

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 260 of 2013

Date of Decision: 2.12.2015

Harbans Singh

....Appellant.

Versus

Commissioner of Income Tax, Patiala

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Manjit Singh Sarao, Advocate for the appellant.

Mr. Zora Singh Klar, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of three appeals bearing ITA Nos. 260, 261 and 269 of 2013 as according to learned counsel for the parties, similar questions of law and facts are involved in all the appeals. For brevity, the facts are being extracted from ITA No. 260 of 2013.

2. ITA No. 260 of 2013 has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 27.12.2012 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 758/CHD/2012 for the

assessment year 2008-09. The appeal was admitted by this Court vide order dated 10.3.2014 for determination of the following substantial questions of law:-

- i. Whether the Hon'ble ITAT Chandigarh Bench 'B', Chandigarh was justified in confirming the order of learned CIT(Appeals) and orders of Assessing Officer making additions of ₹ 11,002/- on account of Gratuity and ₹ 37,012/- on account of Leave Encashment claimed exempt by the assessee?
- ii. Whether the Hon'ble ITAT Chandigarh Bench 'B' Chandigarh confirming the order of learned CIT (Appeals) that Assessing Officer was justified in calculating the amount of Gratuity exempt under Section 10(10) and Leave Salary exempt under Section 10(10AA) of the Income Tax Act, 1961 by treating Salary for the purpose of calculation of exempted amount of Gratuity and Leave encashment as that Salary means "basic plus DA and excludes all other allowances as per clause (h) of Rule 2 of Part A of the Fourth Schedule" whereas in clause 2(h) of Part A of the Fourth Schedule it is nowhere provided that Salary means only basic pay and does not include Special Pay, Fixed Personal Pay, Professional Pay as in case of the appellant?

- iii. Whether the ITAT has rightly taken support by the decision of the Hon'ble Madras High Court in case of K. Gopal Krishan v. Central Board of Direct Taxes (1994) 206 ITR 183?

3. A few facts necessary for adjudication of the present appeal as narrated therein are that the assessee had retired from the services of the State Bank of Patiala under 'Exit Option Scheme' floated by the Bank vide circular dated 30.9.2006 and is having income from retiral benefits and from other sources during the year in question. He has filed his return on 31.7.2008 for the assessment year 2008-09 declaring income at ₹ 7,95,394/-. Thereafter, he filed the revised return on 4.6.2009 declaring income at ₹ 2,93,850/- by claiming exemption of ₹ 5 lacs under Section 10(10C) of the Act. The case of the assessee was taken up for scrutiny and notice under Section 143(2) of the Act was issued. The Assessing Officer framed the assessment under Section 143(3) of the Act vide order dated 28.12.2010 (Annexure A-1) at a total income of ₹ 8,41,860/-. The Assessing Officer made additions of ₹ 5 lacs claimed exempt under Section 10(10C) of the Act being amount of ex-gratia received under the Scheme of Voluntary Retirement from the State Bank of Patiala declaring it as not in conformity with the Rule 2BA of the Income Tax Rules, 1962 (in short "the 1962 Rules"), ₹ 11,002/- on account of excess amount of gratuity and ₹ 37,102/- being excess amount of leave encashment both claimed exempt under Section 10(10AA) of the Act. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT (A)"]. The CIT(A) vide order dated 25.5.2012 (Annexure A-2) partly allowed the appeal and deleted the disallowance of exemption under

Section 10(10C) of the Act. However, the disallowance of claim ₹ 11,002/- on account of gratuity and ₹ 37,012/- of leave encashment under Section 10(10AA) of the Act were upheld by the CIT(A). Still dissatisfied, the assessee filed an appeal before the Tribunal who vide order dated 27.12.2012 (Annexure A-3) upheld the order of the CIT(A) and dismissed the appeal. Thereafter, the assessee filed an application bearing MA No. 25/Chd/2013 for recalling the order dated 27.12.2012 (Annexure A-3) before the Tribunal. The said application was dismissed by the Tribunal vide order dated 21.6.2013 (Annexure A-4). Hence, the present appeal.

4. After hearing learned counsel for the parties, we do not find any merit in the appeals.

5. The bone of contention between the parties in these appeals relates to whether any benefit or allowance other than dearness allowance is to be included in the basic salary of the assessee for computation of gratuity and leave encashment under Section 10(10) and 10(10AA) of the Act respectively.

6. Firstly, reference is made to the relevant statutory provisions to analyze the legal position. Section 10 of the Act deals with income which are not included in total income for the purposes of income tax. Under sub-section (10) of Section 10 of the Act, any death-cum-retirement gratuity received by the assessee is exempt from payment of income tax to the extent specified therein on fulfillment on conditions enumerated in that provision. Similarly, Section 10(10AA) of the Act prescribes that cash equivalent of leave salary in respect of the period of earned leave is not to be included in his taxable income to the extent specified therein where the assessee fulfills the conditions stated

thereunder. According to Explanation appended to Section 10(10) of the Act, "salary" in clauses (10) and (10AA) to Section 10 of the Act shall have the meaning assigned to it in clause (h) of Rule 2 of Part A of the Fourth Schedule of the Act which reads thus:-

"2(h) "Salary" includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites."

7. A plain reading of Clause (h) of Rule 2 of Part A of Fourth Schedule to the Act clearly spells out that for determining the extent of exemption in case of receipt of death-cum-retirement gratuity and also leave encashment on retirement, the salary shall include dearness allowance only if the terms of employment so provide but shall exclude all other allowances and perquisites. Though salary has also been defined in Section 17 of the Act but that is restricted for the purposes of Sections 15 and 16 of the Act and would not govern provisions of Sections 10(10) and 10(10AA) of the Act. Thus, for quantifying the amount exempt under Sections 10(10) and 10(10AA) of the Act, the "salary" shall be determined as referred in Rule 2(h) of Part A of Fourth Schedule of the Act and no other payment or allowance other than dearness allowance if the terms of employment so permit, shall be taken into consideration.

8. Having enunciated the legal position as noticed above, we proceed to examine the factual matrix involved herein. The assessee retired from the service of State Bank of Patiala under 'Exit Option Scheme' floated by the said Bank vide circular dated 30.9.2006 and claimed exemption under Section 10(10C) of the Act amounting to ₹ 5 lacs on account of ex-gratia. The Assessing Officer disallowed the claim

of the assessee and made addition of ₹ 5 lacs by observing that the said scheme was not in conformity with Rule 2BA of the 1962 Rules. The claims of the assessee regarding gratuity and leave encashment under Sections 10(10) and 10(10AA) of the Act were partially disallowed by the Assessing Officer and additions of ₹ 11,002/- and ₹ 37,012/- on that account were made. On appeal, the CIT(A) upheld the order of the Assessing Officer except deleting the disallowance of the assessee under Section 10(10C) of the Act made by the Assessing Officer. The partial additions of ₹ 11,002/- and ₹ 37,012/- made on account of gratuity and leave encashment were sustained by the CIT(A) by holding that the computation of benefit of gratuity and leave encashment under Sections 10(10) and 10(10AA) of the Act are to be governed by the definition of 'salary' as per Rule 2(h) Part A, Fourth Schedule under which it is provided that what it includes and what it does not include. The relevant findings recorded by the CIT(A) read thus:-

“5.4. I have considered the submissions made and I am of the opinion that the A.O. has rightly computed the amount of gratuity exempted under the Act by following definition of salary as per Fourth Schedule, Part A, Rule 2 (h) as under this schedule proper definition of salary for the purpose of this Act is given as to what it includes and what it does not include. Further, the circular No. 46 also says that salary would include only the periodical payments made to the employee by the employer as compensation for his service and any payments made by the employer to the employee by way of allowances or perquisites

etc. is not to be taken into consideration as salary for the purpose of Section 10(10) and that if, however, DA is merged with salary it no longer remains dearness allowance but becomes salary and is then includible in the term salary for the purposes of Section 10(10) of the I.T. Act, 1961.

5.5 to 6.2 XX XX XX

6.3. I have gone through the submissions and as discussed above, I am of the opinion that the A.O. has rightly computed the extent of exemption available u/s 10(10AA) by adopting definition of salary as per clause (h) of Rule 2 of Part A of Fourth Schedule.”

9. On further appeal, the Tribunal has noticed that the Assessing Officer has included basic pay plus dearness allowance and applied the formula as applicable to the gratuity and leave encashment for working out the eligible amount of gratuity and leave encashment. Further, it was held by the Tribunal that the computation of benefit of gratuity and leave encashment under Section 10(10) and 10(10AA) of the Act are to be governed by the definition of 'salary' contained in Explanation to Section 10(10) of the Act. The Tribunal has recorded as under:-

“7. For the purpose of proper appreciation of the relevant statutory provisions of section 10(10) and 10(AA), it is relevant to reproduce the Explanation to section 10(10) of the Act:-

“Explanation – In this clause and in clause 10(AA), “salary” shall have a meaning assigned to it

in clause (h) of Rule 2 of Part-A of the Fourth Schedule.”

8. In view of the Explanation, the computation of benefit of gratuity and leave encashment, as contemplated u/s 10(10) and 10(10AA) are to be governed by the definition of 'salary' contained in the above Explanation and not by any agreement, as contended by the Id. AR, viz. 8th Bipartite Settlement on wage revision and other similar conditions between Indian Banks' Association and their Workmen. The definition of 'salary' as reproduced above is squarely and specifically applicable to section 10(10) and 10(AA) of the Act and, hence, any other definition of 'salary' cannot be imported and applied to such sections.”

10. The authorities below on appreciation of material on record have concurrently recorded that the computation of benefit of gratuity and leave encashment under Sections 10(10) and 10(10AA) of the Act are to be governed by the definition of 'salary' as per Rule 2(h) Part A, Fourth Schedule. Learned counsel for the assessee was not able to demonstrate that the approach of the authorities below was erroneous or perverse or that the findings of fact recorded were based on misreading or misappreciation of evidence on record so as to warrant interference by this Court.

11. Further, the Madras High Court in **K. Gopalakrishnan v. Central Board of Direct Taxes and others (1994) 206 ITR 183 (Mad)** while interpreting the term 'salary' under Sections 10(10) and 10(10AA)

of the Act has held that there is no general definition of the word “salary” applicable for all the provisions of the Act. The Explanation to Section 10(10) provides that “in this clause and in clause (10AA) 'salary' shall have the meaning assigned to it in clause (h) of Rule 2, Part A of Fourth Schedule to the Act. As per clause (h), “salary” includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites. There was no ambiguity in the said clause and it is the said definition which should be applied while construing Sections 10(10) and 10(10AA) of the Act. It was observed as under:-

“15.We are unable to accept his contention in view of the Explanation found in section 10(10) of the Act. It reads thus :

"In this clause, and in clause (10AA) 'salary' shall have the meaning assigned to it in clause (h) of rule 2 of Part A of the Fourth Schedule."

16. Clause (h) of rule 2 of Part A of the Fourth Schedule reads that "salary" includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites. There is no ambiguity whatever in the definition contained in the above clause, and it is the said definition which should be applied while construing section 10(10) and section 10(10AA) of the Income-tax Act. It is to be noted that there is no general definition of the word "salary" applicable for all the provisions of the Income-tax Act. Section 17 of the Income-tax Act contains a definition for the purpose of section 15, 16 and 17 of

the Act. Explanation 1 to section 36(1)(ia) of the Income-tax Act is to the effect that the expression "salary" in that clause includes the pay, allowances, bonus or commission payable monthly or otherwise. Hence, the contention of the petitioner that the expression "salary" found in section 10(10) and section 10(10AA) of the Income-tax Act should be given a wider meaning than found in clause (h) of rule 2 of Part A of the Fourth Schedule is wholly untenable. Thus, the petitioner is not entitled to the grant of any part of the prayer made by him in the writ petition."

12. In view of the above, the substantial questions of law as reproduced above are answered against the appellant-assessee and in favour of the revenue. Accordingly, finding no merit in the appeals, the same are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

December 2, 2015
gbs

(RAMENDRA JAIN)
JUDGE