

GAHC010015112023



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/404/2023**

CHYAWAN PRAKASH MEENA  
S/O- SH ROOP CHAND MEEENA, R/O- VPO-SEWA , TEHSIL- GANGAPUR  
CITY,  
DIST- SAWAI MADHOPUR (RAJ) 322219 PRESENTLY POSTED DIG (OPS) OF  
BORDER SECURITY FORCE, MASIMPUR, SILCHAR , ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF  
FINANCE , DEPARTMENT OF REVENUE , NORTH BLOCK,NEW DELHI-01.

2:THE COMMISSIONER OF INCOME TAX  
AAYAKAR BHAWAN  
3RD FLOOR  
G.S.ROAD  
CHRISTIAN BASTI  
GHY-05

3:THE INCOME TAX OFFICER  
WARD NO-1  
RANGE SILCHAR

C-R BUILDING  
CIRCUIT HOUSE ROAD  
SILCHAR  
ASSAM  
PIN-788001

4:THE INCOME TAX OFFICER  
ITO  
MANTRIBARI ROAD EXTENSION

DHALESWAR  
AGARTALA  
TRIPURA  
PIN-79900

**Advocate for the Petitioner** : MR. A GOYAL

**Advocate for the Respondent** : DY.S.G.I.

**BEFORE**  
**HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**03.02.2023**

Heard Mr. A. Goyal, learned counsel for the petitioner. Also heard Mr. S. Chetia, learned Sr. Standing Counsel, Income Tax Department.

**2.** The petitioner is serving as a DIG (Ops) of Border Security Force and is posted in Masimpur, Silchar, Assam. The petitioner contends to have rendered meritorious and unblemished service and has been awarded several commendations and medals from various meritorious service. It is the contention of the petitioner that the petitioner is a member of a recognized Schedule Tribe from the State of Rajasthan under Article 342 of the Constitution of India and is therefore entitled to Income Tax Exemption as provided under Section 10(26) of the Income Tax Act, 1961. In support of his contention, the petitioner refers to the Caste Certificate issued by the Executive Magistrate and Tehsildar, Dist. Sawai Madhopur, Rajasthan, which certifies that the petitioner belongs to the "Meena" community which is considered to be a Schedule Tribe under the Constitution Schedule Tribe State order 1951 in the State of Rajasthan. The petitioner during the course of his service has been posted in

several places (details of which are furnished at Paragraph-3 of the writ petition).

**3.** The grievance of the writ petitioner is that although he is certified to be a member of the Schedule Tribe "Meena" in the State of Rajasthan and by virtue of which he is exempted from payment of Income Tax under the provisions of Section 10(26) of the Income Tax Act, 1961, Income Tax has been deducted from his salary in the form of Taxes Deducted from Source (TDS). Time and again, the petitioner has represented before the authorities concerned to refund the taxes deducted from his salary as he is exempted from payment of Income Tax under Section 10(26) of the IT Act, 1961. He represented before the Income Tax Officer, Ward No. 1, Range Silchar as well as Income Tax Officer, Agartala seeking refund of Income Tax deducted in view of the caste certificate issued in his name and the benefit of exemption as prescribed under Section 10(26). However, the Income Tax deducted from his salary has not been refunded till date.

**4.** The learned counsel for the petitioner submits that this Court, in ***Pradip Kr. Teye and Ors. Vs. Union of India and Ors***, reported in **(2010) 2 GLR 367**, has already settled this issue and has held that persons belonging to Schedule Tribe will be eligible to the benefit of Section 10(26) of the IT Act, 1961 irrespective of their places of posting. The learned counsel for the petitioner submits that the said Judgment still holds the field and therefore the respondent authorities are duty bound in law to refund the taxes deducted from his salary in terms of the law laid down by this Court in *Pradip Kr Teye (Supra)*. The learned counsel for the petitioner has also referred to a Judgment by

Tripura High Court, where Pradip Kr Taye (Supra) has been relied upon.

**5.** Mr. S. Chetia, learned Sr. Standing Counsel, Income Tax Department does not dispute the position of law laid down in the said Judgment of this Court. He submits that in terms of the Judgment, this Court has laid down that in terms of the benefit accrued under Section 10(26), beneficiaries like the petitioner who are members of Scheduled Tribes are not required to pay income tax. He, however, submits that further time be granted to him to obtain the required instructions from the department.

**6.** The learned counsels for the parties have been heard. Pleadings on records have been perused. The Judgments referred to by the learned counsel for the petitioner has been carefully perused. Provisions of the statute have also been noted. It is also seen that the Department has already issued a Certificate in favour of the petitioner under Section 197 which is found at Annexure -5 of the writ petition that the petitioner is exempted from payment of Income Tax since there is no dispute regarding the position of law, this Court proposes to dispose of this writ petition at this stage without issuing any Notice, as the Income Tax Department is also represented by its Standing Counsel.

**7.** Section 10(26) of the Income Tax Act, 1961 reads as under:

***10** In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-*

*(26) in the case of a member of a Scheduled Tribe as defined in clause (25) of article 366 of the Constitution, residing in any area specified in Part I or Part II of the Table appended to Paragraph 20 of*

*the Sixth Schedule to the Constitution or in the States of Arunachal Pradesh, Manipur, Mizoram, Nagaland and Tripura or in the areas covered by notification No. TAD/R/35/50/109, dated the 23<sup>rd</sup> February, 1951, issued by the Governor of Assam under the proviso to sub-paragraph (3) of the said paragraph 20 as it stood immediately before the commencement of the North-Eastern Areas (Reorganization) Act, 1971 (71 of 197) or in the Ladakh region of the State of Jammu and Kashmir, any income which accrues or arises to him,-*

*(a) from any source in the areas or States aforesaid, or*

*(b) by way of dividend or interest on securities;*

**8.** In terms of the provisions of this Section, any member of a Scheduled Tribe as defined in Clause (25) of Article 366 of the Constitution, residing in any of the areas prescribed under Section 10(26), is exempted from payment of income tax. This Court in *Pradip Kr. Teye (Supra)* had elaborately dealt with this issue and had laid down the law and had held that the expression under Section 10(26) "residing in any area specified" cannot be given a narrow and restricted meaning to imply that the members of a Schedule Tribe migrating from their places of origin, which happens to fall in one of the areas specified in the said sub-section, to another area although once again falling within the areas specified in the sub-section, would not get the benefit of the exemption under Section 10(26) for exemption from payment of income tax. The relevant paragraphs from the said Judgment are extracted below:

**“28.** *Examined thus, the crucial expression "residing in any area specified" occurring under section 10(26), in our view, cannot be given a narrow and restricted meaning to imply that the members of a Scheduled Tribe migrating from their place of origin, which happens to fall in one of the areas specified in the said sub-section, to another area although once again falling within the areas specified in the sub-section, would not get the benefit of the exemption under section 10(26). If a literal meaning is to be given to the expression "residing in any area specified", in our view, section 10(26) is*

*capable of producing a result that any member of a Scheduled Tribe irrespective of the fact whether such a Scheduled Tribe is a Scheduled Tribe, in relation to those territories specified in the said sub-section or not, is entitled to the bene fit of the said subsection. It is not the case of either the petitioners or the revenue that the Parliament, while enacting section 10(26) intended such result. Therefore, the expression "residing in any area specified" must be interpreted in the context of the said sub-section. The context of the sub-section is that it is a special provision with reference to the specified areas of the country, that is, the areas comprising North East and Jammu & Kashmir of the country, which received a special treatment under the scheme of the Constitution in the various aspects of the application of the Constitution. It may also be worthwhile remembering that even in the matter of reservation of seats either in the Lok Sabha or the various Legislative Assemblies, the Scheduled Tribes of the State of "Assam" are treated exclusively under article 330(3) [ 330 (3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State.] and 332(1) [ 332 (1) Seats shall be reserved for the Scheduled Castes and Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in Nagaland and in Meghalaya, in the Legislative Assembly of every State.] . Therefore, in our view, the expression "residing in any area specified", occurring under section 10(26) is used by the Parliament synonymously with the expression "in relation to any area specified" under the said sub-section. In our view, the expression "residing in any area specified" is not meant to be restrictive of the benefit provided under the said sub-section in the case of members of the Scheduled Tribes, who, otherwise, fall within the scope of the said section, but migrating to one of the places specified in the said sub-section but only descriptive of the limited number of Scheduled Tribes, which are residents of the areas specified under section 10(26) of the Income-tax Act.*

**29.** *It may also be kept in mind while interpreting the said sub-section that the benefit contemplated therein is sought to be given to a specific class of assesseees with reference to the income arising or accruing out of a specified area, i.e., areas specified in section 10(26)(a) or certain sources specified in section 10(26)(b). While clause (a) of section 10(26) restricts the benefit to the incomes arising or accruing out of various sources, such as, salaries, house*

*properties etc., (which are some of the heads of income) so long they arise or accrue within one of the territories/areas specified in the said sub-section, under clause (b) of section 10(26), such a restriction, regarding the territory (with reference to which the income arising out of dividend or interest on securities arise), is not applicable.*

**30.** *Yet another reason to reject the interpretation sought to be placed on the said sub-section by the revenue is the history of the sub-section. It is already noticed earlier, originally the provision sought to exclude the employees of the government from the purview of the benefit conferred by the said sub-section, which was found to be unconstitutional by the Supreme Court as creating an unreasonable classification among the Scheduled Tribes. The Supreme Court in S.K. Dutta (supra) held such a classification to be illegal. At para-14 of the said judgment the Supreme Court held as follows:—*

*“It was the contention of the learned Solicitor-General that exemption from income-tax was given to members of certain scheduled tribes due to their economic and social backwardness; it is not possible to consider a government servant as socially and economically backward and, hence, the exemption was justly denied to him. According to the Solicitor-General, once a tribal becomes a government servant he is lifted out of his social environment and assimilated into the forward sections of the society and, therefore, he needs no more any crutch to lean on. This argument appears to us to be wholly irrelevant. The exemption in question was not given to individuals either on the basis of their social status or economic resources. It was given to a class. Hence, individuals as individuals do not come into the picture. We fail to see in what manner the social, status and economic resources of a government servant can be different from that of another holding a similar position in a corporation or that of a successful medical practitioner, lawyer, architect, etc. To over-paint the picture of a government servant as the embodiment of all power and prestige would sound ironical today his position in the society to put it at the highest is no higher than, that of others who in other walks of life have the same income. For the purpose of valid classification what is required is not some imaginary difference but a reasonable and substantial distinction, having regard to the purpose of the law.”*

**31.** *Once it is held that such a classification of the government servants from the scope of section 10(26) is violative of article 14 to say that a government servant or the employees of the “State” (within the meaning of article 12) loses the benefit on the mere accident of his being posted out of his place of origin but within the areas specified under section 10(26) and entitled to the benefit of the said section if by an accident, he is posted in the same area of his origin. Such an interpretation, in our view, which is dependent upon pure accident and exigencies of the service, would lead to wholly arbitrary results and undesirable consequences. We, therefore, find no*

*substance in the submission made by the revenue. We are of the opinion that the case NEEPCO Tribal Employees' Welfare Association (supra) is wrongly decided and we approve the decision of this court Dipti Doley Basumatary (Supra) to the extent it is consistent with the present judgment."*

**9.** Having perused the Judgment of this Court rendered by a full Bench in *Pradip Kr. Taye (Supra)* as well as in view of the Tax Exemption Certificates dated 10.12.2020 and 21.04.2021 issued by the respondent department; this Court is of the view that the prayers made by the petitioner will have to be allowed.

**10.** The petitioner is indeed entitled to the benefits accrued under Section 10(26) of the Income Tax Act, 1961. Accordingly, Mandamus is hereby issued to the respondent, more particularly, the Commissioner of Income Tax (TDS) as well as the concerned Income Tax Officer of the ward to expeditiously process the request for refund of income tax deducted from the salary of the petitioner and remit to the petitioner forthwith.

**11.** The respondent department is directed to carry out this order within a period of three (3) weeks from the date of receipt of a certified copy of this order. If the department requires verification of any other documents, the same may be intimated to the petitioner who will make the same available before the respondents authority concerned.

**12.** This writ petition is accordingly allowed. No order as to costs.

**JUDGE**

**Comparing Assistant**