THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C) No.73 of 2014

Shri Chandra Mohan Sinku,
Son of Late Mata Sinku
S.G(Wells), TRI LOGG SER, ONGC Ltd., Tripura Asset,
Resident of Qr. No.C-37, O.N.G.C., South Colony,
P.O. – O.N.G.C. Colony, P.S. Amtali,
District – West Tripura.

.... *Petitioner.*

- Vs –

1. **The Union of India, New Delhi,**
   Represented by the Secretary to the Government of India,
   Ministry of Finance, New Delhi. PIN – 110 001.
2. **The Secretary to the Government of India,**
   Ministry of Finance, New Delhi, PIN – 110 001.
3. **The Commissioner of Income Tax,**
   Aaykar Bhawan, North Eastern Region,
   Mahatma Gandhi Road,
   P.O. Shillong, Meghalaya, Pin -793 001.
4. **The Joint Commissioner of Income Tax (TDS),**
   Aaykar Bhawan, Mahatma Gandhi Road,
   P.O. Shillong, Meghalaya, Pin -793 001.
5. **The Income Tax Officer (TDS),**
   City Centre, 5th Floor, Paradise Chowmuhuni,
   P.O. Agartala, West Tripura, PIN – 799 001.

.... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	:	Mr. D. Chakraborty , Advocate.
For the respondents	:	Mr. P K Biswas, Asstt. S.G.I. Mr. P. Majumder, Advocate Ms. C. Bhowmik, Advocate
Date of hearing & Judgment	:	02.03.2015
Whether fit for reporting	:	NO

JUDGMENT & ORDER (ORAL)

(*Deepak Gupta, CJ*)

The petitioner by means of this petition has prayed that though he does not hail from the specified areas as mentioned in Section 10(26) of the Income Tax Act, 1961, since he is a member of the Scheduled Tribes within the meaning of Article 342 of the Constitution of India, he is entitled to the benefit of Section 10(26) of the Income Tax Act, 1961.

2. This question is no longer *res-integra.* A Full Bench of this Court was constituted to answer the following six questions. The judgment of the Full Bench forms part of the record of this case.

> ***"(1) Whether, a member of a Scheduled Tribe as defined in Clause 25 of Article 366 of the Constitution of India is entitled to grant of exemption under section 10(26) only when he is working 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 when he is posted anywhere in the country?***
>
> ***(2) What is the scope and ambit of the words "residing" in the opening portion of section 10(26) of the Act?***
>
> ***(3) Whether, a person belonging to the Scheduled Tribes and falling within the meaning of Clause 25 of Article 366 but not originally belonging to the areas specified in Part I or Part II of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution and not belonging to the States of Arunachal Pradesh, Manipur, Mizoram, Nagaland and Tripura is entitled to benefit of section 10(26) when posted in such areas?***
>
> ***(4) Whether, a person who is a member of the Scheduled Tribes and belongs to the areas specified in Part I or Part II of the Table***

appended to paragraph 20 of the Sixth Schedule to the Constitution or belongs to the States of Arunachal Pradesh, Manipur, Mizoram, Nagaland and Tripura is entitled to benefit of exemption under section 10(26) of the Act when he is posted outside these areas?

(5) Whether, a member of the Scheduled Tribes is bound to obtain a certificate of exemption from the Income Tax Authorities in terms of section 197 of the Act?

(6) Whether, such certificate, if obtained, is valid for the entire service career of the member of the Scheduled Tribes or not?"

3. The Full Bench vide its decision rendered on 20th February, 2015 in ***WP(C) No.73 of 2014 [Shri Chandra Mohan Sinku and others Vs. Union of India and others]*** has answered these questions in the following terms :

"30. In view of the above discussion, we answer the six questions as follows :

(a) A member of a Scheduled Tribe would be entitled to the benefit of Section 10(26) only when he is posted in the specified areas. Once he is posted outside the specified areas then he ceases to reside in the specified are and the income does not accrue to him in the specified area.

(b) The scope and ambit of the word 'residing' has to be given its natural meaning that a person has an abode and is living in a particular area for his work and livelihood for a reasonably long length of time. However, whether a person is actually residing or not is a question of fact to be decided on the facts of each case.

(c) Question no.3 is answered in favour of the assessees by holding that any member of a Scheduled Tribe declared to be so under Article 342 of the Constitution, even though he does not belong to the specified area, would be entitled to benefit of Section 10(26) when posted to at a station in the specified area and residing therewith in connection with his employment.

> ***(d) Question no.4 is answered by holding that a member of Scheduled Tribe originally hailing from the specified area would not be entitled to the benefit of exemption under Section 10(26) when he is residing outside the specified areas.***
>
> ***(e) A member of Scheduled Tribe is bound to obtain a certificate of exemption in terms of Section 197.***
>
> ***(f) Question no.6 is answered by holding that the validity of the certificate will be for one assessment year only."***

4. In view of the reasoning given in the Full Bench judgment in response to question No.3, the petitioner is entitled to the benefit of Section 10(26) of the Income Tax Act, 1961 as long as he is residing in the specified areas as defined in the judgment. The petitioner may apply for fresh exemption certificate in terms of Section 197 of the Income Tax Act, 1961 and the income tax authority shall deal with the same in accordance with the judgment of the Full Bench.

JUDGE **CHIEF JUSTICE**

MB