

ITA/20/2003

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PREMILA BHATIA & ANR.

-Versus-

C.I.T. W.B., KOLKATA XI

Appearance:

*Mr. Ananda Sen, Adv.
...for the appellant.*

*Mr. Aryak Dutta, Adv.
...for the respondent.*

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE BIVAS PATTANAYAK

Date : 20th July, 2022.

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 20th August, 2002 passed by the Income Tax Appellate Tribunal, Kolkata, "C" Bench, Kolkata in ITA No.962/Cal/1999 for the assessment year 1993-94.

The appeal was admitted on the following substantial questions of law for consideration:

- i) Whether on the facts and in the circumstances of the case, the Tribunal was right in law and had material to hold that the assessee retired only as Managing Director of SAIL on 31.12.1992 and*

further how a person will appeal for retirement from the post for which he has not worked in spite of the admitted fact that letter of acceptance of VRS was issued by SAIL on 01.01.1993 after the assessee joined as an Advisor on 01.01.1993 and on the same day he opted for VRS in the capacity of his present post of Advisor?

- ii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that when the assessee did not draw any salary even for half a day for working as an Advisor, there is no question of any amount being worked for permissible deduction under Section 10(10C) in spite of the admitted fact that the assessment has been paid VRS amount which includes the salary of half day of 01.01.1993?*

We have heard Mr. Ananda Sen, learned standing counsel for the appellant/assessee and Mr. Aryak Dutta, learned counsel for the respondent/revenue.

On going through the order passed by the tribunal we are of the clear view that the order is utterly perverse, non-speaking and without taking note of the factual position which has been brought out by the Commissioner of Income Tax (Appeals) - VIII, Kolkata. The short issue which arose for consideration was as to how the benefits which were paid to the appellant/assessee upon being granted the voluntary retirement from Steel Authority of India Limited (SAIL) has to be taxed. The assessing officer held

against the assessee. The assessee preferred appeal before the CIT(A) who had elaborately taken note of the factual position and, in our view, rightly come to the conclusion that the application for voluntary retirement dated 10th December, 1992 was accepted by the employer of the assessee with effect from 31st December, 1992 on which date the appellant/assessee was to retire voluntarily as Managing Director of the Durgapur Steel Plant. For better appreciation we extract the following finding rendered by the tribunal :

"6. I have considered this argument of the A.O. and in fact after an overall consideration of the matter, I must say that I cannot agree with him. The A.O. has not been able to understand the fact properly and at certain places his arguments are also in variance at each other. From the copies of orders and documents produced before me it is clear that the appellant applied for V.R. on 18-12-92. It is important to note that on that date the appellant was holding the charge of M.D. So it was only natural on his part to write such letter to the employer only in his capacity as M.D. There is nothing wrong in that. What is important is that he knew full well by that time that he could not work in that capacity beyond 31-12-92 because he would attain the age of 58 years on that date. It is also a fact that he was also aware while writing such application that he would be posted as an advisor w.e.f. 1-1-93. It is seen that accordingly his employer SAIL has correctly informed him that he could hand over the charge of M.D. on 31-12-92 and that thereafter he would take over the charge as advisor w.e.f. 1-1-93 till his superannuation on 31-12-94. Therefore the SAIL authority also

correctly granted the prayer of the appellant that he would be allowed V.R. w.e.f. 1-1-93. On this point it is immaterial if the appellant requested for V.R. w.e.f. 31-12-92. What is material is that his employer granted V.R. to the appellant w.e.f. 1-1-93. It is also a matter of record that the appellant in this case handed over the charge of M.O. on 31-12-92 and also took over the post of advisor on 1-1-93 in pursuance of order of employer dated 30-12-92. It is also important to note that only after he took over the charge as advisor the office order was issued on 1-1-93 that the offer of V.R. of the appellant was accepted by his employer. Thus it is absolutely clear that the appellant was granted V.R. only w.e.f. 1-1-93. It is seen that accordingly the payments due to the appellant were also ordered to be paid by the employer through letter No. Pers. (Reg & Genl.)/VR/161/1449A/1 dated 1-1-93. This letter shows that the appellant was working as advisor in the grade of E-9 and he was allowed to retire voluntarily w.e.f. 1-1-93 at the age of 58 years. In this perspective it is absolutely clear that the appellant in fact has retired not as M.D. but only as advisor. It is, therefore, immaterial if he has not drawn the salary of half a day as mentioned by the A.O. In fact it is not the business of the A.O. to see whether the appellant was paid or not. The fact remains that if he was not paid the amount would still be due to be paid to him. The copies of office records produced show that the appellant took over the charge as advisor on 1-1-93 and then he was allowed V.R. in that capacity on 1-1-93. If under the circumstances in the voucher for payment of P.F. accumulation the V.R. date is noted as 31-12-92 and not as 1-1-93 and his designation is noted as M.D. and not as advisor there is no doubt that in fact it was a clerical mistake. It is important to note that

in this case the office order of SAIL clearly shows that the appellant was appointed advisor after relinquishing the charge of M.D. The appellant has also submitted the copy of the charge report of taking over of the charge of advisor and handing over the charge of M.D. Therefore there cannot arise any doubt to say that there was a corporate veil in the whole matter and that he retired as M.D. I am of the view that on this issue the argument of the A.O. is misdirected because how could the appellant be allowed to retire voluntarily as M.D. when the A.P. knew fully well that in SAIL there was no scheme of V.R. for the Directors or the M.Ds. Then how could the appellant be held to have retired voluntarily as M.D. and how could the appellant be paid voluntary retirement as well ? This obviously was not possible at all in the case of a Public Sector Undertaking. He could have been given V.R. benefit only if he would have retired in any capacity other than M.O. or Director. Therefore it is clear that he retired as advisor and then only he was allowed to avail V.R. benefits. Office orders of the SAIL are clear on this issue. Under the circumstances, I hold that the A.O. was not correct in judging the fact properly. There was no corporate veil in this matter and the truth is that the appellant has retired as advisor and he obtained his V.R. benefit as advisor. Therefore the receipt of V.R. benefit amounting to Rs. 2,47,720/- cannot be said to be taxable income in his hand. The addition on this count is therefore ordered to be deleted. The appellant gets relief accordingly."

The revenue was not in a position to dislodge the factual finding which was recorded by the CIT(A). However, the tribunal without appreciating the factual position erroneously reversed the order on the flimsy ground the assessee did not draw any salary

even for a half day, i.e. 1st January, 1993. The tribunal missed an important fact as regards the actual date of retirement on voluntary basis. We are of the view that the order passed by the tribunal was erroneous, perverse and calls for interference.

Accordingly, the appeal (ITAT/20/2003) filed by the assessee is allowed and the substantial questions of law are answered in favour of the assessee and the order passed by the CIT(A)-VIII, Kolkata dated 30th March, 1999 is restored.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)