IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2019

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.28271 of 2019
and
W.M.P.No.27951 of 2019

S.Vasanthi ...Petitioner

vs.

1. The Principal Chief Commissioner of Income Tax
   Aayakar Bhawan,
   Office of the Chief Commissioner of Income Tax

   Chennai, M.G.121, Nungambakkam High Road,
   Tirumurthy Nagar,
   Chennai, Tamil Nadu - 600 034, India.

2. The Principal Commissioner of Income Tax
   O/o. The Commissioner of Income Tax (Appeals)
   No.4, Williams Road, Cantonment
   Tiruchirappalli - 620 001.

3. The Income Tax Officer
   Ward-I(2), 31, Krishnasamy Road,
   Gandhi Nagar, Kumbakonam - 612 001. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records from the 3rd respondent in connection with the impugned orders dated 04.08.2016 and the consequential order dated 07.03.2019 issued by 2nd respondent and quash the same and further direct the respondents to refund the dues of Rs.1,23,220/- together with interest.

For Petitioner : Mr.K.Krishnamoorthy
For Respondents : Mr.A.P.Srinivas
Senior standing counsel

O R D E R

The petitioner is aggrieved against the order of the third respondent dated 04.08.2016 and the consequential order of the second respondent dated 07.03.2019, wherein and whereby, the petitioner's request for refund relevant to the assessment year 2004-2005 by way of claiming exemption under Section 10(10C) of the Income Tax Act, 1961, (for brevity "IT Act") was rejected on the reason that the revised return was filed after the time limit prescribed.

2. Heard both sides and perused the materials placed before this Court.

3. The case of the petitioner is as follows:

The petitioner's husband was an ex-employee of ICICI Bank and also an Assessee under the IT Act. He died on 29.08.2019. The ICICI Bank introduced a scheme called "Early Retirement Option", which is voluntary retirement scheme and under that scheme, the petitioner's husband opted to retire and receive the terminal benefits. He had filed his original returns under Section 143(3) of the IT Act, for the year 2004-2005 on 08.07.2004, claiming the relief under Section 89(1) of the IT Act. However, the relief of exemption under Section 10(10C) of the Act, to the extent of Rs.5,00,000/- was not granted. The issue as to whether the persons, who retired under the scheme called "Early Retirement Option" are entitled to claim exemption or not under Section 10(10C) of the IT Act, had already been settled in favour of the retired employees by the Apex Court by its order dated 28.09.2015 made in Civil Appeal No.4411 of 2010. Without granting similar benefit to the petitioner, the impugned proceedings were issued only on the reason that the returns were filed belatedly.

4. The learned counsels appearing on either side fairly submitted that the issue involved in this case is squarely covered by the decision of the Apex Court made in C.A.No.4411 of 2010 in the case of S.Palaniappan Vs. Income Tax Officer, Chennai, dated 28.09.2015, which is also followed by this Court in other cases.

5. One such order passed by this Court in W.P.No.42385 of 2016 dated 02.12.2016 is also placed in the typed set of papers, wherein this Court has observed at Paragraph Nos.8 to 15 as follows:

> "8. After hearing the learned counsel for the parties and perusing the materials placed on record, this Court is of the view that the technicality should not stand in the way while giving effect to the order passed by the Hon'ble Supreme Court. The Board also issued a circular on 13.4.2016 with a view to grant relief to the retirees of the ICICI Bank under the Early Retirement Option Scheme. Several persons, who had filed writ petitions before the Madurai Bench of this Court, have been granted the relief. In fact, in those orders,

the Court took into consideration the decision of the Hon'ble Supreme Court and granted the relief.

9. The circular issued by the Central Board of Direct Taxes is in exercise of the powers conferred under Section 119 of the Act. The said provision deals with instructions to Subordinate Authorities. Sub-Section (1) of Section 119 of the Act states that the Board may, from time to time, issue such orders, instructions and directions to other Income Tax Authorities, as it may deem fit, for the proper administration of the provisions of the Act and such Authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board. The Proviso carves out certain exceptions, under which circumstances, the Board will not issue instructions.

10. Clause (a) to Sub-Section (2) of Section 119 of the Act states that without prejudice to the generality of the power under Section 119(1), the the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of the Act as mentioned therein, general or special orders in respect of any class of income or fringe benefits or class of cases, setting forth directions or instructions as to the guidelines, principles or procedures to be followed by other Income-Tax Authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may be made if the Board is of opinion that it is necessary in the public interest. It is relevant to point out that one of the provisions, which are listed out under Clause (a) to Sub-Section (2) of Section 119 of the Act is Section 139 of the Act.

11. Admittedly, the case, which was considered by the Hon'ble Supreme Court related to an individual employee namely S.Palaniappan, who was also a similarly placed person as that of the petitioner. Thus, the Board, in its wisdom, while implementing the judgement in the case of S.Palaniappan, took a decision that

such a benefit should be extended to the similarly placed persons treating them as class of cases. Therefore, the Board observed that the order should be communicated to all the Commissioners, so that relief can be granted to such retirees of the ICICI Bank. Thus, the petitioner cannot be non-suited solely on the ground that he had filed a revised return well beyond the period stipulated under Section 139 (5) of the Act.

12. Furthermore, it is relevant to point out that Clause (c) to Sub-Section (2) of Section 119 of the Act states that the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, relax any requirement contained in any of the provisions contained in Chapter IV or Chapter VI-A of the Act, which deal with computation of total income and deductions to be made in computing the total income and such power is exercisable where the petitioner failed to comply with any requirement specified in such provision for claiming deduction thereunder, subject to the conditions that (i) the default is due to circumstances beyond the control of the assessee and (ii) the assessee has complied with the requirement before the assessment in relation to previous year, in which, such deduction is claimed.

13. Thus, if the default in complying with the requirement was due to circumstances beyond the control of the assessee, the Board is entitled to exercise its power and relax the requirement contained in Chapter IV or Chapter VI-A. If such a power is conferred upon the Board, this Court, while exercising jurisdiction under Article 226 of The Constitution of India, would also be entitled to consider as to whether the petitioner's case would fall within one of the conditions stipulated under Section 119(2)(c).

14. Considering the hard facts, the petitioner, being a senior citizen, cannot be denied of the benefit of exemption under Section 10(10C) of the Act and the financial benefit that had accrued to the petitioner, which would be more than a lakh of rupees. Therefore, this Court is of the view that the third respondent should grant the benefit of

exemption to the petitioner.

15. Accordingly, the writ petition is partly allowed, the impugned order is set aside and the third respondent is directed to grant the benefit of exemption under Section 10(10C) of the Act and refund the appropriate amount to the petitioner, within a period of three months from the date of receipt of a copy of this order. Considering the facts and circumstances of the case, the prayer for interest is rejected. No costs."

6. It is seen from the above findings rendered by this Court that the issue involved in this case is squarely covered by the above decision.

7. Considering the above stated facts and circumstances, this Writ Petition is allowed and the impugned orders are set aside. Consequently, the respondents are directed to grant the benefit of exemption under Section 10(10C) of the IT Act and refund appropriate amount to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Chief Commissioner of Income Tax
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Gandhi Nagar, Kumbakonam - 612 001.

+1 CC to Mr.A.P.Srinivas, Advocate sr 89995
+1 CC to Mr.K.Krishnamoorthy, Advocate sr 89815.

VBA(CO)
SP(08/11/2019)