BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.10602 of 2011

R.Banumathy ... Petitioner

Vs.

1.The Commissioner of Income Tax-I,
2, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai - 625 002.

2.The Assistant Commissioner of Income Tax,
Circle - I,
W.C.C.Road,
Thoothukudi - 628 001. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records relating to the proceedings of the order in C.No.407/01/CIT-I/2009-10, dated 18.02.2011 on the file of the first respondent and quash the same and further direct the respondents to allow the petitioner's claim for exemption under Section 10(10)C of the Income Tax Act in the petitioner's revised return filed on 01.07.2005.

For Petitioner : Mr.N.Mohideen Basha

For Respondents : Mrs.S.Srimathy

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ORDER

Challenging the order passed by the first respondent in C.No.407/01/CIT-I/2009-10, dated 18.02.2011, in and by which, the claim of the petitioner for exemption under Section 10(10C) of the Income Tax Act, has been rejected, the petitioner is before this Court.

2. According to the petitioner, he is an employee of ICICI Bank. He opted for Early Retirement Optional Scheme. Originally, the petitioner/assessee filed her return of income for the assessment year 2004-05 on 03.12.2004 admitting a total income of Rs.10,19,201/- and it was processed under Section 143(1) of the Income Tax Act on 21.02.2005. Thereafter, she filed a revised return on 01.07.2005 admitting a total income of Rs.5,19,207/- after claiming exemption under Section 10(10C) of the Income Tax Act to the tune of Rs.5,00,000/-. However, the revised return filed by the petitioner/assessee was lodged by the Assessing Officer on 31.05.2007 for the reason that she has not complied with the provisions of Section 139(1) of the Income Tax Act and also it has

been filed after completion of assessment under Section 143(1) of the Income Tax Act. Later, the petitioner/assessee filed a letter dated 12.07.2007 requesting the Assessing Officer to accept the return as filed under Section 139(4) and not under Section 139(5) of the Act. However, the same has not been considered by the Assessing Officer and therefore, she filed a revision under Section 264 of the Act before the first respondent claiming exemption under Section 10 (10C) of the Act. Meanwhile, the Bank has introduced the Voluntary Retirement Scheme, by which, a consolidated payment was made to the employees. Under Chapter III of the Income Tax Act, 1961, the incomes not included in total income are specified, in which, the agricultural income and income received by an individual as a member of a Hindu undivided family are exempted and so many other exemptions are there.

3. Insofar as this case is concerned, Section 10(10C) of the Income Tax Act, 1961, is relevant, which reads as under:

> "10(10C)- any amount received or receivable by an employee of -
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> (i) a public sector company; or
>
> (ii) any other company; or
>
> (iii) an authority established under a Central, State or Provincial Act; or
>
> (iv) a local authority ; or
>
> (v) a co-operative society; or
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> (vi) a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956); or
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> (vii) an Indian Institute of Technology within the meaning of clause (g) of section 3 of the Institutes of Technology Act, 1961 (59 of 1961) ; or
>
> (viia) any State Government; or
>
> (viib) the Central Government; or
>
> (viic) an institution, having importance throughout India or in any State or States, as the Central Government may, by notification in the Official Gazette, specify in this behalf; or
>
> (viii) such institute of management as the Central Government may, by notification in the Official Gazette, specify in this behalf,
>
> On his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub-clause (i), a scheme of voluntary separation, to the extent such amount does not exceed five lakh rupees;
>
> Provided that the schemes of the said companies or authorities or societies or Universities or the Institutes referred to in sub-clauses (vii) and (viii), as the case may be, governing the payment of such amount are framed in accordance with such guidelines including inter alia

criteria of economic viability as may be prescribed:

Provided further that where exemption has been allowed to an employee under this clause for any assessment year, no exemption thereunder shall be allowed to him in relation to any other assessment year:

Provided also that where any relief has been allowed to an assessee under section 89 for any assessment year in respect of any amount received or receivable on his voluntary retirement or termination of service or voluntary separation, no exemption under this clause shall be allowed to him in relation to such, or any other, assessment year."

4. Clause (viii) of Section 10(10C) specified a limit of Rs.5,00,000/-. Rule 2BA of the Income Tax Rules, 1962 reads as under:

"2BA. The amount received by an employee of-

(i) a public sector company; or

(ii) any other company; or

(iii) an authority established under a Central, State or Provincial Act; or

(iv) a local authority; or

(v) a co-operative society; or

(vi) a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956); or

(vii) an Indian Institute of Technology within the meaning of clause (g) of section 3 of the Institutes of Technology Act, 1961 (59 of 1961); or

(viia) an institution, having importance throughout India or in any State or States, as the Central Government may, by notification in the Official Gazette, specify in this behalf; or

(viii) such institute of management as the Central Government may, by notification in the Official Gazette, specify in this behalf,

at the time of his voluntary retirement or voluntary separation shall be exempt under clause (10C) of section 10 only if the scheme of voluntary retirement framed by the aforesaid company or authority or co-operative society or University or institute, as the case may be or if the scheme of voluntary separation framed by a public sector company, is in accordance with the following requirements, namely:-

(i) it applies to an employee who has completed 10 years of service or completed 40 years of age;

(ii) it applies to all employees (by whatever name called) including workers and executives of a company or of an authority or of a co-operative society, as the case may be, excepting directors of a company or of a co-operative society;

(iii) the scheme of voluntary retirement or voluntary separation has been drawn to result in overall reduction in the existing strength of the employees;

(iv) the vacancy caused by the voluntary retirement or voluntary separation is not to be filled up;

(v) the retiring employee of a company shall not be employed in another company or concern belonging to the same management;

(vi) the amount receivable on account of voluntary retirement or voluntary separation of the employee does not exceed the amount equivalent to three months salary for each completed year of service or salary at the time of retirement multiplied by the balance months of service left before the date of his retirement on superannuation:

Provided that requirement of (i) above would not be applicable in case of amount received by an employee of a public sector company under the scheme of voluntary separation framed by such public sector company."

5. According to the Rule, any Scheme shall be in conformity with Rule 2BA of the Income Tax Rules, 1962.

6. According to the Income Tax Department, Voluntary Retirement Scheme issued by the ICICI Bank is not in conformity with the Rules. Therefore, the employees are not entitled to any exemption under Section 10(10C) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

7. The said Voluntary Retirement Scheme was put to judicial scrutiny in view of Rule 2BA of the Income Tax Rules, 1962. There were different views by various High Courts. Ultimately, in the judgment of Commissioner of Income Tax vs. Koodathil Kallyatan Ambujakshan (2008) 219 CTR (Bom) 80, the Bombay High Court dealt with Voluntary Retirement Scheme framed by RBI and held that the exemption under Section 10(10C) of the Act was applicable to the employees, who had taken benefit of the Scheme framed by RBI and observed as under:

> "10............................. Merely because the scheme may not expressly set out that the posts will not be filled in cannot result in the scheme not being a scheme falling under s.10(10C) r/w r.2BA of the Rules, bearing in mind the procedural nature of the rules. It will have to be read in harmonious construction with the substantive provisions of the Act so as not to render it ultra vires the provisions of the substantive provisions of the Act."

Against the judgment of the Bombay High Court, the Income Tax Department has not preferred any appeal and the judgment has attained finality. However, in the case of Chandra Ranganathan & Ors. vs. Commissioner of Income Tax, Chennai, dated 21.10.2009, in Civil Appeal Nos.6997 - 7002 of 2009, the Hon'ble Supreme Court declared that the retiring employees of the RBI would be eligible for exemption under Section 10(10C) of the Act and set aside the order passed by the Madras High Court, based on the circular issued by the Income Tax Department.

8. It is pertinent to note that pursuant to the judgment of the Bombay High Court in Commissioner of Income Tax vs. Koodathil Kallyatan Ambujakshan (2008) 219 CTR (Bom) 80, the Income Tax Department issued a circular that the retiring employees of RBI would be eligible for exemption under Section 10(10C) of the Income Tax Act, 1961.

9. While the matter stood thus, the Hon'ble Division Bench of this Court in Tax Case (Appeal) Nos.1210, 1217, 1249 and 1250 of 2009, dated 23.12.2009 [Mr.S.Parthasarathy vs. The Assistant Commissioner of Income Tax Salary Circle III, Chennai-34], has held that if the tax effect is below Rs.2,00,000/-, which has been prescribed as a monetary limit by the circular of the Central Board of Direct Taxes in Instruction No.2/2005, dated 24.10.2005, the Department need not have to file an appeal to the Tribunal and the Tribunal also has not taken the circular into consideration and hence set aside the impugned demands.

10. In the instant case also, the impugned notice specifies the sum of Rs.1,78,953/- for the assessment year 2004-2005. As per Section 10(10C) of the Act, the individual is entitled to exemption upto Rs.5,00,000/-. The Hon'ble Supreme Court as well as Bombay High Court have categorically held that the employees are eligible for exemption under Section 10(10C) of the Act. Rule 2BA of the Income Tax Rules, 1962, cannot exceed the provisions of the Act. Therefore, the impugned order passed by the first respondent is *per se* illegal and is not sustainable any further.

11. As discussed above, the matter has attained finality in Commissioner of Income Tax vs. Koodathil Kallyatan Ambujakshan (2008) 219 CTR (Bom) 80 and the same stands confirmed by the Hon'ble Supreme Court in Chandra Ranganathan & Ors. vs. Commissioner of Income Tax, Chennai, dated 21.10.2009, in Civil Appeal Nos.6997 - 7002 of 2009. Thereafter, the Special Leave Petitions filed in respect of orders of the Division Bench of this Court in S.L.P.Nos.5281 - 5339/2014, etc., batch were dismissed by the Hon'ble Supreme Court leaving the question of law kept open, by an order dated 08.10.2014 and again, in Civil Appeal Nos.8908 of 2013, etc., batch, except Civil Appeal Nos.51 of 2010 and 4411 of 2010, all other appeals were dismissed by a common order dated 28.01.2015.

12. This Court respectfully follows the decision of the Hon'ble Supreme Court and the Hon'ble Division Bench of this Court. The benefit of the judgment of the Hon'ble Supreme Court is applicable to the petitioner also. It is categorically stated that the judgment of this Court in K.R.Alagappan & Others vs. ACIT in W.P.(MD)Nos.3986 to 3997, 4145 to 4157, 6523, 6569 to 6587, 6964 to 6976 of 2007 is related to employees of ICICI Bank. Even otherwise, the benefit

applicable to all the public sector and other companies' employees is applicable to the petitioner also. Section 10(10C) of the Act and Rule 2BA of the Income Tax Rules, 1962, do not specifically apply to RBI alone. Therefore, the benefit is applicable to the petitioner also. Further, the revisional authority has condoned the delay in filing the revised return. Circular No.14(XL35) of 1955, dated 11.04.1955 mandates that the tax payers have to be guided by the assessing officers in the matter of claims and reliefs. Only because an assessee files a return and pays excess tax, it is incumbent on the officials of the Income Tax Department much less the Assessing Authority to inform the reliefs entitled to the assessees. When the Income Tax Department has the power to demand payment of tax, where there is a deficit, it is equally a bounden duty to refund the payment of excess tax also. In such circumstances, the order refusing to refund the excess tax paid by the assessee is not sustainable. Accordingly, the impugned order passed by the first respondent in C.No.407/01/CIT-I/2009-10, dated 18.02.2011, is set aside and the respondents are directed to refund the excess amount, which the petitioner is entitled to, as per Section 10(10C) of the Income Tax Act, 1961.

13. In the result, this writ petition is allowed as above. No costs.

Sd/
Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar(CS-III)

To

1.The Commissioner of Income Tax-I,
2, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai - 625 002.

2.The Assistant Commissioner of Income Tax,
Circle - I,
W.C.C.Road,
Thoothukudi - 628 001.

+1cc to Mrs.S.SRIMATHY, Advocate, SR.No. 66755
+1cc to Mr.N.MOHIDEEN BASHA, Advocate, SR.No.67278

W.P(MD)No.10602 of 2011
05.06.2018

RSB
KK/RP/SAR-3/31.07.2018/6P-5C/