IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.Nos.8116 to 8120, 8586, 8411 & 8564 of 2011

W.P.No.8116 of 2011

Laxshmi Vilas Bank Officers Association,
Rep: by its General Secretary,
Mr.R.Subramanaian,
G3, Water Front,
No: 4 & 5, South Mada Street,
Nungumbakkam, Chennai 34. ... 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.Laxshmi Vilas Bank,
Rep: by its Managing Director,
Administrative Office,
Kathaparaj, Karur 632 006.
Erode. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order of the 4th respondent dated 25.03.11, bearing Ref.No.LVB/102-09.04/GEN/99/2010-11, and quash the same, and consequently forbear the 4th respondent, its men or officers, 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.

In all writ petitions

For Petitioners	: Mr.Bhagavath Krishnan
For R1 to R3	: Mr.S.Rajasekar, SSC
For R4	: No appearance

COMMON ORDER

(Order of the Court was made by Dr. ANITA SUMANTH., J)

This order disposes eight writ petitions filed by the Associations of the Officers or Lakshmi Vilas Bank, South Indian Bank, Catholic Syrian Bank, Federal Bank, Federal Bank Executive Forum, Federal Bank Employees Union and All India Punjab National Bank.

2.In all the writ petitions, barring W.P.No.8564 of 2011, the prayer is either for Declaration or for Certiorarified mandamus as the petitioners are aggrieved by the deduction of tax from out of the salary arrears which is appropriated for transfer to pension corpus set up in terms of appropriate pension regulations. In W.P.No.8564 of 2011 the prayer is for a Declaration that the Explanation to Section 17 (2) (ii)(c) of the Income Tax Act 1961 and para 2 of Circular bearing Ref.FD/HOAT/CIR dated 02.03.2011 read with Circular bearing reference FD/01/2010 dated 06.01.2010 issued by the 4th respondent, are unconstitutional\ultra vires the Income Tax Act and therefore null and void.

3.One of us (DR. ANITA SUMANTH,J.) in W.P.No.8101 of 2011 has had occasion to consider a similar issue raised by the Indian Overseas Bank Employees' Union (All India, Indian Overseas Bank Employees' Union Vs. The Union of India and two others). The prayer in that matter was for a Declaration that deduction of tax from out of that portion of the salary arrears which is appropriated for its transfer to pension corpus set up in terms of regulations 5 to 7 of Pension Regulations is illegal and unconstitutional. The following order has been passed on 06.09.2019 in W.P.No.8101 of 2011.

The petitioner is a Union affiliated to the National Confedration of Bank Employees (in short 'NCBE'), founded in 1949, and has been in existence, as on date, for nearly 70 years.

2. The Indian Overseas Bank (in short 'bank') had introduced a pension scheme under the Indian Overseas Bank Employees Pension Regulations, 1995 (in short 'pension regulation') with retrospective effect from 01.01.1976. According to the petitioner union, there were several of its members that had not availed of the benefits of the scheme initially. After negotiations between the Indian Banks Association (in short 'IBA') and the United Forum of Bank Unions (in short 'UFBU') of which the NCBE is a constituent, a settlement was arrived at extending a second option of pension for those employees who had not opted for the pension scheme at the original/first instance. The second option was subject to the Union members contributing towards meeting the shortfall/deficit in the corpus for the first pension fund computed and determined through actuarial variation at a sum of Rs.6000 crores.

3. Pursuant thereto, an agreement was signed between the IBA and UFBU on 27.11.2009 and a second option was provided for those bank employees who had not opted for pension in 1995. This required a contribution from the employees out of their salary arrears amounting, in toto, to a sum of Rs.1800 crores out of the aforesaid Rs.6000 crores of shortfall. The arrears had been computed post a revision of wage negotiated and settled between the associations. It was agreed that 2.8 times of pay should be withheld from the arrears payable to all the employees who had exercised the second option. Tax had been deducted at source in terms of the Income Tax Act, 1961, under an instruction issued by the Bank.

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.*
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> *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.*
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> *9. This writ petition is disposed of in the above terms. No costs.*

4.Mr.Bhagavath Krishnan appears for the petitioners and Mr.S.Rajasekar for the Union of India, the Central Board of Direct Taxes and the Chief Commissioner of Income Tax, arrayed as R1 to R3 in all the writ petitions. The banks have also been arrayed as respondents in all writ petitions, but there is no representation on their behalf.

5.There is no dispute on the position that the issue raised in these writ petitions is identical to the one considered in W.P.No.8101 of 2011 by order dated 06.09.2019 and hence the contents of that order may be read as part and parcel of the present order as well. The liberty granted at paragraph 7 as in that matter is extended to the present petitioners herein as well. Learned counsel for the petitioner states that the petitioner will make requests before the authorities for determination of the rate of tax deduction, if any, within four weeks from the date of receipt of this order and they are permitted to do so. Upon receipt of the requests, the petitioners shall be heard and their representations will be decided in accordance with law within a period of six weeks from the date of receipt of the representations.

6.Since in the present matter as well, there is an interim injunction which is presently in force, the injunction shall continue till 15th April 2025 or disposal of the representations whichever is earlier. Writ petition Nos.8116 to 8120, 8586 & 8411 of 2011 are disposed in terms of this order. The only distinction in W.P.No.8564 of 2011 is that the issue relates to house rent allowance (HRA) arising from a bipartite settlement between the employees and the Punjab National Bank. As the position in law is identical to the other writ petitions, the same direction as made in paragraph 5 of this order will apply to W.P.No.8564 of 2011 as well.

7.These writ petitions are disposed in terms of the above order. Consequently, connected miscellaneous petitions, if any, are also closed. No costs.

[A.S.M.,J] **[G.A.M.,J]**

sli **15.10.2024**

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

To

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.Laxshmi Vilas Bank,

Rep: by its Managing Director,
Administrative Office,
Kathaparaj, Karur 632 006.
Erode.

DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

sli

W.P.No.8116 of 2011 and batch

15.10.2024