BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Writ Petition (MD) No.12624 of 2018

VR.Ramanathan ... Petitioner

Vs.

1. The Commissioner of Income Tax -I,
   Madurai 625 002.

2. The Assistant Commissioner of Income Tax,
   Circle II, Madurai. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents to grant the refund eligible under section 10 (10C) of Income Tax Act to the petitioner as amount received by an employee on his Voluntary Retirement Scheme an amount of five lakhs is not treated as taxable income.

For Petitioner : Mr.P.Arunjayatram
For Respondents : Mrs.S.Srimathy

ORDER

The writ petitioner is seeking a direction for refund of the tax amount already paid to the respondents.

2.As per Section 10(10C) of the Income Tax Act, 1961, the amount received by way of Voluntary Retirement Scheme upto Rs.5 lakhs is exempted under the Act as it is not taxable. However, Rule 2BA of the Income Tax Rules, 1962 specifies that Voluntary Retirement Scheme shall be approved by the Income Tax Department otherwise, the employees are not entitled to avail exemption granted under Section 10(10C) of the Income Tax Act, 1961.

3.When the matter was put under challenge, the Bombay High Court in ***Commissioner of Income Tax Vs.Koodathil Kallyatan Ambujakshan*** reported in ***(2008) 219 CTR (Bom) 80*** has held that the Rules cannot prevail over the Act. Insofar as the Rule 2BA exceeds substantive provisions of the Act is concerned, it was rendered as ultra vires and that the entitlement of the petitioner for the exemption was granted. However, in subsequent cases, the Income Tax Department has gone on appeal to the Hon'ble Supreme Court. The Hon'ble Supreme Court while disposing of the batch of matters has left the particular question open and dismissed the appeals. Accordingly, the benefits were given to the employees similarly placed that of the petitioners herein.

4.The learned counsel for the respondents vehemently contended that the matter is *sub judice* before the Hon'ble Supreme Court and that the issue is left open for the decision and if an order that may be passed which shall be subject to the outcome of the issue pending before the Hon'ble Supreme Court.

5.I have considered the rival contentions.

6.It is a well settled law that the subordinate legislation shall not exceed the substantive provisions of the Act. If it exceeds the substantive provision, it shall be considered as ultra vires. The Bombay High Court has rightly decided the issue and it has become final. In view of the same, a direction is issued to the respondents to consider the request of the petitioner for refund of eligible amount under Section 10(10C) of the Income Tax Act, 1961, within a period of two months from the date of receipt of a copy of this order. However, this order will be subject to the outcome of the issue pending before the Hon'ble Supreme Court.

7.With this observation, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner of Income Tax -I,
   Madurai 625 002.

2. The Assistant Commissioner of Income Tax,
   Circle II, Madurai.

+ 1 CC TO Mr.P.ARUN JAYATRAM, ADVOCATE IN SR No. 70189
+ 1 CC TO Mrs.S.SRIMATHY, ADVOCATE IN SR No. 70180

SMS
TE/SKN-RSK/SAR-2 : 17/07/2018 : 2P/5C