IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-04-2016

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

WRIT PETITION No.11098 of 2016
and
W.M.P.No.9646 of 2016

All India Bank Officers' Confederation
(a registered Trade Union, under the
Trade Unions Act, 1926)
Dr.V.Chidambara Kumar
30/17, Errabalu Street, Parrys
Chennai 600 001 .. Petitioner

vs

1.Union of India
Represented by its Secretary to Government
Ministry of Finance
New Delhi
2.The Central Board of Direct Taxes
North Block
New Delhi 110 001 .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of declaration declaring that Section 17(2)(viii) of the Income-Tax Act, is unconstitutional and ultravires and null and void.

For Petitioner : Mr.Srinath Sridevan

For Respondents : Mr.T.Pramodkumar Chopda

ORDER

(Order of the Court was made by V.RAMASUBRAMANIAN, J.)

This is a writ petition filed by All India Bank Officers' Confederation, seeking a declaration that Section 17 (2)(viii) of the Income-Tax Act, 1961, is unconstitutional and ultra vires.

2.Heard Mr.Srinath Sridevan, learned Counsel for the petitioner, and Mr.T.Pramodkumar Chopda, learned Standing Counsel for the Department.

3.The main ground on which Section 17(2)(viii) is challenged is that in stead of clearly providing what is a fringe benefit or amenity, that comes within the purview of the definition of the expression "perquisite", the impugned provision has left it to the Executive to prescribe what a fringe benefit is. However, Section 115WB of the Income-Tax Act, 1961, defines fringe benefit by itself. Therefore, the contention of the learned Counsel for the petitioner is that once the statute defines the expression "fringe benefit", there is no question of delegating the power of prescribing what a fringe benefit is, to the Executive.

4.As seen from Section 17(2), it merely defines what a perquisite is. Sub-section (2) of Section 17 is an inclusive definition. It contains about eight Clauses. Clauses (vi) to (viii) were substituted by Finance Act 2 of 2009 with effect from 1.4.2010. After this amendment, any fringe benefit or amenity as may be prescribed by a subordinate legislation, is included within the meaning of the expression "perquisite" under Section 17(2). In exercise of the rule making power, the Government had already listed the fringe benefits that are to be treated as perquisites. Rule 3(7)(i) of the Income-Tax Rules, 1962, is already under challenge in a batch of writ petitions.

5.Insofar as Section 115WB is concerned, the same defines fringe benefits for the purpose of Chapter XII-H. Under Chapter XII-H, an additional income-tax known as fringe benefit tax, was sought to be imposed under Section 115WA. Therefore, the benefits listed out in Clauses (a) to (d), in sub-section (1) of Section 115WB, relate only to the fringe benefit tax chargeable under Section 115WA. This cannot be extended to Section 17(2). In any case, with effect from 1.4.2010, Chapter XII-H has gone. Therefore, the only ground of challenge is not liable to be sustained.

6.In the light of the above, the writ petition challenging Section 17(2)(viii), is liable to be dismissed and accordingly, dismissed. No costs. Consequently, connected writ miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

nsv

To:

1.The Secretary to Government
Ministry of Finance
New Delhi

2.The Central Board of Direct Taxes
North Block
New Delhi 110 001

+1 cc to Mr.T.Pramodkumar Chopda, Advocate, sr.22279

W.P.No.11098 of 2016

ca co
kra 29.04.2016