

ito Vs. Harsh Kumar Sharma

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Sep-14-2007

Judge : D Singh, R Singh

Appellant : ito

Respondent : Harsh Kumar Sharma

Judgement :

1. These appeals filed by the revenue against the respective orders of Commissioner (Appeals), New Delhi, passed in Appeal Nos. 457/05-06, 86/06-07, 454/05-06, 6/06-07, 7/06-07, 453/05-06, 452/05-06, 84/06-07, 61/06-07 and 62/06-07, dated 10-8-2006 were heard together and are being disposed off by this common order, because the facts and issues involved in the grounds of appeals are identical, for the sake of convenience.

2. All the instant assesseees were former employees of Reserve Bank of India who took retirement under the Optional Early Retirement Scheme (OERS) meant for the employees who having completed 25 years of service and attained the age of 50 years. The scheme was for the benefit of the employees who opted for retirement from Reserve Bank of India and Reserve Bank of India was to pay ex gratia amount. The same was claimed as exempt by these employees under Section 10(10C) of the Act.

3. The assessing officer was of the view that the payment received by the assesseees under OERS do not qualify for exemption under Section 10(10C) of the

Act read with rule 2BA of the Income Tax Rules, 1962. The view of the assessing officer was based on the clarification issued by the Reserve Bank of India vide its Letter No. 3079/Pension 5(m)A/2004-05, dated 9-3-2005 and the extract from the same is reproduced herein below: Further we enclose a copy of the extract containing the salient features of the Optional Early Retirement Scheme (OERS). It may be observed therefrom that the income-tax shall be deducted at source on the entire amount payable as ex gratia. Besides, the ex gratia amount will be payable in one lump sum subject to the recovery of income-tax, which is to be borne entirely by the employee. It has also been observed from the clarifications received on the Scheme of Central Office that since the OERS will not comply with rule 2BA of the Income Tax Rules, 1962, and accordingly, the amount received by the employees under the OERS would not be eligible for exemption under Section 10(10C) of the Act.

4. On appeals against the orders of the assessing officer, the learned Commissioner (Appeals) after referring to the scheme and considering the decision of Hon'ble Calcutta High Court in the case of Sail DSP VR Employees Association 1998 v. Union of India held that the maximum exemption under Section 10(10C) of Rs. 5 lakhs is allowable as all the conditions of Section 10(10C) read with rule 2BA are fulfilled. If the sum is received in excess of Rs. 5 lakhs, the same was held eligible for relief under Section 89(1) of the Act in view of the decision of Hon'ble Madras High Court in the case of CIT v.G.V. Venugopal . Thereafter, the Commissioner 5. At the outset of the appellate proceedings, learned authorised representative of the assessee submitted that identical issue in respect of erstwhile employees of Reserve Bank of India who have opted for OERS were held eligible for exemption under Section 10 (10C) and also relief under Section 89(1) of the Act by Income Tax Appellate Tribunal, Mumbai-Bench in the case of Vaiskali A. Shelar v. Asstt. CIT (2007) 14 SOT 407. Income Tax Appellate Tribunal- 'D' Bench - New Delhi in the case of Smt. Santosh Gautam. (XT. Appeal No. 3223 (Delhi) of 2006 for assessment year 2004-05) along with other appeals and Income Tax Appellate Tribunal - 'G' Bench - New Delhi in the case of Shri Dharam Pal (I.T.A. No. 3530 (Delhi) of 2006 for assessment year 2004-05) along with other appeals. He further submitted that the issue involved in the instant cases of the assessee also stand covered in favour of the assessee

and against the revenue by the following decisions of the High Court: CIT v. P. Surendra Prabhu 5.1 Income Tax Appellate Tribunal-'D' Bench, New Delhi in the case of Smt. Santosh Gautam (I.T.A. No. 3223 (Delhi) of 2006 for assessment year 2004-05) along with other appeals decided this issue in favour of the assessee and against the revenue by placing reliance on the decision of Income Tax Appellate Tribunal, Mumbai Bench "K", in the case of Vaishali A. Shelar (supra) also considering the case of Sail DSPVR Employees Association 1998 (supra) decided by the Hon'ble Calcutta High Court.

5.2 Income Tax Appellate Tribunal - 'G' Bench, New Delhi in the case of Dharam Pal (supra) alongwith other appeals decided this issue in favour of the assessee and against the revenue by making following relevant observations under paras 3 to5 at pages 8 to 10: 3. When the matter came up for hearing, the learned Counsel for the assessee, at the outset, has submitted that the issue involved in these appeals is covered by the decision of ITAT, SMC Bench, New Delhi in ITA No. 3552/ Delhi/2006 in the case of Income Tax Officer v. Shri Prem Kumar Gupta wherein it has been held thus: I have heard the rival submissions. I have also perused the record.

I find that the learned Commissioner (Appeals) has rightly held that the scheme framed by Reserve Bank of India was covered by the provisions of Section 10(10C) and the amount received by the assessee at the time of voluntary retirement was also covered by Section 10(10C) read with rule 2BA of the Income Tax Rules, 1962. Therefore, he held that the assessee was also entitled to relief under Section 89(1). The contention of the learned Commissioner (Appeals) finds support from the following case laws: CIT v. P. Surendra Prabhu 5. After perusal of all the above-cited judgments it is evident that the assessee was eligible to claim simultaneous benefit under Section 10(10C) as well as Section 89(1) of the Income Tax Act in respect of the compensation received under the Voluntary Retirement Scheme framed by Reserve Bank of India. The learned authorised representative had also relied on the case of ITO, Ward 27(2), Kolkata v. Sri Jiban Kumar Paul, Kolkata in ITA Nos. 2225 & 2226 (Kol) 2005 wherein the Income Tax Appellate Tribunal held that since the tax effect was below the limits prescribed by the Central Board of Direct Taxes, this issue could not be examined. Necessary

details had not been filed by the Learned authorised representative regarding tax effect involved in this case. However, I find no infirmity in the order of learned Commissioner (Appeals) on merit.

The order of learned Commissioner (Appeals) is confirmed for the reason given therein.

4. In the recent decision in the case of CIT v. S. Sunder the Hon'ble High Court has held that the assessee was eligible to claim simultaneous benefit under Section 10(10C) as well as Section 89(1) of Income Tax Act, 1961, in respect of the compensation received under voluntary retirement scheme.

5. In view of the above, we find no reason to interfere with the orders passed by the Commissioner (Appeals) in the above appeals.

5.3 Income Tax Appellate Tribunal- K Bench, Mumbai in the case of Vaishali A. Shelar (supra) along with other appeals also decided this issue in favour of the assessee and against the revenue by making following relevant observations under para 11 at page 31: 11. We, therefore, on the basis of the scheme and the actual facts that are brought out by the bank itself, do not agree with the stand of the assessing officer or the Commissioner that the conditions or the guidelines prescribed under rule 2BA are not complied in the OERS of the Reserve Bank of India. Any statement that it will not fill up the vacancies caused as a result of OERS would have resulted in opposition by the employees themselves as it will be a repressive measure against the labour. It will of interest to observe the finding of the Hon'ble Calcutta High Court in the case of Sail DSP Employees Association v. Union of India (supra) where it has opined that Section 10(10C) of the Income Tax Act, 1961 uses the expression "any amount received by an employee...at the time of his voluntary retirement in accordance with any scheme or schemes of voluntary retirement." If a plain literal interpretation of statutory provision produces a manifestly absurd and unjust result, which the Legislature could not have intended, the court is supposed to modify the language used by the Legislature, even to do some violence to it so as to achieve the obvious intention of the Legislature and produce a rational construction. An expression used in the statute is not always to be interpreted literally or grammatically. Some times it has to be

interpreted having regard to the context in which the expression is used and having regard to the object and purpose for which the same is enacted. Section 10(10C) was inserted in order to make voluntary retirement attractive so as to reduce human complements for securing economic viability of certain companies.

This object was elaborated by various departmental circulars and explanatory statements issued from time to time. Similarly, rule 2BA of the Income Tax Rules, 1962, which was inserted by the Income (Sixteenth Amendment) Rules, 1992, was amended from time to time.

All these go to show that this was intended to make voluntary retirement more attractive and beneficial to the employee opting for voluntary retirement. Therefore, this has to be interpreted in a manner beneficial to the optee for voluntary retirement, if there is any ambiguity, rule 2BA prescribes the limit. Initially it was one and one half month's salary for each completed year of service since amended to three months salary for each completed year of service or the salary for the months remaining after voluntary retirement till retirement. This clearly indicates that it is only the compensation part payable on account of cessation of employment, which is the amount intended in Section 10(10C), inasmuch as, on the date an employee opts for voluntary retirement, he is already entitled to the accumulation of the provident fund in his account governed by the Provident Funds Act and the Scheme, gratuity payable under the Payment of Gratuity Act, encashment of leave pay under the leave rules and pension payable under the pension rules, if there be any.

These are all terminal benefits to which an employee is entitled even without the scheme. This entitlement cannot be taken away under any scheme. Therefore, if these amounts are also payable under the scheme, they would not be a component of the compensation for voluntary retirement and are not an amount receivable on account of voluntary retirement. Therefore, the terminal benefits cannot be brought within the scope and ambit of the expression "amount received" used in Section 10(10C).

Sums paid on voluntary retirement to the extent of rupees five lakhs are exempted from being charged to tax by reason of Section 10(10C).

Even if the payment is stretched over a period of years, the same could not become chargeable to tax in any subsequent assessment year.

What is not otherwise taxable cannot become taxable because of admission of the assessee. Nor can there be any waiver of the right otherwise admissible to the assessee in law. The chargeability is not dependent on the admission of, or waiver, by the assessee.

Chargeability is dependent on the charging section, which needs to be strictly construed.

It may not be out of place to mention that the Calcutta High Court while dealing with the Writ Petition in 4957/W/04 in its operative para has expressed the following view: Prima facie, it appears that money received on account of voluntary retirement up to the sum of Rs. 5 lakhs was not taxable. The Reserve bank of India, it appears, was conscious of the legal position and that is why it went in for advice in the matter. The correctness of the advice rendered to them, however, appears to be doubtful. This Court, however, does not pass any opinion with regard thereto.

This will answer whether the opinion expressed by the Chartered Accountant on the issue will make the sums in question taxable.

Neither the opinion of the Chartered Accountant nor the views of the Reserve Bank of India will finally determine the fate of exemption that is claimed under Section 10(70C) but the satisfaction of the conditions or guidelines laid down by the Income Tax Rules, 1962. A plain reading of section and guidelines of rule 2BA shows that the scheme in question leaves no doubt in our minds that the sums in question are clearly exempt under Section 10(10C) of the Act upto the extent of Rs. 5 lakhs. On the excess receipts the assessee is entitled to relief under Section 89 of the Act. The provisions of Section 89 of the Act read as under: Where the assessee is in receipt of a sum in the nature of salary, being paid in arrears or in advance or is in receipt, if any one financial year, of salary for more than twelve months or a payment which under the provision of Clause (3) of Section 17 is a profit in lieu of salary, or is in receipt of a sum in the nature of family pension as

defined in the explanation to Clause (iia) of Section 57, being paid in arrears, due to which his total income is assessed at a rate higher than that at which it would otherwise have been assessed, the assessing officer shall, on an application made to him in this behalf, grant such relief as may be prescribed.

The sums in question are clearly the part of salary in the form of profits in lieu of salary as defined in Section 17(3) of the Act.

These are amount of compensation received by, the employee from the employer in connections with the terms of employment and, therefore, the assesses in question are clearly entitled for relief under Section 89 in accordance with law in respect of the payments that are included in the total income. Further a similar view has been expressed in the decision of the Hon'ble Madras High Court in the case of CIT v. Venugopal 273 ITR 307 (Mad) and the decision of the Hon'ble Karnataka High Court in CIT v. P. Surendra Prabhu 279 ITR 402 (Karn).

6. On the other hand, learned Departmental Representative for the revenue was fair enough to concede to the above submissions of the learned authorised representative for the assessee.

7. On examining the order of the Tribunal as well as of the High Court, we find that the facts and issues involved in the instant cases of the revenue are exactly identical to the facts and issues involved in the decisions (supra) and, hence, respectfully following the decisions (supra), the issue involved in the instant ground of appeals of the revenue are decided in favour of the assessee and against the revenue and consequent upon the same the orders of the Commissioner (Appeals) in this regard are upheld and ground of the appeals taken by the revenue is rejected.

8. In the result, the instant appeals filed by the revenue are dismissed.

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