IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.1537 of 2008

N.Venkatachalam ... Appellant

-vs-

The Assistant Commissioner of Income Tax,
Salary Circle-III,
Chennai-034 ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Chennai 'B' Bench, dated 05.08.2008 in ITA No.2578/Mds/2007, for the Assessment year 2004-05.

For Appellant : Mr.C.T.Murugappan

For Respondent : Mr.M.Swaminathan

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This appeal by the Revenue is directed against the order passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, dated 05.08.2008 in ITA No.2578/Mds/2007, for the Assessment year 2004-05

*2.*Heard Mr.C.T.Murugappan, the learned counsel for the appellant and Mr.M.Swaminathan, the learned Counsel for the respondent/Revenue.

3.This Appeal has been admitted on 13.10.2008, on the following Substantial Question of Law:

> *"Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the appellant is not entitled to the exemption under Section 10(10(c)) of the Income Tax Act in respect of the terminal benefits received by the appellant at the time of voluntary retirement under the Early Retirement Option(ERO) 2003, Scheme of his employer?"*

4.The above referred Substantial Question of Law was considered by the Division Bench of this Court in the case of Smt.Kalyani Santhanam -vs- The Income Tax Officer, Ward(2), Tambaram, Chennai-600 045 (T.C.A.No.2057 of 2008, dated 10.10.2018) and decided in favour of the assessee. The operative portion of the judgement reads as follows:

> "3.The assessee is an individual, who was employed in the Reserve Bank of India and took Voluntary Retirement under the 'Optional Early Retirement Scheme' (OERS), framed by the Reserve Bank of India. In the return filed by the assessee for the assessment year 2004-05 she disclosed a total income of Rs.14,25,698/- and claimed exemption under Section 10(10C) of the Act, to an extent of Rs.5 lakhs, out of the compensation received under the OERS. The return was processed under Section 143(1) on 04.05.2005 and subsequently, the case was selected for scrutiny and notice was issued under Section 143(2) of the Act.
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> 4.In the assessment made under Section 143(3) of the Act, the Assessing Officer took the view that the OERS of RBI has not fulfilled the condition Nos.(ii), (iii) and (iv) of Rule 2BA and therefore,

exemption under Section 10(10C) of the Act cannot be allowed, thereby, denied the exemption of Rs.5 lakhs. This very issue was considered by the Hon'ble Supreme Court in the case of **Chandra Ranganathan vs. Commissioner of Income Tax [(2010) 195 Taxman 418 (SC)**. The appeal filed by the assessee therein was allowed. The judgement of the Hon'ble Supreme Court reads as follows:

"1. Leave granted.

2. These appeals are directed against the order passed by the Madras High Court in several tax appeal cases where the question involved was with regard to the deduction available to the appellants under Section 10(10C) of the Income-tax Act, 1961. The order of the Commissioner (Appeals)-IV, Chennai, relating to the assessment year 2004-05, was questioned before the Income-tax Appellate Tribunal, Chennai Bench, in ITA No. 986 (Mad.)/2007, and other connected appeals, which were disposed of by the subject matter of the tax appeal cases before the Bombay High Court, which refers to the order of the Appellate Tribunal on the basis of letter [F.No.225/74/2005 ITA-II], dated 20-10-2005, of the Central Board of Direct Taxes so far as the Reserve Bank of India is concerned. The High Court held that having regard to the above letter *of the Central Board of Direct Taxes, the amount received by the employees of the RBI opting for Optional Early Retirement Scheme do no qualify for deduction under Section 10(10C) of the aforesaid Act.*

3. During the course of hearing of these appeals, it was brought to our notice that by the subsequent letter dated 08.05.2009, issued by the Central Board of Direct Taxes, it was indicated that the matter had been reviewed on the basis of the judgement of the Bombay High Court dated 04.07.2008, in the case of CIT v. Koodathil Kallyatan Ambujakshan [2009] 309 ITR 113 and it was held that amounts received by retiring employees of the RBI would be eligible for exemption under the aforesaid provisions of the Income-Tax Act. On behalf of the Union of India and the Commissioner of Income Tax, the respondent herein, it was submitted that in view of the said circular, the respondent would allow the benefit of deduction to the appellants under Section 10(10C) of the Income Tax Act, 1961, as far as the retired employees of the Reserve Bank of India is concerned.

4. Having regard to the above, the appeals succeed and are allowed. The impugned order passed by the High Court is set aside and that of *the Tribunal is restores. There will be no order as to costs."*

5.In the light of the above decision of the Hon'ble Supreme Court, the assessee is entitled to succeed in this appeal. Accordingly, the appeal filed by the assessee is allowed and the order passed by the Income Tax Appellate Tribunal is set aside and the Substantial Question of Law framed for consideration is answered in favour of the assessee. No costs"

5.Following the above decision, the assessee is entitled to succeed in this appeal. Accordingly, the appeal filed by the assessee is allowed and the order passed by the Income Tax Appellate Tribunal is set aside and the Substantial Question of Law framed for consideration is answered in favour of the assessee. No costs.

[T.S.S., J.] **&** **[V.B.S., J.]**

msk **11.10.2018**

To

1.The Assistant Commissioner of Income Tax,
Salary Circle-III,
Chennai-034

2.The Income Tax Appellate Tribunal,
Madras 'B' Bench.

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

msk

T.C.A.No.1537 of 2008

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