IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.No.8101 of 2011

All India, Indian Overseas Bank Employees' Union
Rep. by its General Secretary
Regd.No.1026
No.763, Anna Salai,
Chennai-600002 ...Petitioner

Vs.

1.The Union of India,
Rep. by its Secretary,
Ministry of Finance,
New Delhi-110001

2.Central Board of Direct Taxes,
Government of India,
Rep.by its Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi

3.Indian Overseas Bank
Rep.by its Chairman and Managing Director
762, Anna Salai
Chennai-600002 ...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of declaration declaring that deduction of tax from out of that portion of the salary arrears which is appropriated for its transfer to pension corpus set up in terms of regulations 5 to 7 of Pension Regulations is illegal and unconstitutional.

For Petitioner	:	Mr.V.Kalyanaraman for Mr.C.R.Chandrasekaran
For Respondents 1 & 3	:	Mrs.Hema Muralikrishnan Senior Standing Counsel
For Respondent 3	:	Mr.R.Srinivasa Murthy

ORDER

The petitioner is a Union affiliated to the National Confedration of Bank Employees (in short 'NCBE'), founded in 1949, and has been in existence, as on date, for nearly 70 years.

2. The Indian Overseas Bank (in short 'bank') had introduced a pension scheme under the Indian Overseas Bank Employees Pension Regulations, 1995 (in short 'pension regulation') with retrospective effect from 01.01.1976. According to the petitioner union, there were several of its members that had not availed of the benefits of the scheme initially. After negotiations between the Indian Banks Association (in short 'IBA') and the United Forum of Bank Unions (in short 'UFBU') of which the NCBE is a constituent, a settlement was arrived at extending a second option of pension for those employees who had not opted for the pension scheme at the original/first instance. The second option was subject to the Union members contributing towards meeting the shortfall/deficit in the corpus for the first pension fund computed and determined through actuarial variation at a sum of Rs.6000 crores.

3. Pursuant thereto, an agreement was signed between the IBA and UFBU on 27.11.2009 and a second option was provided for those bank employees who had not opted for pension in 1995. This required a contribution from the employees out of their salary arrears amounting, in toto, to a sum of Rs.1800 crores out of the aforesaid Rs.6000 crores of shortfall. The arrears had been computed post a revision of wage negotiated and settled between the associations. It was agreed that 2.8 times of pay should be withheld from the arrears payable to all the employees who had exercised the second option. Tax had been deducted at source in terms of the Income Tax Act, 1961, under an instruction issued by the Bank.

4. According to the petitioner, the amount of pension granted was taxable in the respective year of payment. Thus taxing the same again would constitute double taxation.

5. I am of the considered view that it is not appropriate for this Court to go into the prayer of the petitioner for nil deduction, since the Income Tax Act contains a mechanism for consideration of such a request, on merits.

6. Section 197 provides for the issuance of Certificate of deduction at nil/lower rate, and is extracted below:-

Certificate for deduction at lower rate.

197. *(1) Subject to rules made under sub-section (2A), where in the case of any income of any person [or sum payable to any person], income-tax is required to be deducted at the time of credit or, as the case may be, at the time of payment at the rates in force under the provisions of sections 192, 193, [194,] 194A, [194C,] 194D, [194G] [, 194H], [194I], [194J] [194K], [194LA], [194LBB, 194LBC] [194M] and 195M and 195, the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income tax at any lower rates or no deduction of income-tax, as the case may be, the Assessing Officer shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate.*

(2) Where any such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the Assessing Officer, deduct income-tax at the rates specified in such certificate or deduct no tax, as the case may be.

(2A) The Board may, having regard to the convenience of assessee and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (1) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.

7. In the light of the above statutory provision, it is appropriate that the petitioner make its plea for nil/lower deduction for consideration by the appropriate Authorities. Learned counsel for the petitioner on its behalf states that it will file its request before the authorities within two weeks. It is permitted to do so. Such request, if made before the Authorities concerned, within two weeks from today will be considered after hearing the petitioner union and decided in accordance with law within a period of six (6) weeks from date of conclusion of personal hearing in any event on or before 15th of November 2019.

8.This Court, vide an interim order dated 13.06.2011 has extended until further orders an injunction granted on

29.03.2011 restraining the banks from deducting tax at source until further orders. The Court has also noticed that in such cases where the deduction was not effected, then the respondents are restrained from effecting the same and in cases where the deductions have been effected amounts equal to tax shall not be disbursed and shall be retained in the custody of the bank itself. In the light of the fact that the injunction has been in force since 2011, the same shall continue till the disposal of the representation to be filed by the petitioner or till the 15th of November, 2019 whichever is earlier.

9. This writ petition is disposed of in the above terms. No cots.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
Union of India,
Ministry of Finance,
New Delhi-110001

2. The Secretary,
Central Board of Direct Taxes,
Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi

3. The Chairman and Managing Director
Indian Overseas Bank
762, Anna Salai
Chennai-600002

+1 cc to M/s.C.R.Chandrasekaran,Advocate Sr.No. 77894
+1 cc to M/s.Hema Murali Krishnan,Advocate Sr.No. 77284
+1 cc to M/s.N.G.R.Prasad, Advocate SR.No.77429

AKM/12.09.19/4P- 7C /

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