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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MS.JUSTICE R.N.MANJULA

W.A.Nos.741,746,743,742,744 and 745 of 2018
and C.M.P.Nos.7141,7140,7139,7143 and 7142 of 2018

W.A.No.741 of 2018

The Commissioner of Income Tax (TDS),
No.121, Uthamar Gandhi Salai,
Chennai - 600 034. ... Appellant/3rd Respondent in all WAs

Vs

1.Hindustan Photo Film Workers' Welfare Centre(CITU)
(Regn.No.31/NLG)
Rep. by its General Secretary,
Indu Nagar, Ootacamand,
The Nilgris - 643 005,
Tamil Nadu ...Ist Respondent/
Petitioner in W.A 741 of 2018

2.Indu Film Officers Association(IFOA)
(REGN.No.65/NLG)
Rep by its General Secretary,
C/o Hundustan Photo Films,
Indu Nagar, Ootacamund,
The Nilgiris-643 005. ...Ist Respondent/
Petitioner in W.A NO.742 of 2018

3.Film Factory Workers Union (INTUC)
(Regn.No.49/NLG)
rep by its General Secretary,
C/o Hindustan Photo Films,
Indu Nagar, Ootacamund,
The Nilgiris-643 005. ...Ist Respondent/
Petitioner in W.A No.743 of 2018

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4.Anna Indu Employees Union (AIEU),
(Regn. No.99/NLG)
rep by its Secretary,
C/o Hindustan Photo Films
Indu Nagar, Ootakamund,
The Nilgiris-643 005. ...Ist Respondent/Petitioner in W.A.No.744 of 2018

5.HPF Staff Union (BMS),
(Regn.No.165/NLG)
rep by its General Secretary,
C/o.Hindustan Photo Films,
Indu Nagar, Ootacamund,
The Nilgiris-643 005. ...Ist Respondent/ Petitioner in W.A No.745 of 2018

6.Indu Employees Progressive Union (LPF)
(Regn.No.36/NLG),
rep by its General Secretary,
C/o. Hindustan Photo Films,
Indu Nagar, Ootacamund,
The Nilgiris-643 005. ...Ist Respondent/ Petitioner in W.A No.746 of 2018

7.The Government of India
Rep. by its Secretary,
Department of Heavy Industry
Ministry of Heavy Industries & Public Enterprises,
Udyog Bhavan, New Delhi - 110 001.

8.Hindustan Photo Film Manufacturing Co., Ltd.,
Indu Nagar, Ottacammand,
The Nilgris - 643 005. ... Respondents/Respondents 1 & 2in all Writ Appeals

Prayer in W.A.No.741 to 746 of 2018: Appeal filed under Clause 15 of Letters Patent against the order dated 17.03.2017 made in W.P.Nos.18556 of 2015, 18608/2015, 18609/15, 18610/15, 18788/15 and W.P.No.18789 of 2015 respectively.

Common Prayer in W.P.No.18556, 18608, 18609, 18610, 18788 and 18789 of 2015:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the letter bearing Ref.No. 19(2)/2013-PE.III dated 20.3.2014 issued by the 1st respondent read with Circular No. P1/14/59/VRS dated 21.3.2014 issued by the 2nd respondent as illegal and unconstitutional in so far as the quantum of payment and

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consequently direct the Respondents to pay compensation to all the employees of the 2nd respondent who have retired / retire under the Voluntary Retirement Scheme announced by the letter dated 20.3.2014 issued by the 1st respondent read with the circular dated 21.3.2014 issued by the 2nd respondent on the following basis: a. 72 months salary on the 2007 pay scales to each employee b. Arrears of pay on 2007 pay scales to each employee c. No deduction towards income tax on the severance package payable under the VRS scheme; d. No deduction of the amount of recoverable monthly advance, Special performance allowance and Adjustable Advance paid to the employees so far and e) permitting the employees to occupy the staff quarters of the second respondent at Udhagamandalam till 01.05.2016 at the same rate of rent charged until the voluntary Retirement Scheme.

Prayer in W.P.No.18556 of 2015:

For Appellant	:	Mr.Karthik Ranganathan in all cases
For Respondent	:	Ms.Vaigai, Senior Counsel for M/s.Anna Mathew for R1 No appearance for R2 and R3

COMMON JUDGMENT
(Delivered by M.M.SUNDRESH, J.)

All these appeals have been preferred by the appellants laying a challenge to the orders passed in a batch of writ petitions filed in W.P.No.18566 of 2015 etc., dated 17.03.2017.

2. We do not wish to travel much on the facts involved. Suffice it to state that the issue involved in these appeals is with respect to the deduction of TDS on the amount paid and payable to the workmen being the members of the first respondent. The workmen were made entitled for certain payment consequent upon the closure of the Industry. Winding up proceedings were initiated before this Court and an order was accordingly passed by the learned Single Judge in C.P.No.114 of 2003, wherein, it has been held that the payment due to the workmen is a special package though styled as Voluntary Retirement Scheme. Paragraph 14 of the order of the learned Single Judge in C.P.No.114 of 2003 dated 24.01.2017 is appositely recorded hereunder:-

> "14. The only apprehension of the workmen appears to be that if the assets of the company in liquidation are taken over by the learned Official Liquidator, then the workmen fear that they may have to stand before the learned Official

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> Liquidator in the queue along with other unsecured creditors to recover the dues and that they should not be put to such an ordeal, more particularly when the Central Government has sanctioned a special package to take care of the workmen opting under the VRS Scheme."

3. Incidentally, the very same learned Single Judge took up the issue, namely, the aforesaid due payment is to be construed as a special package coming under the second proviso to Section 10(10B) of the Income Tax Act as against the case sought to be projected by the appellant that it would come under Section 10 (10C) being the Voluntary Retirement Scheme.

4. Learned Single Judge upon hearing the counsel was pleased to hold that it being a special package, second proviso would alone be made applicable.

5. Challenge has been made by the Central Government against the order of the learned Single Judge on the other issue. Incidentally, we may note that the learned counsel appearing for the appellant was also heard. In W.P.No.616 of 2017 dated 29.06.2017, the issue has been dealt with by the Division Bench, which is extracted hereunder:-

> "12. In the meanwhile, there is also claim of the Income Tax Department to deduct TDS out of the amount which is to be paid to the workmen by way of VRS Scheme. It is brought to the notice of the Company Court that deduction of TDS it appears that it may be run up to 4 crores. Learned Senior Standing Counsel for the Income Tax Department, then representing before the Company Court informed that if a representation is given by one of the workmen through their Union the same would be placed before the Central Board of Direct Taxes in this regard for necessary consideration. Since already the learned Standing Counsel for the Income Tax Department has offered a scheme to place the matter before the Central Board of Direct Taxes as to the deduction of the amount at source by way of TDS to the tune of 4 Crores once again delayed elsewhere if the association or any individual files an application to seek such concession. So far as the deduction of TDS is concerned already given opportunity to the Standing Counsel appearing on behalf of the Income Tax Department. It is observed that TDS would not be applicable to the case on hand.

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> 13.Now, it appears as practice in respect of earlier settlement amount, the income tax department also exercise its rights seeking for TDS amount. Such being the case, there could not be any dispute once again by filing appeal or otherwise to the Income Tax Department if the amount cannot be subject to tax at source or TDS or collect income tax from the workmen concerned. However, any such observation to be made by this Court as already observed by this Court it should not be in the way of the right available to the Department with regard to challenge of the said finding by the learned Single Judge. There is a direction in respect of other workers to deposit the TDS amount in a ESCROW Account. The same will apply to the workers herein also."

6. The Special Leave Petition filed by the Government challenging the aforesaid order has also ended in dismissal in S.L.P.(c)Nos.5595-5601/2018 dated 19.02.2018.

7. Though the learned counsel appearing for the appellant seek to contend that the case on hand would come under Section 10(10C) of the Income Tax Act, in which case, the amount quantified is only the Voluntary Retirement payment, we do not subscribe to the said view expressed. Incidentally, the learned counsel appearing for the appellant submitted that if it is a case under first proviso to Section 10(10B) of the Income Tax Act, there is a cap with respect to the amount quantified - Rs.50,000/-. This will only militate against the members of the first respondent.

8. The said contention also, in our considered view, cannot be countenanced. As rightly submitted by the learned Senior Counsel appearing for the first respondent, it is a case of the first respondent/writ petitioner that the case would fall under the second proviso.

9. The learned Single Judge has considered this issue in extenso in paragraphs 31 and 32, which are extracted hereunder:-

> "31. As mentioned above, the Government of India had recommended a scheme to give relief to the employees of HPF. This proposal was approved by the Cabinet Committee on Economic Affairs and such approval was a non-plan budgetary support. The Government of India did not authorise the HPF to bring out a VRS package, but what was approved was a non-plan budgetary support, which is in the nature of a grant given by the Central Government to the second respondent for a specific purpose and

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a specific reason. The purpose is to rehabilitate the employees of HPF and the reason being that the employees have been receiving the pay scales as of 1987, the increase in the cost of living has made it very difficult for them to survive and meet their financial obligations and the Government thought fit to offer this package to enable the employees to come out of the financial crises. If such was the sanction made by the Central Government, it undoubtedly would qualify the parameters laid down under sub-section(10B) of Section 10 of the Income Tax Act. This is so because the monetary benefit which will accrue to the employees is in the nature of a compensation, which is pursuant to a decision taken by the Government of India specifically for the employees of HPF. Therefore, the amount would be exempted from income tax in terms of the first proviso under Section 10 (10B) of the IT Act. In terms of clause (2) of first proviso, the ceiling limit is Rs.5,00,000/-. The second proviso states that the first proviso shall not apply in respect of any compensation received by a workmen in accordance with any scheme, which the Government may, having regard to the need for extending the special protection to the workmen in the undertaking to which such scheme applies and other relevant circumstances, approve in its behalf. The compensation which is received by the workmen would fall within the definition of compensation found in explanation to Section 10(10B).

32. In such circumstances, this Court has no hesitation to hold that the package having been received by the workmen as compensation pursuant to the decision taken by the Central Government to offer special protection to the employees of HPF, the same stands exempted from deduction to income tax."

10. We do not find any perversity in such a finding rendered by the learned Single Judge. After all, as indicated by us earlier, it is the very same learned Single Judge, who passed the order in C.P.No.114 of 2003. Therefore, the interpretation given has to be accepted with respect to the nomenclature of the Scheme. Though it is referred as Voluntary Retirement Scheme, one has to see the object and intent behind it. When once a factual finding is given that it is a special package, a different view is not possible. We may note that the case on hand involves a chequered history with respect to the running of

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Industry qua rights of the workmen. That is the reason why, an order has been passed by the Company Court on 24.01.2017 after finding that the company requires to be wound up. Therefore, this is not a case of voluntary retirement by the workmen, but, on the other hand, brought forth by contingency. Therefore, the reason of the learned Single Judge bringing the case under the second proviso is perfectly in order.

11. In such view of the matter, we have no hesitation in confirming the order of the learned Single Judge. In this connection, we would like to make a special note on the decision rendered by the Division Bench as confirmed by the Hon'ble Apex Court.

12. Thus, looking from any perspective, we do not find any reason to interfere with the well merited orders passed by the learned Single Judge.

13. Accordingly, the writ appeals stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

14. At this juncture, learned senior counsel appearing for the first respondent brought to our notice that during the pendency of the proceedings before the learned single Judge, an order was passed directing the appellant to deposit certain amount in the name of Registrar General, High Court, Madras. This amount certainly will have to go to the members of the first respondent. In such view of the matter, Registry is directed to release the said amount so as to enable the members of the first respondent to get the benefits as the aforesaid arrangement is only interim in nature and we are disposing of the main appeals themselves, confirming the orders of the learned single Judge. Needful will have to be done within a period of six weeks from the date of receipt of a copy of this judgment.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To:

1.The General Secretary,
Hindustan Photo Film Workers' Welfare Centre(CITU)
(Regn.No.31/NLG)
Indu Nagar, Ootacamand,
The Nilgris - 643 005,
Tamil Nadu.

2.The General Secretary,
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The Nilgris - 643 005.

+6ccs to M/s.Karthik Ranganathan, Advoate Sr.30713 to 30718
+1cc to M/s.S.Sakthivel, Advocate Sr.30597

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742,744 and 745 of 2018

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