

(2010) 07 MAD CK 0367

Madras High Court

Case No: Tax Case (Appeal) No. 532 of 2010 and M.P. No. 1 of 2010

V. Natesan

APPELLANT

Vs

Assistant
Commissioner of
Income Tax

RESPONDENT

Date of Decision: July 13, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 10(10C)

Citation: (2012) 347 ITR 645

Hon'ble Judges: M.M. Sundresh, J; F.M. Ibrahim Kalifulla, J

Bench: Division Bench

Advocate: S. Vaidyanathan, for the Appellant; J. Nareshkumar, Senior Standing Counsel for Income-tax Department, for the Respondent

Final Decision: Allowed

Judgement

F.M. Ibrahim Kalifulla, J.

The assessee has come forward with this appeal in which the following substantial questions of law have been raised :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in allowing the appeal of the Revenue when the tax effect is less than Rs. 2 lakhs and when the Revenue is governed by two notifications of CBDT Instruction No. 2, dated October 24, 2005, and Instruction No. 5, dated July 16, 2007 ?

(2) Whether, on the merits of the case, the order of the Tribunal was right and justified u/s 10(10C) of the income tax Act when the assessee is under public sector ?

We need not examine the first question of law inasmuch as the second question of law which has been raised on the merits, deserves acceptance. In this context it is worthwhile

to refer the communication of the Government of India addressed to all Chief Commissioners of income tax, all Directors General of income tax and Director General (Legal and Research), dated May 8, 2009, which reads as under :

Subject : Taxability of ex gratia amount received by the Reserve Bank of India's Employees under Optional Early Retirement Scheme (OERS) during assessment year 2004-05 reg.

Sir/Madam,

The Central Board of Direct Taxes, vide its letter F. No. 225/74/ 2005-ITA-II, dated 20-10-2005 relying on a letter from the Reserve Bank of India (RBI), had advised all field formations that the Optional Early Retirement Scheme (OERS) of the RBI does not conform with the provisions of rule 2BA of the income tax Rules, 1962. Accordingly, the amount received by the employees of the RBI opting for OERS did not qualify for exemption u/s 10(10C) of the income tax Act, 1961.

2. It has now been brought to this notice of the Board that the hon"ble High Court of Bombay, vide its order dated July 4, 2008, in the case of [Commissioner of Income Tax Vs. Koodathil Kallyatan Ambujakshan](#), has held that the Optional Early Retirement Scheme of the RBI satisfies all the conditions of rule 2BA and amounts received by retiring employees thereunder were eligible for exemption u/s 10(10C). That judgment has become final.

3. The matter has, therefore, been reviewed in the Board in view of the aforesaid order of the hon"ble High Court of Bombay and it has been decided that the employees of the RBI who accepted OERS would be entitled for the benefit of section 10(10C) of the income tax Act, 1961.

2. In fact, in respect of another employee of the Reserve Bank of India, who had gone on voluntary retirement under the scheme, this court on November 25, 2009, passed orders in T.C. No. 1101 of 2008, by applying the decision of the Supreme Court in Civil Appeals Nos. 6997-7002 of 2009 arising out of SLP (C) Nos. 15805-15810 of 2008 (Chandra Ranganathan v. CIT [2010] 326 ITR 49 (SC)), granted relief in favour of the assessee. As the case of the appellant is squarely covered by the above referred to decision of the Supreme Court as well as the decision of the Division Bench of this court, dated November 25, 2009, and also having regard to the communication of the Government of India, making it clear the employees of the Reserve Bank of India who accepted the Optional Early Retirement Scheme, are entitled for the benefit of section 10(10C) of the income tax Act, 1961, the tax case (appeal) stands allowed. The impugned order is set aside and the second question of law is answered in favour of the assessee. No costs. Consequently, connected miscellaneous petition is closed.