IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.06.2020
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THE HONOURABLE MR.JUSTICE R.MAHADEVAN
W.P.No.7912 of 2011
and
M.P.No.1 of 2011

Indian Overseas Bank Officers' Association
Reg No: 321/MDS,
Rep: by its Joint General Secretary,
R.Muthukumar,
763, Anna Salai, Chennai - 2.
... Petitioner

Vs.

1. Union of India
   Represented by its Secretary to Government,
   Ministry of Finance,
   New Delhi.

2. The Central Board of Direct Taxes,
   North Block,
   New Delhi 110 001.

3. The Chief Commissioner of Income Tax,
   Ayakar Bhavan,
   Nungambakkam,
   Chennai 600 034.

4. Indian Overseas Bank,
   Rep: by its Chairman and Managing Director,
   Head Office,
   763, Anna Salai,
   Chennai - 02.
... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the 4th respondent dated 16.3.2011, bearing ref.No.PAD/SAL/179, and quash the same and consequently forbear the 4th respondent, its men or others from deducting tax at source on the amounts appropriated towards the

4th respondent Bank's Pension Fund corpus, from out of the sums paid by the 4th respondent to the members of the petitioner Association towards salary and arrears of salary in pursuance of the provisions of the 9th Bipartite Settlement.

For Petitioner : Mr.Srinath Sridevan

For R1 to R3 : Mrs.Hema Muralikrishnan, Senior Standing Counsel

For R4 : Mr.N.G.R.Prasad

O R D E R

The prayer made in this writ petition is to quash the order dated 16.03.2011 passed by the fourth respondent Bank and consequently, forbear them from deducting tax at source on the amount appropriated towards the Pension Fund Corpus, from and out of the sums paid by the fourth respondent Bank to the members of the petitioner Association towards salary and arrears of salary, pursuant to the provisions of the 9^{th} Bipartite Settlement.

2.By the order impugned herein, the fourth respondent Bank rejected the request of the petitioner Association for exclusion of 2.8 times of pay deducted towards pension fund gap, from the salary revision arrears paid to its members, who had opted for II option for pension, from the taxable income for the calculation of income tax pertaining to the financial year 2010-11. While doing so, it was informed that the amount deducted from the gross arrears, which is a part of salary, has been remitted to pension fund gap as per the II pension option exercised by the members of the petitioner Association under the wage/salary revision agreement; and there is no mention in the Income Tax Act with respect to exclusion of the amount so deducted for income tax calculations.

3.On 28.03.2011, this Court, while admitting this writ petition, has granted an order of interim injunction, which is in force till date.

4.Today, when the matter is taken up for consideration through Video Conferencing, due to COVID-19, the learned counsel for the petitioner submitted that in WP.No.8101 of 2011, this Court has considered the similar relief as sought herein and disposed of the said writ petition on 06.09.2019, the relevant portion of which, for better appreciation, are extracted hereunder:

"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 costs."

Hence, the learned counsel prayed for the very same relief in this writ petition as well.

5.There is no serious objection on the side of the respondents for granting such relief to the petitioner.

6.Considering the facts and circumstances of the case and having regard to the submissions now made by the learned counsel on either side and also following the aforesaid order, which is squarely applicable to the present case, this Court disposes of this writ petition in the following terms:

"The petitioner Association is directed to submit a representation with respect to nil/lower deduction of income tax to the authorities concerned, within a period of four weeks from the date of receipt of a copy of this order. On such submission being made, the authorities concerned shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner Association within a period of four weeks thereafter. Till such time, the order of interim injunction already granted, shall stand extended."

No costs. Consequently, connected Miscellaneous Petition stands closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

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Union of India
Ministry of Finance,
New Delhi.

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4.The Chairman and Managing Director
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aa04/08/2020