IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6052 of 2018

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Syed Jamaluddin Ali Son of Late Syed Asghar Ali, Resident of Mohallah- Chandwara, Azad Road, P.S.- Muzaffarpur Town, District- Muzaffarpur Bihar.

... ... Petitioner/s

Versus

1. State Bank of India, 5th Floor, Local Head Office, West Gandhi Maidan, Patna- 800001 through the General Manager-I.
2. Assistant General Manager, State Bank of India, Central Pension Processing Centre, 4th Floor, Judges Court Road, Anta Ghat, Patna-800 001.
3. Assistant General Manager, Centralized Pension Processing Centre, North Eastern, 6th Floor of Sethi Trust Building, Guwahati- 781005 (Assam).
4. The Branch Manager, State Bank of India, Chandwara Branch, Pakki Sarai, Muzaffarpur-842001 Bihar.
5. The Principal Chief Commissioner of Income Tax (Bihar and Jharkhand), Central Ravenue Building, Bir Chand Patel Marg, Patna -800 001 (Bihar).

... ... Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Raju Giri, Advocate
		Mr. Santosh Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Kaushlendra Kumar Sinha, Advocate
		Mrs. Archana Sinha, Advocate
		Mr. Rakesh Kumar Singh, Advocate
		Mr. Sunil Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-10-2020

By way of the present writ petition, the petitioner seeks an issue of a writ of mandamus in the form of directions to the respondent nos. 1-4, State Bank of India (SBI) and/or the respondent no. 5, Income Tax Department (I-T Department), to:

(i) act under Section 89(1) and 192(2A) of the Income Tax Act, 1961 and spread over/ distribution of arrears of pension amount paid in a lump sum to the petitioner and not treat them as payable in May 2016;

(ii) refund the illegally deducted income tax from the pension of the petitioner with interest @ 18%;

(iii) not deduct advance income tax every month from the pension of the petitioner as he is a senior citizen and is enjoying exemption of Section 207 of the I-T Act;

(iv) allow costs of litigation at Rs 50,000/- to the petitioner.

2. The facts of the case are as follows.

<u>Facts</u>

3. The petitioner was supposed to retire from the Railway Authorities with effect from November 8, 2007. However, on account of proceedings pending against the petitioner before the Railway Authority, his retirement and pension benefits were withheld. After protracted litigation of several years, in 2016, the petitioner was allowed his pension (less 20% forfeited amount) back-dated with effect from November 8, 2007. Accordingly, Pension Payment Order (PPO)

was issued in favour of the petitioner by the Finance Advisor and Chief Accounts Officer and forwarded to the Central Pension Processing Centre (CPPC) of the State Bank of India, Patna.

4. Subsequently, on March 14, 2016, the petitioner submitted an application to the Branch Manager of SBI Chandwara Branch to commence the petitioner's pension and pay the arrears in pension. The petitioner also submitted a request to not deduct income tax on the amount by treating it as income of the current year, to spread over/ distribute the payment over the period, under Section 89 of the I-T Act read with Rule 21A (2)(d) of the I-T Rules. This was done to ensure that the income tax on the arrears of pension is not deducted by treating the amount as taxable income of the current year and is spread over in the relevant years from 2007 to 2016.

5. On March 30, 2016, the petitioner made a similar application and requested to the CPPC, Patna. The petitioner, further, furnished before the CPPC, all necessary details and calculation sheet for pension as required under with Section 192(2A) of the I-T Act as well as Form 10E of the I-T Department, for claiming relief under Section 89(1) of the I-T Act.

6. It is the petitioner's case that despite repeated requests, when the arrears of pension were released on June 18, 2016, the income tax was deducted from his pension treating the entire amount as his income for the current year. Thereinafter, the petitioner made more applications to SBI demanding refund of the illegally deducted income tax, but with no avail. The petitioner also applied for the Right to Information Act, 2005 seeking information on the basis for deductions made, from the CPPC, Patna. However, in reply, the petitioner was informed that deductions made were on a pro-rata basis month-wise in terms of the I-T Act, and the petitioner directed to approach the I-T Department for a refund.

7. The petitioner argues that this deduction of income tax constitutes an illegal deduction from his pension as it is without regard to the statutory provisions, which allow a spread over/distribution of pension amount. If the spread over of amount were followed, the petitioner's total income would not be falling within taxable limits and as such no income tax would be deductible at source. Therefore, making the deduction of pension by SBI as arbitrary, without jurisdiction and unconstitutional.

8. The petitioner argued that it invoked operation

of Section 192 (2A) by submitting the required details and forms and therefore in making a deduction of tax at source under Section 192, SBI was duty-bound to act under the statutory provision to spread over/distribute the arrears of pension in making the deduction, which it failed to do.

9. Further, the petitioner submitted that the petitioner, being a senior citizen, was exempted from paying income tax in advance, under Section 207(2) of the I-T Act. Therefore, the deduction of advance tax for the assessment year 2016-17 was riddled with further illegality.

10. On the other hand, it is SBI's case that as per Section 89(1) of the I-T Act, the Assessing Officer of income tax was the only authority that could grant relief under the Section. This is done at the time when the petitioner files his income tax return as per the I-T Act and makes an application under Section 89. In the first place, petitioner was wrong in approaching the SBI for availing the required relief. Moreover, the petitioner already had a remedy to get a refund under Section 237 of the I-T Act, and therefore the present writ petition lacked legal force.

Position of Law

11. The relevant provisions of the I-T Act and I-T Rules are produced below.

Section 89

Relief when salary, etc., is paid in arrears or in advance.

"**89.** Where an assessee is in receipt of a sum in the nature of salary, being paid in arrears or in advance or is in receipt, in any one financial year, of salary for more than twelve months or a payment which under the provisions of clause (*3*) of section 17 is a profit in lieu of salary, or is in receipt of a sum in the nature of family pension as defined in the *Explanation* to clause (*iia*) of section 57, being paid in arrears, due to which his total income is assessed at a rate higher than that at which it would otherwise have been assessed, the Assessing Officer shall, on an application made to him in this behalf, grant such relief as may be prescribed:" (emphasis supplied)

Rule 21A

Relief when salary is paid in arrears or in advance, etc.

"**21A. (2)** [...]

(*d*) Where the additional salary or additional family pension, as the case may be, relates to more than one previous year,—

(i) the previous years to which the additional salary or additional family pension relates and the amount relating to each such previous year shall first be ascertained;

(ii) tax shall, then, be calculated on the total income of each such previous year as increased by the amount relating to such previous year

> ascertained under sub-clause (*i*); as if the total income so increased were the total income of that previous year, and the amount by which the aggregate amount of tax in respect of the aforesaid previous years as calculated under sub-clause (*ii*) exceeds the aggregate amount of tax payable by the assessee in respect of the total income of the said previous years shall, for the purposes of clause (*a*), be taken to be the aggregate tax on the additional salary or additional family pension, under this clause."

12. Section 89 provides that an assessee who receives a sum like salary in arrears for more than 12 months, making the total assessable income for the current year higher than it would have otherwise been, are allowed relief as may be prescribed. Under Section 17(1) (ii) of the I-T Act, salary includes pension. Rule 21A (2)(d) provides the method of calculation of tax for the year through the spread over/ distribution of arrears of salary amount across the years for which they correspond.

Section 192

Deduction at source: **Salary.**

> **"192. (1)** Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed based on the rates in force for the financial year in which the payment is

> made, on the estimated income of the assessee under this head for that financial year.
> [...]
> **(2A)** Where the assessee, being a Government servant or an employee in a company, co-operative society, local authority, university, institution, association or body is entitled to the relief under sub-section (1) of section 89, he may furnish to the person responsible for making the payment referred to in sub-section (1), such particulars, in such form and verified in such manner as may be prescribed, and thereupon the person responsible as aforesaid shall compute the relief on the basis of such particulars and take it into account in making the deduction under sub-section (1)."
> (emphasis supplied)

Rule 21AA

Furnishing of particulars for claiming relief under section 89(1).

> "**21AA.** Where the assessee, being a Government servant or an employee in a [company, co-operative society, local authority, university, institution, association or body], is entitled to relief under sub-section (1) of section 89, he may furnish to the person responsible for making the payment referred to in sub-section (1) of section 192, the particulars specified in Form No. 10E."

13. Section 192 provides for tax deduction at source at specified rates, by the person making payment of salary. Section 192 (2A) provides that in certain specified cases, where the assessee is eligible for the benefit of Section 89 of the I-T Act, the assessee has the option to furnish particulars by way of required forms to the person responsible

for making their payment, wherein the person accountable for making deduction would compute the deduction based on the details provided. Practically under this Section, where particulars are submitted to the deductor, he shall take into account relief of Section 89 while computing tax to be deducted at source. Rule 21AA provides that Form No.10E has to be furnished to the person responsible for making payment to avail benefit under Section 89.

14. In the instant case, no one claims that the petitioner is not entitled to relief under Section 89. SBI, as well as I-T Department, are in agreement that the benefit of Section 89 is applicable in the present case.

15. The issue before us is whether the SBI erred in not allowing the benefit of Section 89 while deducting TDS on a pension under Section 192 of the I-T Act. Further, whether this Court ought to direct the SBI or the I-T department to make a refund to the petitioner.

16. To us, Section 89 is plain and clear. It provides that it is for the Assessing Officer of income tax to grant the relief under the Section and on application made before him. We further see that the Hon'ble Apex Court has accepted this position in multiple cases.

17. In the case of **Sundaram Motors (P.) Ltd. v. Ameerjan 1985 1 SCC 118**, the Hon'ble Apex Court awarded the petitioners with compensation in place of reinstatement. Holding that since the amount would be paid in lump sum, for payment of income tax, the benefit of spread over must be provided to the petitioners. Accordingly, the Court directed the employee to make a necessary application before the I-T Officer to claim relief under Section 89, and the officer to act immediately in disposing of the said application:

> "**7.** ...Therefore, we made it very clear that the entire amount awarded by our judgment shall be spread over from 1970 to 1989, 1970 being the year of dismissal from service and 1989 being the year of retirement on superannuation as per the relevant service rules. We are, accordingly, clear in our minds that viewed from any angle, respondent - Ameerjan, the workman is fully entitled to the relief under s. 89 of the I.T. Act. No other view on this point is possible. In order to satisfy the requirements of law, the respondent-Ameerjan shall with the assistance of the appellant and its income-tax consultants make the necessary application to the ITO having jurisdiction in the matter at Bangalore for relief under s. 89 and the officer concerned shall, without further enquiry, grant him immediate relief under s. 89 and dispose of the proceedings within a period of three months from the date of the application, so that the spirit and purpose of our judgment and order would be implemented without unnecessary delay and the agony and torture of unemployment heaped upon the lowly paid respondent-Ameerjan from 1970 be relieved." (emphasis supplied)

18. Similarly, in **Sant Raj v. O.P. Singla 1985 2 SCC 345**, the petitioner was allowed back wages in lieu of reinstatement by the Hon'ble Apex Court. In the same decision, the Court held that if the employer were to deduct income tax at source on the amount allowed under Section 192, the appellants would be entitled to relief under Section 89 of the I-T Act. The Court directed the petitioner to approach the competent authority (which as per the Section is the Assessing Officer) to claim relief of spread over:

> "8. ... Both the appellants are entitled to the relief under section 89 because compensation herein awarded includes salary which was in arrears for 12 years and it is being paid in one lump sum under the orders of this court. Therefore, the salary has to be spread over a period of 12 years as also the compensation in lieu of reinstatement and the relief should be given as provided by section 89 of the Income-tax Act read with rule 21A of the Income-tax Rules. Both the appellants are entitled to the same. If any application is necessary to be made, the same may be made to the competent authority and the respondent-employer shall assist the appellants in each case for obtaining the relief." (emphasis supplied)

19. Finally, in the case of **K.C. Joshi v. Union of India (1985) 3 SCC 153,** where the Hon'ble Apex Court quashing an order of the High Court, directed the employer-ONGC to provide the petitioner-employees with back wages in lieu of reinstatement, the Court held that:

> "**17.** ...If, therefore, the employer proceeds to deduct the income-tax as provided by section 192, we would like to make it abundantly clear that the appellant would be entitled to the relief under section 89 of the Income-tax Act which provides that where, by reason of any portion of the assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year salary for more than 12 months or a payment which under the provisions of clause (3) of section 17 is a profit in lieu of salary, his income is assessed at a rate higher than that it would otherwise have been assessed, <u>the Income-tax Officer shall on an application made to him in this behalf grant such relief as may be prescribed</u>."
> (emphasis supplied)

20. We are therefore clear that it is for the Assessing Officer of income tax to grant relief under Section 89 of the I-T Act. In all the cases discussed above, the employer had the responsibility to make tax deduction at source under Section 192, before making payment of the lump sum amount of salary. The Hon'ble Apex Court held that the employees who were eligible for the benefit of Section 89, had to apply before the I-T officer to avail benefit of the Section.

21. Now, we will deal with Section 192 (2A) of the I-T Act. Per this subsection, an assessee who is entitled to relief under Section 89 can furnish the required forms to the person responsible for making payment under Section 192 (1) (i.e. the employer), upon which the person responsible for making deduction would compute the relief based on the

particulars and take it into account while deducting tax.

22. The petitioner placed great reliance on the argument that SBI being the person responsible for making deduction and payment under Section 192, was forwarded with all particulars in the prescribed form (Form No. 10E) under Section 192 (2A). Therefore it became the SBI's obligation to only deduct amounts in accordance with Section 192 (2A). In not doing so, the SBI has made illegal deductions from the petitioners mention and therefore ought to be directed to refund the amount to the petitioner.

23. On a reading of Section 192 (2A), we agree that the SBI should have computed the relief on the basis of the particulars and deducted income tax in accordance with Section 89. However, we see that the remedy of the undue deduction is provided under Section 89 of the I-T Act itself, where the assessee is required to apply to the Assessing Officer and avail relief under the Section.

24. A similar case came before the Hon'ble Madhya Pradesh High Court in the case of **Shantilal Bagora v. State Bank of Indore (2002) 255 ITR 60**. The petitioners applied to the Court claiming violation of Section 192 (2A) of the I-T Act read with Rule 21AA of the I-T Rules. The SBI was

the person responsible for deducting the income tax in that case as well. The petitioner claimed that in not allowing the benefit of Section 89, despite their furnishing of particulars in the prescribed form (Form No. 10E), the SBI acted in contravention of the law. The Court agreed that Section 89 provided a statutory remedy to the petitioners to make an application to the Assessing Officer for relief. However, it held that it was for the Assessing Officer to examine the case and decide whether relief was applicable. It was held that in cases where the statute dedicated an authority to make an assessment, it was not for the writ Court to examine the matter and grant relief factually. The petitioner was directed to make the appropriate application before the Assessing Officer under Section 89 and directed the Assessing Officer to dispose of the application expeditiously.

25. We agree that a statutory remedy is available to the petitioner under Section 89. This instant case is not a writ against the order of the Assessing Officer disallowing relief. The petitioner has failed to approach the relevant authority under the I-T Act to claim relief.

26. We do not wish to make any directions to either SBI or the I-T Department to make any refunds to the

petitioner. It is trite law that where a statutory remedy is available to a writ petitioner unless exceptional circumstances are made out, the High Court must first require the petitioner to avail of the statutory remedy [**U.P. State Spg. Co. Ltd. v. R.S. Pandey (2005) 8 SCC 246**, **Star Paper Mills Ltd. v. State of U.P. (2006) 10 SCC 201**,**ITO v. M. PiraiChoodi (2010) 15 SCC 283** and others]. It is true that where the alternate remedy is ineffectual or a mere formality, the Court must not send the petitioner from "Caesar to Caesar's wife", however in the present case it is not the petitioner's case that the available alternate remedy under the I-T Act is ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court. The appropriate forum for availing relief is the Assessing Officer, and the petitioner must apply to the Assessing Officer to avail the benefit of Section 89 of the I-T Act.

27. The petitioner also argued before the Court that for the assessment year 2016-2017, no tax was deductible, as the petitioner was a senior citizen and therefore enjoyed exemption from paying advance tax by operation of Section 207 of the I-T Act. However, to claim this exemption, the procedure established under the Act has to be followed and the

required form submitted to the deductor. We are unsure whether this procedure was followed by the petitioner. Be that as it may, it remains open to the petitioner to provide the following details and claim this exemption under Section 207 of the I-T Act in future.

28. No other submission is made on behalf of learned counsel for the parties.

29. The instant petition was filed on 31.03.2018, since when the petitioner has been diligently pursuing his remedy before this Court. As such, the period of limitation shall not come in the way of adjudication of the application of the petitioner, if so filed, within next three months.

30. Accordingly, the petitioner is directed to make a required application to the Assessing Officer having jurisdiction of the matter for the grant of relief under Section 89 of the Act in accordance with the provisions of the statute. The SBI is directed to extend all assistance to the petitioner to enable him to avail such relief. We also hope and expect that the Assessing Officer of the income tax considers and dispose of the matter expeditiously and within a period of three months from the date of receipt of application.

31. The writ petition stands disposed of with the

aforesaid observations and directions.

32. Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

S. Kumar, J: I agree

(S. Kumar, J)

pallavi/-

AFR/NAFR	AFR
CAV DATE	25.08.2020
Uploading Date	14.10.2020
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