IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.20258 of 2014 and
MP.Nos.1 & 2 of 2014

International Flavours and Fragrances India Private Ltd.,
Formerly known as Bush Boake Allen (India) Ltd.,
1-5 Seven Wells Street,
St.Thomas Mount,
Chennai 600 016
Represented by Manager - HR ... Petitioner

Vs.

1.Presiding Officer,
Second Additional Labour Court,
Chennai 600 104
2.V.Ramalingam ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorari calling for the records of the first respondent in CP.No.82 of 2006 and quash its order dated 24.11.2012.

For Petitioner : Mr.S.Haroon
for M/s.T.S.Gopalan & Co.

For Respondents
For R2 : Mr.M.Rajasekaran
for Mr.R.Lawrence

R1 : Court

O R D E R

This writ petition has been filed against the award passed in claim petition in CP.No.82 of 2006 dated 24.11.2012 on the file of the first respondent, thereby directed the petitioner to pay a sum of Rs.1,15,488/- to the second respondent which was deducted as TDS.

2. The second respondent had joined in the petitioner Company on 01.05.1975 as Flavour Assistant in Flavour Department. He was retired under voluntary retirement scheme on 29.08.1994. Prior to his retirement, he was not allotted any work and he was put in common pool without giving any work along with other few employees. At the time of his retirement, he was paid only Rs.2,07,356/- instead of Rs.3,43,639.27/-. The petitioner had deducted from the terminal benefit as income tax on the voluntary retirement benefits to the tune of Rs.1,15,488/-.

3. The learned counsel for the petitioner would submit that the petitioner had put up a Voluntary Retirement Scheme in respect of

employees working in the Factory. Accordingly, the second respondent made application dated 19.08.1994 under the voluntary retirement scheme opting to leave the service of the petitioner Company. It was accepted and the second respondent was duly informed about the amount payable to him in terms of voluntary retirement scheme. The tax exempted component was also mentioned in the calculation. The amount would be subjected to income tax deductions as applicable under proviso. Accordingly, after deducting TDS of Rs.1,15,488/- on 14.09.1994, the second respondent was paid a sum of Rs.2,07,753.66/- as full and final settlement of his dues in terms of voluntary retirement. He also accepted the voluntary retirement and also received the amount. However, he approached this Court in WP.No.15383 of 2000 on the ground that the Management had obtained his signature on coercion in the voluntary retirement scheme. However, the said writ petition was dismissed and aggrieved by the same, he also filed writ appeal in WA.No.961 of 2006 and it was also dismissed by the Hon'ble First Bench of this Court by an order dated 09.08.2006.

4. He further submitted that after dismissal of the writ appeal, again the second respondent approached the Labour Court on the ground that a sum of Rs.1,15,488/- was illegally deducted from the terminal benefits of the second respondent, that too after a period of twelve years from the receipt of the terminal benefits of Rs.2,07,753.66/- as full and final settlement. He further submitted that as per the income tax prevailing as on the date of the voluntary retirement of the second respondent, the deduction was made to the tune of Rs.1,15,488/-. At that relevant point of time, only approved voluntary retirement scheme was exempted from tax deduction at source. Further, it is not the case of the second respondent that after deduction of tax at source was not paid to the income tax department by the petitioner. Therefore, if the deduction was not justified, the question of payment of the same to the second respondent does not arise. It was deducted and paid by the petitioner to the Income Tax Department. If at all the amount was not limited, the petitioner is answerable to his auditor while filing income tax. He vehemently contended that after period of twelve years, made claim as if

a sum of Rs.1,15,488/- was deducted illegally, that too after dismissal of the writ appeal challenging the voluntary retirement from service.

5. The learned counsel for the petitioner also produced Section 10 (10C) of Income Tax Act in respect of amount received in accordance with any scheme or scheme of voluntary retirement Accordingly, it was clarified that clause 10(C) of Section 10 of the Income Tax Act, 1961 deals with the income tax exemption on payments received at the time of voluntary retirement. The provisions of this clause which covered earlier only the payments received by employees of public sector companies have been amended by the Finance Act, 1992 to include therein the payments received by employees of companies other than public sector companies also. Under the amended provisions of this clause, the payments on account of voluntary retirement are to be exempt from income tax only if the schemes governing the said payments are in accordance with the guidelines prescribed in this behalf. However while granting interim order by this Court, the petitioner deposited 50% out of Rs.1,15,488/- to the credit of CP.No.82 of 2006 on the file of the first

respondent. The petitioner has no objection to withdraw the same and insofar the remaining amount, he has sought to set aside the award passed by the first respondent.

6. The second respondent filed counter and vacate stay petition stating that the petitioner illegally deducted the wages of the second respondent in terms of income tax. The wages due to the period of work done by the employees would be in an ambit of Section 33 (c) (2) of ID Act. Under the voluntary retirement scheme, the amount payable to the workman will be exempted Rs.5,00,000/- from the income tax as per Income Tax Act. So the management have illegally deducted a sum of Rs.1,15,488/- from his retirement benefits. The writ petition was filed after period of nearly two years. Further the petitioner failed to produce any challan or receipt from Income Tax Department as if the deduction amount of Rs.1,15,488/- was paid to the Income Tax Department.

7. However on perusal of clause 10(C) of Section 10 of Income Tax Act, revealed that payments on account of voluntary retirement are

to be exempted from income tax only if the schemes governing the said payments are in accordance with the guidelines prescribed in this behalf. However, the learned counsel for the petitioner would submit that the scheme floated by the petitioner Company is not by any law. Since it was only contract between the petitioner and the second respondent and he was allowed to retire on voluntary retirement scheme. Therefore, Section 10(C) of the said Act is not at all applicable to the second respondent. However, the petitioner failed to produce any receipt or challan in respect of the payment of Rs.1,15,488/- as deducted from terminal benefits of the second respondent before the Income Tax Department. Admittedly, the second respondent was voluntarily retired from his service. Therefore, as per Income Tax Act, the person who had retired from service on voluntary retirement scheme, his income upto Rs.5,00,000/- on retirement have to be exempted from income tax. Therefore, the first respondent rightly directed the petitioner to pay a sum of Rs.1,15,488/- to the second respondent. Hence, this Court finds no infirmity or illegality in the order passed by the first respondent.

8. Accordingly, this writ petition is dismissed. It is made clear that the petitioner is directed to pay the remaining amount after deducting the amount which was already deposited on the file of the first respondent within a period of four weeks from today. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

14.07.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
lok
(Note: Issue order copy on 24.07.2023)

G.K.ILANTHIRAIYAN, J.

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To

1.Presiding Officer,
Second Additional Labour Court,
Chennai 600 104
2. The Public Prosecutor,
High Court, Madras.

W.P.No.20258 of 2014

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