IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.11.2020

Delivered on : 01.12.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE
and
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

W.P.No.33725 of 2019 &
W.M.P.No.34198 of 2019

G.Srinivasan
... Petitioner-in-Person

..vs..

1.Union of India
Ministry of Labour,
Represented by Secretary,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi-10 001.

2.Union of India,
Ministry of Finance,
Represented by Secretary,
Ministry of Finance,
North Block, New Delhi-110 001.

3.The Chairman, CBDT,
Ministry of Finance,
North Block,
New Delhi-110 001. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Declaration declaring that

A.1 Appointed date of Notification S.O.1419 (E) dated 29th March 2018 issued by Ministry of Labour and Employment is declared as 1st January 2016 instead of 29th March, 2018 by replacing the words "29th day of March, 2018" appearing in the notification with the words "1st day of January, 2016" retaining other terms in the notification.

A.2 Notification No.S.O.1213 (E) dated 08.03.2019 of CBDT, Ministry of Finance is declared to have been implemented w.e.f.1st January 2016 instead of 29th March 2018 by replacing the words "29h day of March, 2018" appearing in the notification with the words "1st day of January, 2016" retaining other term in the notification.

B. Direct the Respondent-3 to return and refund the Income Tax deducted at Source from the Petitioner in the Financial Year 2018-19 on Gratuity, received as superannuation benefit, treating the same as income and render justice.

For Petitioner : Mr.G.Srinivasan, Party-in-person

For Respondents : Mr.Venkataswamy Babu, Spl. Panel Counsel for R1 & R2
Mrs.Hema Muralikrishnan for R3

O R D E R

SENTHILKUMAR RAMAMOORTHY J.,

By this writ petition, the petitioner prays for a Writ of Declaration in respect of the Notification S.O.1419 (E) dated 29.03.2018 of the Ministry of Labour and Employment [Notification S.O. 1419(E)] to declare that the appointed date specified therein should be 01.01.2016 instead of 29.03.2018. Likewise, a similar declaration is prayed for in respect of the Notification S.O.1213 (E) dated 08.03.2019 of the Central Board of Direct Taxes, Ministry of Finance [Notification S.O. 1213 (E)]. In both Notifications, it is prayed that the words "29th day of March 2018", as contained in the aforesaid notifications, should be substituted by the words "1st day of January 2016". By way of consequential relief, the Petitioner prays for the refund of income tax that was deducted at source for the financial year 2018-19 on the gratuity paid to the Petitioner.

2. The Petitioner was an employee of the National Thermal Power Corporation (the NTPC). He worked in the said organization as an Engineer [Executive Cadre] and retired from service on 28.02.2018 after serving the organization for about 33 years. Upon retirement, his gratuity was paid in two tranches of Rs.10 lakhs each. The second tranche was paid after deducting tax under Section 10 (10) (ii) of the Income Tax Act, 1961 [the Income Tax Act]. Pursuant thereto, Form-16 was issued in the month of June 2019. As a result of the deduction of income tax on gratuity, the Petitioner received only Rs.16.7 lakhs instead of Rs.20 lakhs. According to the Petitioner, the amount received by him as gratuity should have been completely exempt

from income tax whereas he was required to pay income tax on the second tranche of Rs.10 lakhs because he retired on 28.02.2018 and not on or after 29.03.2018, which is the appointed date under Notification S.O.1419(E) and Notification S.O. 1213(E) .

3. Section 10 of the Income Tax Act is an exemption provision that deals with income which is not included in the total income of a person for taxation purposes. Sub-section (10) thereof deals with gratuity. Clause (ii) of Sub-section (10) of Section 10 exempts amounts received as gratuity under the Payment of Gratuity Act, 1972 (the Payment of Gratuity Act) from the payment of income tax to the extent that it does not exceed the amount calculated in accordance with the provisions of sub-sections (2) and (3) of Section 4 of the Payment of Gratuity Act. Section 4 (3) of the Payment of Gratuity Act has been amended from time to time as regards the maximum amount payable as gratuity. Prior to the impugned Notification S.O. 1419 (E), Section 4(3) specified that the amount of gratuity payable to an employee shall not exceed Rs.10 lakhs. Consequently, on a combined reading of Section 10 (10)(ii) of the Income Tax Act and Section 4(3) of the Payment of Gratuity Act, an amount received as gratuity was exempt from income tax up to the specified limit of Rs.10 lakhs. This position prevailed as of the date of retirement of the Petitioner on 28.02.2018. Subsequently, by Notification S.O.1419 (E), Section 4(3) of the Payment of Gratuity Act was amended and the maximum amount of gratuity payable to an employee was fixed at Rs.20 lakhs. Notification S.O.1419 (E) expressly stipulates that the amendment to Section 4(3) of the Payment of Gratuity Act comes into force on 29.03.2018. Likewise, by Notification S.O. 1213 (E), Section 10(10)(iii) of the Income Tax Act was amended whereby the exemption limit in respect of gratuity was fixed at Rs.20 lakhs with effect from 29.03.2018.

4. The case of the Petitioner is that the entire gratuity amount of Rs.20 lakhs, which was received by him, would have been exempt from income tax if he had retired on or after 29.03.2018 because the amendment to Section 4(3) of the Payment of Gratuity Act, whereby the maximum gratuity was modified as Rs.20 lakhs, came into effect on 29.03.2018. The consequential amendment to Section 10 (10) of the Income Tax Act was made on 08.03.2019 with effect from 29.03.2018. If these provisions had come into effect on 01.01.2016, which is the date when the gratuity limit was raised to Rs.20 lakhs, persons such as the Petitioner would have the benefit of complete exemption from income tax. According to the Petitioner, the impugned notifications are unconstitutional inasmuch as employees who retired prior to 29.03.2018 are being discriminated against. The present writ petition is filed in these facts and circumstances.

5. We heard Mr.G.Srinivasan, the Petitioner, as a party-in-person; Mr.Venkatasamy Babu for the Respondents 1 and 2; and Mrs.Hema Muralikrishnan for the third Respondent.

6. Mr.Srinivasan stated that he worked in the NTPC as an engineer for about 33 years and retired on 28.02.2018. Upon retirement, as a first tranche, he received a sum of Rs.10 lakhs as gratuity. Thereafter, he received the second tranche, as per the direction of BPE dated 10.07.2018, after deducting tax thereon. He further submitted that such tax deduction has resulted in the receipt of a sum of Rs.16.7 lakhs as gratuity instead of Rs.20 lakhs. According to Mr.Srinivasan, the levy of income tax on the amount received as gratuity is unconstitutional. In support of his submissions, Mr.Srinivasan referred to Section 10 (10) (ii) of the Income Tax Act, which exempts gratuity received under the Payment of Gratuity Act from the total income for the purpose of computing income tax subject to the maximum amount specified in Section 4(3) of the Payment of Gratuity Act. By inviting the attention of the Court to Section 4(3) of the Payment of Gratuity Act, he pointed out that the maximum limit specified therein was revised from time to time and stood at Rs.10 lakhs at the time of his retirement on 28.02.2018. However, he was paid a sum of Rs.20 lakhs as gratuity. On account of the exemption being limited to a sum of Rs.10 lakhs at the time of his retirement, income tax was deducted at source on the second tranche of Rs.10 lakhs. Subsequently, by the Notification S.O.1419 (E) and 1420 (E) of the Ministry of Labour and Employment, Section 4(3) was amended and the maximum amount was fixed at Rs.20 lakhs. Unfortunately, this was done with effect from 29.03.2018. Likewise, the amendment to Section 10 (10)(iii) of the Income Tax Act was also with effect from 29.03.2018. The fixation of 29.03.2018 as the appointed date for raising the gratuity limit and the exemption limit to Rs.20 lakhs is unconstitutional because it is discriminatory on the basis of the fortuitous circumstance of an employee's retirement date.

7. In support of the contention that retired employees should not be discriminated against on the basis of the retirement date, he referred to and relied upon the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of D.S.Nakara v. Union of India (1983) 1 SCC 305 (D.S. Nakara) wherein such discrimination in the payment of pension was held to be unconstitutional by the Hon'ble Supreme Court. By relying upon this judgment, he contended that all retirees constitute a single, distinct and homogeneous class and they cannot be discriminated against on the basis that persons who retire before 29.03.2018 should pay tax on gratuity whereas those who retire after 29.03.2018 are exempt. He also relied upon the judgments of the Hon'ble Supreme Court in Express News Paper

Limited v. Workmen, AIR 1958 SC 578; D.D.Tiwari v. Uttar Haryana Bijili Vitram Nigam Ltd. 2015 LLR 126 (SC); and Rashtriya Mill Mazdoor v. National Textiles Corporation (South Maharashtra) Limited (1996) 1 SCC 313, for the principle that gratuity is not a bounty or charity but is an amount paid for services rendered by the employee.

8. His next contention is that the payment of gratuity to employees of public sector undertakings has always been in consonance with the payment of gratuity to employees of the Central Government. Accordingly, the ceiling of gratuity was fixed at Rs.20 lakhs for Central Government employees pursuant to the implementation of the VII Central Pay Commission Recommendations. Consequently, it was decided to amend the Payment of Gratuity Act. Accordingly, the Bill was introduced in Parliament on 23.10.2017 and Parliament passed the Bill on 22.03.2018. According to Mr.Srinivasan, the passage of the Bill was delayed in Parliament due to the un-cooperative attitude of the opposition parties. Otherwise, the Bill had been approved by the Cabinet in 2017. He also relied upon the judgment in Menaka Gandhi v. Union of India (1978) 1 SCC 248 so as to contend that the principle of reasonableness is an essential element of equality or non-arbitrariness under Article 14 of the Constitution and that Article 14 stands violated by the discrimination between persons who are similarly situated on the basis of the date of retirement. For all these reasons, he submitted that he is entitled to the relief prayed for.

9. On the contrary, the learned counsel for the third respondent submitted that the exemption from payment of income tax under Section 10 (10) of the Income Tax Act is limited to the amounts specified under Section 4 (3) of the Payment of Gratuity Act. The admitted position is that the amount specified in Section 4(3) of the Payment of Gratuity Act was a sum of Rs.10 lakhs as on the date of the retirement of the Petitioner. Accordingly, the Income Tax Department granted exemption up to the ceiling limit of Rs.10 lakhs. As regards amounts in excess in Rs.10 lakhs, such amounts were liable to be and were, accordingly, included in the income of the assessee. Consequently, income tax was levied on the second tranche of Rs.10 lakhs. Mrs.Hema Muralikrishnan also submitted that the writ petition is liable to be rejected inasmuch as the Petitioner seeks to implement the amendment to the Income Tax Act with effect from 01.01.2016 whereas the amendment notification makes it abundantly clear that it is with effect from 29.03.2018. She further submits that an exemption notification is required to be construed strictly in accordance with the law laid down by the Hon'ble Supreme Court and by the Division Bench of this Court in Tvl. Afcons-Transtonnelstroy Joint Venture v. Union of India, 2020 SCC Online Mad 2570.

Therefore, she submits that the writ petition is liable to be rejected.

10. Mr.Venkatasamy Babu also reiterated that the amendment to both Section 4(3) of the Payment of Gratuity Act and Section 10 (10) of the Income Tax Act were expressly and categorically made with effect from 29.03.2018. Therefore, it is not possible to apply such exemption with effect from 01.01.2016 as prayed for by the Petitioner.

11. We considered the submissions of the party-in-person and the learned counsel for the Respondents and examined the materials on record.

12. The subject matter of the writ petition is exemption from income tax on amounts received as gratuity. Such exemption is provided for under Section 10 (10) of the Income Tax Act. In the present case, the Petitioner admittedly received gratuity as an employee of the NTPC in terms of the Payment of Gratuity Act. Consequently, the relevant clause in Section 10(10) is clause (ii), and the relevant provision is as under:

> "Incomes not included in total income
>
> 10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-
>
> ....
>
> (10)(ii) any other gratuity received under the Payment of Gratuity Act, 1972 (39 of 1972), to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of section 4 of that Act."

13. On perusal of Section 10 (10) (ii), it is evident that the exemption limit is as specified in sub section (2) and (3)of Section 4 of the Payment of Gratuity Act. Therefore, one has to turn to the Payment of Gratuity Act to determine the exemption limit under Section 10 (10)(ii) of the Income Tax Act. As per Sub-section (2) of Section 4, an employee shall receive gratuity at the rate of 15 days wages for every completed year of service or part thereof based on the wages last drawn. Sub-section (1) thereof imposes an additional condition that such employee should have provided services for a continuous period of not less than five years. Therefore, Sub-section (2) deals with the manner of computation of the amount payable as gratuity. On the facts of this case, there is no dispute with regard to the computation of gratuity and the dispute is restricted to the ceiling on gratuity, which is dealt with in Section 4(3). The ceiling specified in Section 4(3) has been revised from time to time. For example, by the Payment of

Gratuity [Amendment] Act, 2010, Rs.10 lakhs was substituted in Section 4(3) for Rs.3,50,000/-. This amendment came into effect on 24.05.2010. Needless to say, until 23.05.2010, the maximum amount specified in Section 4(3) was Rs.3,50,000/- and employees would have been entitled to exemption of income tax only up to a maximum of Rs.3,50,000/-. As regards the Petitioner, as on the date of his retirement on 28.02.2018, Section 4(3) specified the maximum limit of Rs.10 lakhs. By virtue of Section 10 (10)(ii) of Income Tax Act, this became the exemption limit for the purposes of payment of income tax. Consequently, the Petitioner's gratuity income was exempt from income tax up to to the said limit of Rs.10 lakhs. This limit in the Payment of Gratuity Act was amended pursuant to the Payment of Gratuity (Amendment) Bill of 2017, which was introduced in Parliament on 23.10.2017, but admittedly enacted with effect from 29.03.2018. In this writ petition, the Petitioner does not challenge Section 10(10)(ii) of the Income Tax Act, as it stood on the date of his retirement. Instead, he seeks a declaration in respect of two notifications, namely, S.O. 1419 (E) and S.O. 1213 (E), whereby the amendments to the Payment of Gratuity Act and the Income Tax Act were notified. The relevant amendment notifications are as under:

> Notification
> New Delhi, the 29th March, 2018
>
> S.O.1419 (E)-- In exercise of the powers conferred by sub-section (2) of Section 1 of the Payment of Gratuity (Amendment) Act, 2018 (12 of 2018), the Central Government hereby appoints the 29th day of March, 2018 as the date on which the said Act shall come into force.
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> Notification
> New Delhi, the 29th March, 2018
>
> S.O.1420 (E)-- In exercise of the powers conferred by sub-section (3) of Section 4 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies that the amount of gratuity payable to an employee under the said Act shall not exceed twenty lakh rupees.
>
> MINISTRY OF FINANCE
> (Department of Revenue)
>
> (CENTRAL BOARD OF DIRECT TAXES)
> NOTIFICATION

New Delhi, the 8th March, 2019
(Income-tax)

> S.O.1213 (E)-- In exercise of the powers conferred by sub-section (iii) of clause (10) of section 10 of the Income-tax Act, 1961 (43 of 1961), and in supersession of Ministry of Finance, Department of Revenue, notification number S.O.141(E), dated the 11th June, 2010, except as respects things done or omitted to be done before such supersession, the Central Government, having regard to the maximum amount of any gratuity payable to employees, hereby specifies twenty lakh rupees as the limit for the purposes of the said sub-clause in relation to the employees who retire or become incapacitated prior to such retirement or die on or after the 29th day of March, 2018 or whose employment is terminated on or after the said date."

Upon perusal of Notifications S.O. 1419 (E) and S.O. 1420(E), it is evident that the increase in ceiling limit under the Payment of Gratuity Act is with effect from 29.03.2018. Likewise, on examining the Notification S.O.1213 (E), it is abundantly clear that the increased exemption limit of Rs.20 lakhs under the Income Tax Act is applicable to those who retire or die on or after 29.03.2018. As stated earlier, the Petitioner does not challenge Section 10(10) of the Income Tax Act or even Notification S.O. 1213 (E). Instead, he seeks a declaration whereby the amendments made by Parliament with effect from 29.03.2018 should be applied with retrospective effect from 01.01.2016. While Parliament has the power to legislate retrospectively, the intention to legislate with retrospective effect should be expressly stipulated in the law concerned. In this case, it is expressly stated that the amendment to Section 4(3) of the Payment of Gratuity Act would take effect from 29.03.2018. As a corollary, the increased exemption limit in the Income Tax Act is made applicable only to persons who retire on or after 29.03.2018. In the absence of a challenge to Section 10(10) of the Income Tax Act, in our view, the relief prayed for cannot be granted.

14. Nonetheless, extensive arguments were advanced to the effect that the stipulation of 29.03.2018 as the appointed date for the amendment to Section 4(3) is unconstitutional; therefore, the said contention is examined. The said amendment applies in respect of receipt of gratuity under the Payment of Gratuity Act. As between recipients of gratuity under the

Payment of Gratuity Act, there is no discrimination as regards the date of entry into force of the increased ceiling. The party-in-person alleges that the impugned notifications are discriminatory on the basis that Central Government employees and employees of public sector undertakings should be treated on a par. In our view, this contention cannot be countenanced. The terms and conditions of employment vary significantly as between employees of the Central Government and those of public sector undertakings and, indeed, even as between different public sector undertakings. Therefore, these classes of employees do not constitute a single homogeneous class. Consequently, the contention that employees of public sector undertakings, such as the Petitioner, should be treated in the same manner as regards gratuity as the employees of the Central Government is rejected.

15. The other significant aspect to be borne in mind is that the Petitioner is seeking exemption from the payment of income tax. As per the settled legal position in this regard, an exemption provision or exemption notification is required to be construed strictly and ambiguity, especially as regards applicability, is required to be resolved in favour of the revenue. This principle was laid down in several judgments of the Hon'ble Supreme Court and reiterated authoritatively in the judgment of the Constitution Bench in Commissioner of Customs v. Dilip Kumar (2018) 9 SCC 1. In the said judgment, the Hon'ble Supreme Court concluded as follows in paragraphs 53 and 66.2 thereof:

> "53.After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.
>
> "66.2.When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue."

16. Section 10(10)(ii) of the Income Tax Act exempts amounts received as gratuity from the income of the assessee to the extent specified in Section 4 (3) of the Payment of Gratuity

Act. The undoubted position is that Section 4(3) of the Payment of Gratuity Act specified the limit of Rs.10 lakhs as on the date of retirement of the Petitioner. This limit was increased to Rs.20 lakhs by an amendment which admittedly came into force only on 29.03.2018. As a corollary, the exemption limit was raised to Rs.20 lakhs by an amendment to the Income Tax Act only in respect of persons who retired or died on or after 29.03.2018. In Dilip Kumar, the Supreme Court restated the principle that even an ambiguity in an exemption notification, especially as regards applicability, should be resolved in favour of the revenue. A fortiori, when there is no ambiguity either in Section 10(10)(ii) of the Income Tax Act, as it stood as on the date of retirement of the Petitioner, or in the amendment Notification S.O.1213(E), the applicable exemption limit cannot be raised by an order of Court to Rs.20 lakhs as regards the Petitioner.

17. Upon perusal of the amendment notifications, we find that the Petitioner has completely failed to make out a case that the amendments should be implemented with retrospective effect from 01.01.2016. In our view, the judgment of the Hon'ble Supreme Court in D.S.Nakara case does not come to the aid of the Petitioner inasmuch as the said judgment dealt with a cut-off date with regard to the payment of pension. In this case, we are concerned with the date of entry into force of an amendment to the Payment of Gratuity Act. The said amendment is pursuant to an Act of Parliament which admittedly entered into force only on 29.03.2018. As such, the endeavour by the Petitioner to enforce the said amendment from 01.01.2016 is liable to be rejected.

18. In the result, the writ petition fails and is hereby dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Ministry of Labour,
Union Of India,
Shram Shakti Bhawan,
Rafi Marg, New Delhi-10 001.

2.The Secretary,
Ministry of Finance,
Union of India,
North Block, New Delhi-110 001.

3.The Chairman, CBDT,
Ministry of Finance,
North Block,
New Delhi-110 001.

+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No. 38597

NRL (CO)
GN(11/12/2020)