IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.11623 of 2013

1.A.L.Ramanathan
2.C.T.Viswanathan
3.R.M.Valliappan
4.Bakkiyalakshmi Narayanan
5.S.Murugesan
6.S.Chandrasekaran
7.AR.Natarajan
8.A.Arunachalam
9.D.Gnananandam
10.V.Muhukrishnan
11.TR.Alagusundaram
12.Mrs.V.Muthukkaruppi
13.V.Ramakrishnan
14.RM.Rajendran
15.R.Gopalram
16.K.Narayanan
17.PL.Selvam
18.K.Alagusundaram
19.M.Srinivasan
20.S.Alagappan
21.S.B.Ramasubbu
22.P.Thangaraj
23.S.Kaliaperumal
24.R.Sathyamoorthy
25.J.Hariharan
26.S.Sundaram
27.N.Purushothaman ... Petitioners

Vs.

1.The Assistant Commissioner of Income Tax,
Range V, ACIT Salary Circle I,
Coimbatore - 18.

2.The Deputy/Assistant Commissioner of Income Tax,
Salary, Tambaram Range Chennai.

3.The Assistant Commissioner of Income Tax II,
Salary circle III, Chennai.

4.The Assistant Commissioner of Income Tax,
Salary Ward II(3), Chennai.

5.The Assistant commissioner of Income Tax
Salary Circle II, Chennai.

6.The Income Tax Officer, Income Tax Office,
Ward I (1), Namakkal.

7.The Income Tax Officer, Income Tax Office,
Ward I (5), Vellore.

8.The Income Tax Officer, Income Tax Office,
Salary Ward I (2), Coimbatore.

9.The Income Tax Officer, Income Tax Office,
Ward I (1), Kanchipuram.

10.The Income Tax Officer, Income Tax Office,
Salary Ward I (2), Coimbatore.

11.The Income Tax Officer, Income Tax Office,
Ward I (4), Cuddalore. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the 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 petitioners.

For Petitioners : Mr.Ma.P.Thangavel

For Respondents : Mr.A.N.R.Jayaprathap
Standing Counsel

O R D E R

Both the counsels fairly submitted that the issue is no longer res integra and is covered by a decision of the Apex Court in the case of S.Palaniappan Vs.Income Tax Officer, Chennai vide order dated 28.09.2015 in C.A.No.4411 of 2010.

2.Following the above said order further order have also been passed by this Court in W.P.No.42385 of 2016 dated 02.12.2016 and W.P.No.28271 of 2019 dated 30.10.2019. Operative portion of the order which reads as under:-

> "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:
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> "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."

3.In the light of the above, respondents are directed to consider and grant appropriate relief to the petitioner within a period of eight weeks as per the order in the above Writ Petition.

4.The Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

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+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.7833

+1cc to Mr.AP.Srinivas, Advocate SR.No.7883

W.P.No.11623 of 2013

BP(CO)
GMY(09/03/2020)