



Sanchar Nigam Pensioners' Welfare Association

Reg.No: SOCIETY/WEST/2021/8902564

CHQ : B-11/1 , Ramesh Nagar, New Delhi-110015, India



snpwachq.com



snpwachq@gmail.com

K.D.Sebastian
CHQ President
+91 9447144100

G.L.Jogi
General Secretary
+91 9868217799

S.S. Rajput
Treasurer
+91 9413394204

SNPWA/ CHQ/ Director (F) / 4 / 23 Dared 16th Jan 2023

To

Respected Sh Rajiv Kumar Ji,
Director (Finance) / BSNL,
Corporate Office, New Delhi.

Sub: Unwarranted and arbitrary encroachment by Taxation Wing of BSNL into settled laws of Income Tax. Infringement into the legitimate domain of IT Rules has resulted in uncalled for and illegitimate deduction of Income Tax for onetime payment made by BSNL Retirees for migration from BSNL MRS to CGHS. Kind and immediate intervention solicited to offset huge injustice inflicted because of arbitrary decision of Taxation Wing of BSNL.

Ref: 1. BSNL Co – TAXN/13(18)/3/2020-Taxation/4362 dated 22-9-2021.

2. Addl. DIT/TDS & FIBR/RTI/2019-20/1928 dated 11-02-2020. (Copy attached).

Respected Sir

The clarifications given by the taxation wing of BSNL Co vide letter under reference 1 in response to the queries made by some individuals have not only resulted in creating confusion of all sorts but are issued in gross violation of the existing I.T.Provisions. It appears that Taxation Wing of BSNL is not clarifying the queries raised but framing fresh Income Tax provisions by amending the extant I.T. laws. This fact is sufficiently corroborated while issuing clarification (2) on levying I.T on gratuity. **While existing I.T laws clearly envisage that gratuity is exempted from I.T to the extent of Rs 20 lakhs in terms of CBDT Notification no S.O-1213(E) dated 8/3.2019 issued by I.T department "in exercise of the powers conferred by sub clause9 (III) of clause (10) of section 10 of Income Tax Act, 1961", the clarification issued by BSNL Co mentions that gratuity is Taxable.** This clearly establishes total lack of application and very cursory manner with which the clarification is issued on such crucial issues of taxation.

Similarly, the clarification issued on query 1, relating to whether refund of one time CGHS migration fees is Taxable or not, states **"However, in the absence of clarity on whether reimbursement to BSNL absorbed retired employees on account of CGHS subscription is an insurance premium or not, on a conservative basis, tax may be deducted at source under the head of salary."**

In reference to this specific clarification, following submissions are extremely relevant and significant to immediately set aside this uncalled for and deleterious clarification that has resulted in levying of undue and illegitimate tax on CGHS migration refund on retired BSNL absorbed employees.

- A) That the said payment of onetime CGHS migration fees is not at all a reimbursement but a refund and as such does not fall under the category of salary at all, by any means, since it not at all an insurance premium. The taxation wing is also completely unsure of this fact, as revealed by it, while issuing clarification on this.**
- B) That the taxation wing clearly endorses that there is no clarity on whether it is an insurance premium, yet it says it is taxable on a conservative basis. Imposition of I.T on any specific provision cannot be done on the basis of either conservative or radical basis. Such issues have to be left entirely to the I.T department to decide. BSNL cannot encroach upon into the forbidden territories of I.T laws and interpret I.T laws and that too to the huge disadvantage of retired absorbed employees. Encroachment upon well-defined domains and contours of I.T provisions and interpreting these provisions according to one's choice is a very serious issue, constituting breach of I.T provisions.**
- C) I.T department for the last six years has not imposed any tax on this onetime CGHS migration fees since it has not reckoned it as an income.**
- D) It is only for the first time, after this clarification is issued by the Taxation wing on 21-9-21, that it is being reflected as a taxable income.**
- E) And most significantly, IT department, in response to an RTI query mentioned at Ref 2 above on whether onetime CGHS migration fees is taxable or not, has unambiguously clarified vide 3b that it does not have to take a final call on this issue since it is simply creation of BSNL only.**

Sir, keeping all these glaring, significant and relevant facts into consideration, you can easily conclude how BSNL is imposing unwarranted and unjustified tax on retired employees in utter contravention of the I.T provisions. An immediate and unconditional rescinding, on war footing basis, of the said clarification is solicited since filing of ITR for the Financial Year 22-23 is fast approaching and is just only 10 days away. This may kindly be treated as extremely urgent for obvious reasons

In this connection we have had a detailed discussion on this with Respected CMD sometime before who advised us to discuss the matter threadbare with Director (F) and, based on the outcome of discussion, further directed us to revert back to him.

It is in this context that we request to grant us an audience at your earliest convenience to discuss the matter so that huge injustice inflicted unnecessarily on Retired personnel who has been arbitrarily imposed Tax by Taxation Wing of BSNL for migration to CGHS is resolved. Looking forward for an early meeting.

Regards

Sincerely Yours



(G.L.Jogi)

Copy to

1. Respected Sh. P.K. Purwar CMD / BSNL for kind information pl.
2. Sh. Arvind Vadnerkar, Director (HR), for kind information pl.
3. Sh. Y.N.Singh, GM (Taxation) / BSNL Co. He is requested to kindly initiate action on a very urgent basis to immediately rescind the said clarification.

Enclosures (Ref 1 and 2)

Reference (1)

CORPORATE OFFICE, TAXATION SECTION 5 th FLOOR, BHARAT SANCHAR BHAWAN, JANPATH, NEW DELHI-110001 Ph.No.011-23037306/23734087, Fax : 011-23718886 Email:bsnltdsco@gmail.com	 BHARAT SANCHAR NIGAM LTD	BHARAT SANCHAR NIGAM LIMITED [A Government of India Enterprise]
No. BSNLCO-TAXN/13(18)/3/2020-TAXATION/4362		Dated:-22-09-2021

To

- 1) The Chief General Managers and IFAs, All BSNL Circles/Units.
- 2) Sr.GM (CA/ERP-FICO/HCM), Corporate Office
- 3) GM (EF/ R&P), Corporate Office

Sub.:- Clarification on taxability of payments made to retired employees and nominees of deceased employees-reg.

The undersigned is directed to intimate that, this office is receiving queries from the various circle on the subject mentioned above. In this connection the para wise replies to the queries raised by circles are as follows:-

Query: Whether reimbursement of CGHS subscription to BSNL absorbed retired employees is to be treated as income of the retired employee? And, if the answer is in affirmative, the head under which it is chargeable.

Reply: As per the proviso to section 17(2) of the Income Tax Act,1961 any reimbursement by the employer in respect of any insurance premium paid by the employee to effect an insurance on his health or the health of his family under any approved scheme by Central Govt. or IRDA is a tax free perquisite. However, in the absence of clarity on whether reimbursement to BSNL absorbed retired employees on account of CGHS subscription is an insurance premium or not, on a conservative basis, tax may be deducted at source under the head of salary.

Query: Gratuity/Leave encashment payable to Nominee/Legal Heirs of BSNL employee on death while in employment is to be shown as Income of the employee or legal heirs? And the head under which it is chargeable.

Reply:

- (i) Gratuity is a payment made by Employer to an Employee in appreciation of the past services rendered by the employee. Gratuity can either be received by:-
- a) The employee himself at the time of retirement.
 - b) The legal heir on the event of the death of the employee.

Gratuity received by an employee on his retirement is taxable under the head "Salary" Whereas gratuity received by the legal heir of the deceased employee shall be taxable under the head "Income From Other sources".

As per circular No. 573 dated 21.08.1990, Gratuity payment to a widow or other legal heirs of any employee who dies in active service shall be exempt from income tax.

(ii) Leave salary paid to the legal heir of deceased employee is not taxable as salary. [Letter No. F.35/1/65-IT(B), dated 5/11/1965]. Further, leave salary by a legal heir of the Government employee who died in harness is not taxable in the hands of the recipient [Circulars No.309, dated 3/7/1961].

Query: Medical Reimbursement to the spouse/dependents of the deceased employee is taxable under which head of Income tax.

Reply: As per section 56(1) of the Income tax act, Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14,

in other words, the following conditions must be satisfied before an income can be taxed under the head of "Income from other source" :-

(i) there must be an income.

(ii) such income is not exempt under the provision of the income tax act.

(iii) such income is not chargeable to tax under any first four heads viz., "Income from Salary", "Income from House Property", "Profit and Gains of Business and Profession", and "Income from Capital Gains".

Income from other source is, therefore, a residuary head of income.

In view of the above medical reimbursement to the spouse/dependents of the deceased employee is taxable under the head of "Income from other source" of Income tax.

It is requested to kindly go through the above instructions and contents of the same may be brought to the notice of all concerned for their information and further necessary action.

This issues with the approval of Sr. GM (Taxation).


(Subrat Kumar Mohakud)
AGM (Taxation)

Reference (2)


DIRECTORATE OF INCOME TAX (TPS-1 & TDS),
आयकर निदेशालय (टी.पी.एस.-1 & टी.डी.एस.)
5th Floor, Mayur Bhawan/ 5वां तल, मयूर भवन,
Connaught Circus, New Delhi – 110001/ कनॉट प्लेस, नई दिल्ली- 110001
Phone: 011-2341 2641 Fax: 011-2341 2052
E-mail – delhi.addit.tds.bifr@incometax.gov.in

F. No. Addl.DIT/TDS & BIFR/11/2019-20/1928	Dated: 11.02.2020
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Name & Address of the applicant	Sh. Amit Kumar Gupta, 1/4 Rajendra Banerjee Road, Behala, Kolkata-700034
Date of Receipt of application	13.01.2020
Date of Order	11.02.2020

ORDER U/S 7 OF THE RIGHT TO INFORMATION ACT, 2005

An application filed by Sh. Amit Kumar Gupta, 1/4 Rajendra Banerjee Road, Behala, Kolkata-700034 was received in this office on 13.01.2020 which was forwarded to this office by Addl. DIT(TDS&BIFR), New Delhi wherein the para wise information is provided as under.

Information sought	Reply
1 (a) (b) (c)	Yes, according to Union Budget 2018, reimbursement on actual expenses for outdoor & indoor medical treatment to senior citizens is considered as taxable income in respect of employees other than Government employees and for which TDS is to be deducted and income Tax is to be paid.
2	Reimbursement received by CGHS beneficiaries on account of 1(a) & 1(b) above is not a taxable income
3 (a) (b)	<p>*TDS on medical reimbursement claim is deducted on actual payment u/s 192 of IT Act, 1961 & Rule 3 of Income Tax Rules, 1962.</p> <p>*Any person making specified payment mentioned under the Income Tax Act are required to deduct TDS at the time of making such specified payment which is to be deposited to the Government by 7th of the subsequent month.</p> <p>*Since, this issue relates to the internal practice of the BSNL. Hence, this office is unable to give any specific reply.</p>
4	Same as mentioned in point 3

3 of 3

Copy to :
The AADIT (TPS-1) & CPIO, O/o ADG (TPS-1&TDS), New Delhi.

(M)
AADIT

AADIT (BIFR/11/2019-20/1928)