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(2008) 04 P&H CK 0061

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Subhash Bansal and Others		APPELLANT
	Vs	
Income Tax Officer and Others		RESPONDENT

Date of Decision: April 4, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Electricity (Supply) Act, 1948 - Section 79
- Income Tax Act, 1961 - Section 10, 142, 143, 147, 148
- PROVIDENT FUNDS ACT, 1925 - Section 2, 3, 8

Citation: (2008) 217 CTR 83

Hon'ble Judges: M.M. Kumar, J; Ajay Kumar Mittal, J

Bench: Division Bench

Final Decision: Allowed

Judgement

M.M. Kumar, J.

This order shall dispose of Civil Writ Petn. Nos. 19382, 19623 and 20581 of 2006 and 159 and 2101 of 2007 which involved a large number of senior citizens and retirees of Punjab State Electricity Board (for brevity ''the Board''). The short question involved in these petitions is as to "whether interest income that has accrued on the credit balance maintained by the employees of the Board in their provident fund governed by the Provident Funds Act, 1925 (for brevity, ''the 1925 Act'') after their retirement would continue to qualify for exemption from Income Tax ?". For the sake of brevity, the facts are being referred from Civil Writ Petn. No. 19382 of 2006. These petitions filed under Article 226 of the Constitution pray for quashing notices issued u/s 148 of the IT Act, 1961 (for brevity ''the 1961 Act''), pursuant to reassessment proceedings. It has further been prayed that the respondents be directed not to proceed further till the disposal of preliminary objections by passing

a speaking order. For the sake of brevity, the facts are being referred from Civil Writ Petn. No. 19382 of 2006 because facts in every case would not be significant for the question of law raised before us.

2. Brief facts of the case are that the petitioners herein are senior citizens and retired employees of the Board. The petitioners are Income Tax assessees and they used to file their respective returns during their service career and even after retirement. It is claimed that the petitioners are covered under the Punjab State Electricity Board Provident Fund Regulations, 1960 (for brevity, ''the 1960 Regulations''), which have been notified u/s 79(c) of the Electricity Supply Act, 1948 (for brevity, ''the 1948 Act''), vide Notification No. 777/PSEB, dt. 9th Sept., 1960. As per provisions of Regulation 38 of the 1960 Regulations, interest component on credit balance retained in the provident fund (PF) is exempted from tax in terms of the provisions of Chapter-Ill, Section 10(11) of the 1961 Act, which provides for exemption on any payment received by the assessee from a fund to which the 1925 Act applies. In this regard, reference has been made to clarification issued by the Central Board of Direct Taxes (for short ''the CBDT), vide letter No. F. No. 275/192/2005 IT(B), dt. 15th June, 2006 (Annex. P.5).

3. The respondents initiated reassessment proceedings against the petitioners and in the last week of March, 2006 separate but similarly worded notices u/s 148 of the 1961 Act, in respect of different assessment years ranging from 2001-02 to 2004-05 have been issued to them (Annex. P-l). Thereafter, during the months of August, 2006 to November, 2006, the ITO-respondent No. 1 sent separate letters to the petitioners asking them to attend his office in person or through a representative to clarify certain points in connection with the returns of income submitted by them in respect of different assessment years (Annex. P 2).

4. A detailed chart showing the particulars of the petitioners in relation to assessment year, escaped income, returned income, date of filing of return etc. has been placed on record as Annex. P-3. The petitioners also requested respondent No. 1 for supply of the reasons for reopening of assessment in their respective cases, which were supplied. One of the letters dt. 1st Sept., 2006, issued to petitioner No. 1 has been placed on record as Annex. P-4, wherein following reason has been mentioned:

On the basis of information received from ITO, Ward-5 (TDS)-cum-TRO, Patiala where the Chief Accounts Officer (GPF) of Punjab State Electricity Board, Patiala remained failed to deduct the tax at source from the interest income of those persons who had kept their credit balance in the GPF wilfully even after the date of retirement/quitting the job. The interest should have been taxed under the head ''Income from other sources''. On the date of retirement on the credit balance of GPF including interest thereon was Rs. 18,41,011/Although the assessee was entitled to withdraw the whole amount yet he wilfully kept the amount in GPF account and claimed it exempted from tax beyond the date of retirement. Any

interest earned on such credit balance in GPF account after retirement does not fall in the definition of GPF but comes under the head ''Income from other sources'' and is liable to be taxed. The assessee has not declared the amount of interest earned for taxation in the asst. yrs. 2002-03 to 2004-05. Therefore, I have reasons to believe that interest income of asst. yr. 2002-03 Rs. 54,959, asst. yr. 2003-04 Rs. 1,70,637 and asst. yr. 2004-05 Rs. 1,65,329 has escaped assessment.

5. The petitioners also filed detailed preliminary objections asserting that interest income cannot be brought within the scope and ambit of tax in contravention of various provisions of the 1925 Act, 1948 Act, 1961 Act and 1960 Regulations as well as clarification dt. 15th June, 2006 issued by the CBDT (P-5). It was, thus, requested that before proceeding further in the matter, preliminary objections should be decided by passing a speaking order (P-6). However, respondent No. 1 instead of deciding the preliminary objections, issued further notices u/s 143(2) of the 1961 Act (P-7) again asking for the details of the PF. The aforementioned notices under Sections 148, 142 and 143(2) of the 1961 Act are subject matter of challenge before this Court.

6. In the written statement filed on behalf of the respondents a preliminary objection has been raised that the writ petition is not maintainable, inasmuch as, orders of assessment have been passed in the cases of the petitioners and they have got effective statutory remedy of appeal u/s 246 of the 1961 Act, before the CIT(A), against the assessment orders and further appeal before the Tribunal, u/s 253 of the 1961 Act. Justifying initiation of reassessment it has been asserted that the petitioners have kept their credit balance of GPF with the Board even after their retirement and received interest income on such deposits which is nothing else but retirement benefit of GPF. Since the petitioners did not file their return of income showing interest income, the same escaped assessment and case was reopened u/s 147 of the 1961 Act by issuing notices u/s 148 of the 1961 Act. With regard to the clarification issued by the CBDT, dt. 15th June, 2006, banked upon by the petitioners, it has been pointed out that the same has been probably issued considering the period of retirement upto 6 months from the date of retirement. Therefore, in the present case the interest income is liable to be taxed under the head ''Income from other sources''.

7. Mr. Pankaj Jain, learned Counsel for the petitioners has argued that assessment proceedings against all these petitioners have been reopened u/s 147 of the 1961 Act, for the reasons disclosed in the letter dt. 1st Sept., 2006 sent by the ITO to one of the assessee petitioner. The principal reason given by the ITO is that Chief Accounts Officer (GPF) of the Board failed to deduct the tax at source from the interest income of these persons who had kept their credit balance in the GPF wilfully after the date of retirement/ quitting the job because the interest which has accrued after retirement should have been taxed under the head ''Income from other sources''. He has further stated that the interest income has escaped

assessment and therefore assessment under Sections 147 and 148 of the 1961 Act was required to be reassessed. Learned Counsel has maintained that the reasons are not sustainable because a query was sent by the Chief Accounts Officer of GPF section of the Board to the Chairman, CBDT on 17th April, 2006 (Annex. P-5) raising the question whether the interest paid after the date of retirement of the employee under Regulation 16(4) of the Regulations was liable to TDS or not. The CBDT has replied the question vide letter dt. 15th June, 2006 by stating that interest on GPF is exempt from Income Tax as per provisions of Section 10(11) of the 1961 Act, and therefore no TDS was required to be deducted from the payment of interest. (Annex. P-5 colly.)

8. Mr. Jain has also referred to Regulation 38 of the Regulations and has submitted that it has been specifically provided that the amount standing at the credit of the subscriber in the PF account normally becomes payable on quitting of service i.e. on retirement, proceeding on leave preparatory to retirement or death or quitting the service on reemployment. However, Regulation 38 provides that if a subscriber so desires the amount at his credit in the fund could be retained for a period of five years from the date of retirement, quitting of service etc. In that regard, the regulation requires sending of intimation in writing to the accounts officer either before the date of retirement or quitting service or reemployed or within six months thereof and the balance at the credit of the subscriber would continue to be retained in the fund. A period of five years has to be reckoned from the date of actual retirement/quitting service and not from the date of commencement of leave preparatory to retirement or the date of exercise of option to retain the money in the fund. He has also pointed out that specific provision is that the amount retained in the fund after retirement would continue to enjoy the same freedom from attachment of creditors u/s 3 of the 1925 Act and also exemption from Income Tax.

9. Mr. Jain has then made reference to Schedule appended to 1925 Act, and has argued that Sub-sections 8(2) of the 1925 Act has empowered the appropriate Government to issue notification in the Official Gazette directing that the provisions of 1925 Act are to apply to any PF established for the benefit of the employees of any institution specified in the Schedule. Learned Counsel has pointed out that the Board is included in the list of institutions as shown in the Schedule. Learned Counsel has further submitted that Section 10(11) of the 1961 Act makes it absolutely clear that in computing the total income of the previous year of any person any payment from a PF to which 1925 Act applies or from any other PF set up by the Central Government is not to be included.

10. Mr. Jain has then referred to the definitions of expressions ''compulsory deposit'' and ''PF'' as given in Sections 2(a) and 2(e) of the 1925 Act, and submitted that PF is to mean a fund in which any subscriptions or deposits of any class or classes of employees are received and held in their individual accounts. It also includes any contributions, interest or increment accruing on such subscriptions, deposits or

contributions under the rules of the fund. He has maintained that interest income which has accrued to the petitioners after their retirement would certainly be covered by the definition of expression ''Provident Fund'' as given in Section 2(e) of the 1925 Act. Mr. Jain has pointed out that all these issues have been raised by the petitioners while sending reply to the notice issued under Sections 147 and 148 of the 1961 Act (Annex. P-6).

11. Mr. Yogesh Putney, learned Counsel for the respondents has submitted that Regulation 38 of the Regulations cannot be read in isolation and if Regulation 41 is read along with then it would become clear that after the retirement of an employee if the credit in the PF is not withdrawn then the same is shifted to deposits. According to the learned Counsel the expression ''deposit'' is entirely different than the word ''provident fund'' and the character of the fund after retirement of the employee would undergo a change and it would assume the character of deposit. Therefore, the provisions of Section 10(11) of the 1961 Act are not to apply to such a case. He has further submitted that the petitioner has the remedy of filing appeal before the CIT(A) and then to the Tribunal. In that regard he has referred to the order dt. 17th May, 2007 passed by the CIT(A), Patiala setting aside the order of the ITO (Mark "A"). He has insisted that the petitioners be asked to first exhaust the remedy of statutory appeal.

12. Having heard the learned Counsel for the parties at a considerable length we are of the considered view that all these petitions merit acceptance. We may first deal with the preliminary objection raised by Mr. Putney. According to the learned Counsel the petitioners have regular remedy of appeal u/s 246 of the 1961 Act, and, therefore, the petitioners must be relegated to the remedy of appeal by dismissing the writ petitions under Article 226 of the Constitution. It is true that alternative efficacious remedy of appeal may ordinarily be a bar to the filing of a writ petition, however, it is equally true that it is a self-imposed bar by the writ Court and it does not constitute an absolute bar restraining the Courts that in all such cases the petitioners should be asked first to avail the remedy of appeal. It is a rule of prudence and caution. It is not a rule of law. Hon''ble the Supreme Court in the case of STATE OF TRIPURA v. MANORANJAN CHAKRABORTY AND OTHERS, (2001) 10 SCC 740 has held as under:

4. ...It is, of course, clear that if gross injustice is done and it can be shown that for good reason the Court should interfere, then notwithstanding the alternative remedy which may be available by way of an appeal u/s 20 or revision u/s 21, a writ Court can in an appropriate case exercise its jurisdiction to do substantive justice. Normally of course the provisions of the Act, would have to be complied with, but the availability of the writ jurisdiction should dispel any doubt which a citizen has against a high-handed or palpable illegal order which may be passed by the assessing authority.

13. We are further of the view that it would result in travesty of justice if such a large number of persons nay senior citizens are relegated to the alternative remedies of filing an appeal after appeal in the evenings of their lives. For the aforementioned view we draw support from the following observations of Hon''ble the Supreme Court in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, :

38...Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate Court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

39. Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Article 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of proceedings. But there may be cases where ''a stitch in time would save nine''. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.
(emphasis, italicized in print, added)

14. As a sequel to the above discussion we do not find any substance in the preliminary objection raised by the learned Counsel for the respondents. Accordingly it stands overruled. Therefore, we deem it just and appropriate to decide the matter on merit.

15. In order to appreciate the argument raised on behalf of the petitioners it would be apposite to consider the substantive provision of Section 10 of the 1961 Act, which deals with such income that does not form part of total income. Sub-section (11) of Section 10 of the 1961 Act, in unequivocal terms provides that any payment from PF would not constitute part of total income. In other words, it would be

exempt from Income Tax. Section 10(11) of the 1961 Act reads thus:

10. Incomes not included in total income.-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:

(1) to (10) ...

(11) any payment from a provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies or from any other provident fund set up by the Central Government and notified by it in this behalf in the Official Gazette.

16. A perusal of the afore-mentioned provision would show that any payment received by an assessee from a PF to which 1925 Act applies would not constitute a part of total income. In other words, it would thus qualify for exemption from Income Tax. It is thus obvious that since payment of interest is received by the assessee/employee from PF it would also qualify for exemption from Income Tax provided the provisions of 1925 Act apply. Moreover, the expression ''provident fund'' has been defined in Section 2(e) of the 1925 Act, which reads thus:

2(e) ''provident fund means a fund in which subscriptions or deposits of any class or classes of employees are received and held in their individual account, and includes any contributions and any interest or increment accruing on such subscription, deposits or contributions under the rules of the fund.

17. A perusal of the above section makes it evident that PF means the fund in which subscription or deposit of any class or classes of employees is received and held in their individual accounts. It further shows that the PF would include any contribution and any interest or increment accruing on such subscriptions, deposits or contributions under the rules of the fund. It is thus crystal clear that the element of interest in PF would not constitute part of total income and as such would assume exemption from the Income Tax.

18. In order to ascertain as to whether the provisions of 1925 Act are applicable to the PF maintained by the Board, a reference may be made to Section 8(2) of the 1925 Act, which confers power on the appropriate Government to issue notification in the Official Gazette directing that the provisions of 1925 Act, are to apply to any PF established for the benefit of the employees of a particular institution specified in the Schedule. A perusal of the Schedule appended to 1925 Act, shows that the name of the Board namely Punjab State Electricity Board has already been notified.

19. The principal controversy as to whether the interest income from PF would continue to qualify for exemption from Income Tax could be answered by making reference to the regulations framed by the Board. Regulation 38 deals with PF after an employee quits service either by retirement, proceeding on leave preparatory to retirement or death or otherwise. Relevant portion of Regulation 38 is reproduced hereunder:

38. Under Regulations 31, 32 or 37 the amount standing at the credit of the subscriber in the fund normally becomes payable on his quitting service i.e. on retirement, proceeding on leave preparatory to retirement or earlier death or quitting service of re-employment etc. but if a subscriber so desires the amount at his credit in the fund may be retained in the fund for a period of five years, from the date of his retirement, quitting service after re-employment, subject to his sending an intimation in writing to the Accounts Officer, in this behalf, either before the date of retirement, quitting service after re-employment or within six months thereof. On the basis of this information, the balance at the credit of the subscriber will continue to be retained in the fund beyond the date of retirement, quitting service after re-employment. The period of five years for retention of money should be reckoned from the date of actual retirement/quitting service after re-employment of the officer and not from the date of commencement of leave preparatory to retirement or the date of exercise of option to retain the money in the fund....

The money retained in the fund after the date of retirement/quitting service after re-employment will continue to enjoy freedom from attachment by creditors u/s 3 of the Provident Funds Act, 1925, and also exemption from Income Tax.

(emphasis, italicized in print, added)

20. A perusal of Regulation 38 would show that an employee of the Board on quitting service on account of any of the eventualities has an option available. The amount at his credit in the PF may be retained in the fund for a period of five years from the date of his retirement etc. if the option is exercised within a period of six months. In the event of exercising option, the credit balance of an employee/subscriber would continue to be retained in the fund. Regulation further clarifies that the credit balance retained in the fund after retirement etc. would continue to enjoy freedom from attachment by the creditors in accordance with the provisions of Section 3 of the 1925 Act, and also exemption from Income Tax. It has been expressly made clear by Regulation 38 that for a period of five years from the date of retirement etc. PF or interest accruing on such fund would continue to qualify for exemption from Income Tax. It is pertinent to notice the provisions of Regulation 41 of the Regulations which reads as under:

41. All sums paid into the fund under these regulations shall be credited in the books of the Board to an account named The Punjab State Electricity Board PF''. Sums of which payment has not been taken within six months after they become payable under these regulations shall be transferred to ''deposits'' at the end of the year and treated under the ordinary regulations relating to deposits.

21. A perusal of the above regulation shows that if a subscriber has failed to take the payment within a period of six months after such payment becomes payable under the regulation then the credit balance has to be transferred to ''deposits'' at the end of the year and it would be treated under the ordinary regulation relating to

deposits. Regulations 38 and 41 when read together would show that an option can be exercised within a period of six months for retention of PF in the accounts of a subscriber and if no option is exercised then after the period of six months it would lose its character as PF and would be transferred to deposits.

22. The CBDT had itself clarified by answering the query of the Board in favour of the assessee. The clarification has come in its letter dt. 15th June, 2006 which infact puts the issue beyond any controversy. The Board in letter dt. 17th April, 2006 (Annex. P-5) has raised the following query:

Punjab State Electricity Board has framed GPF Regulations under the provisions of Section 3 of the Provident Fund Act, 1925. Regulation 16(4) of ibid Regulation provides as under:

In addition to any amount to be paid under Regulations 31, 32, 37 or under Regulation 38 if a person has exercised the option under the regulation interest thereon upto the end of the month preceding that in which the payments made or upto the end of the six months after the month in which such amount became payable, whichever of these periods be less shall be payable to the person to whom such amount is to be paid.

A question has arisen whether the interest paid after the date of retirement of the employee under above regulation is liable to TDS or not.

(emphasis, italicized in print, added)

The CBDT in its letter dt. 15th June, 2006 (Annex. P-5 colly.) has answered the aforementioned question by observing as under:

I am directed to refer to your Memo No. 6286 dt. 22nd May, 2006 on the subject mentioned above and to clarify that interest on GPF is exempt from Income Tax as per the provisions of Section 10(11) of the IT Act, 1961. Hence, no TDS is required to be made from payment of interest on GPF.

23. The reply given by the CBDT clarifies the issue that interest on GPF is exempt from Income Tax as per the provisions of Section 10(11) of the 1961 Act and no TDS is required to be deducted from the payment of interest on GPF after the date of retirement of an employee.

24. The argument of Mr. Putney, learned Counsel for the respondents that Regulation 41 of the Regulations would govern the situation and the whole credit balance in the PF of a subscriber would be considered as ''deposits'' has not impressed us because the argument fails to take into account Regulation 38 of the Regulations. It has been provided by Regulation 38, as already noticed above, that within a period of six months an option has to be exercised for retention of the credit balance in the PF failing which it would be shifted to ''deposits'' and once shifted to ''deposits'' then it would be governed by the general regulation. If it is

retained as PF then it would continue to enjoy its character of PF without being considered as deposit. Such an argument is obviously without any substance and the same is rejected.

25. For the reasons afore-mentioned, these petitions succeed and the question posed in the opening para of this judgment is answered in favour of the assessee. Accordingly notices issued u/s 148 of the 1961 Act, pursuant to reassessment proceedings are quashed. The respondents are directed to extend the benefit of exemption from Income Tax to the interest income that has accrued to an employee of the Board and the credit balance which has been retained by them by exercising option in their PF account after their retirement in terms of Regulation 38 of the 1960 Regulations.