IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 16632 of 2017
Date of decision: 31.7.2017

Varinder Mittal

……Petitioner

Vs.

Commissioner of Income Tax (Appeals), Patiala and another

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Manjit Singh Sarao, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. The petitioner through the instant petition under Articles 226/227 of the Constitution of India prays for quashing the order dated 5.1.2011, Annexure P.1 passed by Commissioner of Income Tax (Appeals) [CIT(A)] under Section 250(6) of the Income Tax Act, 1961 (in short, "the Act") rejecting the appeal filed by the petitioner and the assessment order dated 31.12.2009, Annexure P.2 passed by respondent No.2 under section 143(3) of the Act not allowing exemption of amount of ex gratia of ₹ 5 lacs received on retirement under Exit Option Scheme. Further prayer has been made for a direction to the respondents to allow deduction of amount of ex gratia under section 10(10C) of the Act and refund the amount of income tax paid on the said amount alongwith applicable rate of interest.

2. A few facts relevant for the decision of the controversy

involved as narrated in the petition may be noticed. The petitioner joined the services of the State Bank of Patiala on 7.2.1978 as Clerk-cum-cashier and was working as Special Assistant on 30.4.2007. In the year 2006, the State Bank of Patiala floated Exit Option Scheme for voluntary retirement by the employees of the Bank. The petitioner opted for retirement under the said scheme and was retired on 30.4.2007. He was paid his retiral dues including an amount of ₹ 5 lacs as ex gratia. On 6.8.2008, the petitioner filed his return of income for the assessment year 2008-09 and besides other deductions, claimed ex gratia amount of ₹ 5 lacs as exempt under section 10(10C) of the Act. The case of the petitioner was processed under Section 143(1) of the Act. On 31.12.2009, respondent No.2 passed assessment order and among other additions, made addition on account of disallowance of deduction claimed under section 10(10C) of the Act on account of voluntary retirement scheme benefits during the year. Respondent No.2 held that the objectives of the scheme were not covered by the requisite conditions for claiming deduction under section 10(10C) of the Act and thus no deduction was admissible to the assessee. Aggrieved by the order, the petitioner filed an appeal before CIT(A). Vide order dated 5.1.2011, Annexure P.1, the CIT(A) dismissed the appeal and upheld the order passed by respondent No.2 disallowing deduction under Section 10(10C) of the Act. According to the petitioner, some other identical employees got retirement benefits under the same Exit Option Scheme of State Bank of Patiala and got exemption under Section 10(10C) of the Act for the amount received as ex-gratia. On 1.6.2016, vide Annexure P.5, the petitioner requested respondent No.2 to refund the excess tax paid by him and relied upon orders of the Tribunal in identical cases but no response was given by respondent No.2. The petitioner also cited case of ***Amrinder Singh Walia vs. CIT, Patiala and another***, CWP No.10158 of 2014 which was allowed by this court vide order dated 24.2.2015, Annexure P.11 whereby the impugned order dated 10.3.2014 therein was set aside and liberty was given to the respondents to pass a fresh order in accordance with law. Having received no response from the respondents, the petitioner is before this court through the instant petition.

3. We have heard learned counsel for the petitioner.

4. On a perusal of the averments made in the petition and hearing learned counsel for the petitioner, we find that the impugned order dated 5.1.2011 is an appealable order and the petitioner did not avail the said remedy for the last more than six years without any satisfactory explanation. Further, no reasonable justification had been furnished by the petitioner in approaching this Court through the present petition after an inordinate delay of more than six years from the date of passing of the impugned order. Thus, in view of foregoing reasons, we are not inclined to entertain this petition under Articles 226/227 of the Constitution of India. Consequently, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

July 31, 2017 **(Amit Rawal)**
'gs' **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**