



Sanchar Nigam Pensioners' Welfare Association

Reg. No: SOCIETY/WEST/2021/8902564

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SNPWA/ CHQ/ Deputy Commissioner/ 1/ 23 Dated 26th June2023

To

Respected Shri Sunil Prakash ji

The Deputy commissioner of Income Tax,

**(HQRS, Finance). Room no 351A, Central Revenue Bldg, DCIT HQs, I. P Estate,
ND - 110001**

**Subject: Request for comments on taxability of one-time CGHS payment/
contribution paid to BSNL absorbed pensioners by BSNL.**

Respected Sir,

On behalf of the retired employees/officers' Association of Bharat Sanchar Nigam Limited (BSNL), I hope this letter finds you in good health and high spirits. We are writing to seek your esteemed clarification regarding the tax treatment of one-time CGHS payment/ contribution paid to BSNL absorbed pensioners by BSNL on account of surrender of BSNLMRS. We believe that provisions of the Income Tax Act, 1961, pertinent to the issue, firmly support our position that it is not taxable, and we would like to present them for your kind consideration as mentioned below:

17. For the purposes of sections 15 and 16 and of this section,-.. (2)..... (viii) the value of any other fringe benefit or amenity as may be prescribed:**Sub-Sections 17(2)(viii)(iii) &(iv) of the Income Tax Act, 1961 states as follows:**

Provided that nothing in this clause shall apply to (iii).....

(iv).any sum paid by the employer in respect of any premium paid by the employee to effect or to keep in force an insurance on his health or the health of any member of his family under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority established under sub section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), for the purposes of Section 80D.

Furthermore, **Section 80D, referenced to in Section 17(2) (viii) (IV) of the Income Tax act 12961 explicitly states as follows:**

“Deduction in respect of health insurance premium.”

.....(2) Where the assessee is an individual, the sum referred to in sub-section (1) shall be the aggregate of the following, namely:-

(a) the whole of the amount paid to effect or to keep in force an insurance on the health of the assessee or his family or any contributions made to the *Central Government Health Scheme* or such other scheme as may be notified by the Central Government in this regard or any payment made on account of preventive health check-up of the assessee or his family as does not exceed in the aggregate twenty-five thousand rupees; and... " The capping of the deduction under Section 80D to "twenty-five thousand rupees" is only applicable to employees utilizing income other than the income excluded under Sub-Sections 17(2)(viii)(iii) and 17(2)(viii)(iv) of the Income Tax Act, 1961, i.e., if an employee in addition to the employer contribution contributes from own sources, deduction up to twenty-five thousand rupees can be availed by him. Moreover, Section 80D (4A) allows proportionate deduction (appropriate fraction) in case of lump sum payment. In any case, this is not a factor relevant to any determination by BSNL as to the treatment of CGHS subscription fees as a perquisite upon refund of the onetime payment made by the retired employees of BSNL.

As a direct consequence of this, CGHS subscription fees being explicitly excluded from the ambit of Section 17 of the Income Tax Act, 1961, cannot be treated as a perquisite.

It is noteworthy that in comparable circumstances, the Hon'ble High Court of Delhi in *Yoshio Kubo and Ors. vs. Commissioner of Income Tax* [2013:DHC:3744-DB], held as follows:

37. In *CIT v. Lala Shri Dhar* (1972) 84 NR 192 (Del) this Court was concerned with contributions made by the employers under policies of personal accident taken out by them for protecting themselves against the liability for payment of compensation to their employees. It was held by the Court that the decision to take the policy was of the company, which paid the premium that the assessee himself did not want to take out the insurance. If the company had stopped paying the premium, the assessee would not have continued the same from year-to-year and, therefore, the contribution paid by the company to keep the policy alive could not be considered as a perquisite in the hands of the employee.

38. In the present case, the assessee does not acquire any vested right over the payment at the time of contribution. With regard to the insurance plans, the CIT (A) had held that the contributions are made to benefit the employer and to protect him from loss of employment, sickness, death, accident, etc. of the employee and that the policies themselves are contingent in nature, the benefit under 'which would depend on whether the contingency takes place or not.

39 This court is of the opinion that the revenue's contentions are insubstantial and meritless. The assessee does not- in any appeal, get a vested right at the time of contribution to the fund by the employer. The amount standing to the credit of the pension

fund account, social security or medical or health insurance would continue to remain invested till the assessee becomes entitled to receive it.

40. ***In the case of medical benefit, the revenue could not support its contentions by citing any provision in any policy or scheme which is the subject matter of these appeals, which entitle the vesting right to receive the amount under the scheme or plan did not occur. This court is also of the opinion that the Judgment of the Supreme Court in L.W Russel applies. There, it was held that one cannot be said to allow a perquisite to an employee if the employee has no right to the same. It cannot apply to contingent payments to which the employee has no right till the contingency occurs. The employee must have a vested right in the amount. *In this context, it would be useful to recollect the decision of this Court in C1T v. Mehar Singh Sampuran Singh Chawla (1973) 90 ITR 219 (Del) where it was held that the contribution made by the employee towards a fund established for the welfare of the employees would not be deemed to be a perquisite in the hands of the employees concerned as they do not acquire a vested right in the sum contributed by the employer**

.....
41. The Supreme Court spelt out a wider and fundamental principle, i.e. when the amount does not result in a direct present benefit to the employee, who does not enjoy it, but assures him a future benefit, in the event of contingency, the payment made by the employer, does not vest in the employee. This Court is of the opinion that the new Act does not make any significant departure from this aspect.

42. In view of the above discussion, it is held that the revenue's appeals fail; amounts paid by employers to pension, or social security funds, or for medical benefits, are not perquisites within the meaning of the expression, under Section 17 (1) (v) and therefore, the amounts paid by the employer in that regard are not taxable in the hands of the employee-assessee.

The facts and circumstances of the above case are squarely applicable in the case referred above.

In consideration of the express provisions of the Act and the law as decided by the Hon'ble High Court of Delhi, CGHS subscription fees refunded by BSNL to its retired employees for porting from BSNLMRS to CGHS cannot be deemed to be a perquisite within the meaning of the Income Tax Act, 1961 and is not taxable in the hands of the retired employees of the BSNL* *It is relevant to state here that this Judgment of Hon Delhi High Court has not been overruled by the Hon Apex Court and the same has attained finality

Based on the above provisions and the legal precedents mentioned, we firmly believe that the one-time CGHS payment/ contribution paid to BSNL absorbed pensioners by

BSNL on account of surrender of BSNLMRS should not be treated as taxable income in the hands of retired employees.

Looking forward for a very expeditious and positive clarification whether CGHS reimbursement made by BSNL is taxable or not, based on the facts stated above, since date of filing IT returns is approaching very fast.

Sincerely Yours



(G.L. Jogi)
General Secretary

Copy to

1. Respected Sh Rajiv Kumar, Director/ Finance/ BSNL Board, for kind information and n/a please.
2. Respected Sh Y N. Singh, Sr GM/ Taxation/ BSNL, for kind information and expeditious necessary action at his end pl.