(2010) 11 MAD CK 0360

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No''s. 3986 to 3997, 4145 to 4157, 6523, 6569 to 6587, 6964 to 6976 of 2007

K.R. Alagappan — APPELLANT

Vs

Assistant Commissioner of Income Tax — RESPONDENT

Date of Decision: Nov. 3, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 10(10C), 139, 143, 143(3), 154

Citation: (2011) 13 TAXMAN 88

Hon'ble Judges: R.S. Ramanathan, J

Bench: Single Bench

Advocate: S.M.S. Johny Basha, for the Appellant; R. Sathiamoorthy, for the Respondent

Final Decision: Allowed

Judgement

R.S. Ramanathan, J.

Heard both sides. The petitioners, in all these writ petitions, were employees of ICICI Bank and they are also assessees under the income tax Act. The ICICI Bank introduced earlier a retirement option, which is the Voluntary Retirement Scheme and under the scheme, the petitioners opted to retire and received the terminal benefits. The petitioners filed their original return u/s 139 of the income tax Act, 1961 in time and also filed revised returns pursuant to the intimation u/s 143 of the income tax Act. The Assessing Officer granted the relief to the petitioners u/s 89(1) of the income tax Act and did not deal with the exemption u/s 10(10C) of the Act. According to the petitioners, as per section 10(10C) of the income tax Act, any amount received by the employee on his Voluntary Retirement Scheme not exceeding Rs. 5 lakhs is exempted from income tax. The employees are also entitled to take the benefits as per section 89 of the Act. As the terminal benefits received by the petitioners upon the voluntary retirement exceeds Rs. 5 lakhs income tax cannot be levied on the amount of Rs. 5 lakhs as per section 10(10C) of the Act and while passing orders on the assessment of the petitioners, this was not taken notice by the income tax authorities and the tax was assessed on Rs. 5 lakhs. Therefore, the petitioners filed applications u/s 154 of the Act for rectifying the mistake apparent in the assessment order made u/s 143(3) of the income tax Act, for not invoking section 10(10C) as per the order of the income tax Appellate Tribunal. These applications were rejected by the respondent on the ground that there is no mistake apparent from the records and the points raised by the petitioners is a debatable one. These orders passed by the respondent are challenged in these writ petitions.

2. The respondent filed a counter, in all the writ petitions, stating that the petitioners are not entitled to exemption on the amount of Rs. 5 lakhs received under the Voluntary Retirement Scheme as per section 10(10C) of the income tax Act and therefore, they were not granted exemption under that provision. It is further stated that the rectification application was rejected as the issue involved is a debatable one on which two opinions are possible and therefore, it is not a mistake apparent from the records and it requires elaborate argument. It is, therefore, stated that even if it is a mistake, which requires a complicated process of investigation, argument or proof, it cannot be regarded as mistake apparent from the records and therefore, it was rightly rejected. It is further stated that the petitioners are also not entitled to claim exemption to an extent of Rs. 5 lakhs u/s 10(10C) of the income tax Act.

3. Mr. S.M.S. Johny Basha, the learned counsel appearing for the petitioners, in all the writ petitions, submitted that initially exemption was not granted u/s 10(10C) of the Act and this court has also held in the matter of Commissioner of Income Tax Vs. M. Chelladurai and Others, that the amount received on voluntary retirement of service by people like the petitioners are not eligible for exemption u/s 10(10C) of the income tax Act, unless the Voluntary Retirement Scheme confirmed to the guidelines laid down u/s 10(10C) and rule 2B(a) and the Voluntary Retirement Scheme formulated by the ICICI Bank was only a soft exit option for employees and therefore, these amounts are not eligible for exemption but later the judgment of this honourable court rendered by the Division Bench of this Court reported in M. Chelladurai case (supra), was set aside by the honourable Supreme Court in Civil Appeal Nos. 6997-7002 of 2009 in the case of Chandra Ranganathan v. CIT [2010] 326 ITR 49 : 195 Taxman 418 : 8 taxmann 126 and the honourable Supreme Court relying upon the circular issued by the Commissioner of income tax held that the amount received by the employees under the Voluntary Retirement Scheme, are eligible for exemption u/s 10(10C) of the income tax Act. Therefore, the learned counsel appearing for the petitioners submitted that the matter has been finally decided by the honourable Supreme Court and even though, the honourable Supreme Court has not rendered the judgment, setting aside the order of the Division Bench of this court reported in M. Chelladurai''s case (supra), at the time of passing of the order, which are impugned in these writ petitions, having regard to the subsequent judgment of the honourable Supreme Court, the impugned orders are liable to be set aside and the petitioners are entitled to get the benefits of exemption u/s 10(10C) of the

income tax Act. In other words, the learned counsel appearing for the petitioners submitted that though the respondent was right in holding that the issue was a debatable one, having regard to the subsequent judgment rendered by the honourable Supreme Court on this aspect, the writ petitions are liable to be allowed.

4. Mr. R. Sathiamoorthy, the learned standing counsel appearing for the respondent submitted that the petitioners filed rectification applications and it is like a review application and unless the errors are apparent on the face of the record, the rectification applications cannot be entertained and while passing the order rejecting the application filed by the petitioners, the assessment order was in accordance with law and the petitioners were not entitled to claim exemption u/s 10(10C) of the income tax Act and in that context only, applications were rejected as there was no error apparent on the face of the record. The learned standing counsel appearing for the respondent, therefore, submitted that the orders need not be interfered with on the basis of the subsequent judgment rendered by the honourable Supreme Court.

5. I have given my anxious consideration to the submission made by both counsel.

6. In this case, it is admitted that there were conflict of views regarding the exemption to be granted u/s 10(10C) of the income tax Act in respect of the amounts received under the Voluntary Retirement Scheme and therefore, while passing the order u/s 143 of the income tax Act, the income tax Officer did not deal with section 10(10C) of the Act regarding exemption and as rightly pointed out by the learned counsel appearing for the petitioners as well as the learned standing counsel appearing for the respondent that the Division Bench of this court also held in the judgment reported in M. Chelladurai''s case (supra) referred to above held that exemption u/s 10(10C) of the Act cannot be claimed by the employees of the ICICI Bank, who opted to retire under the Voluntary Retirement Scheme of that bank. Therefore, the respondent was right in rejecting the application for rectification on the ground that there is no error apparent on the face of the record and it is a debatable one. However, having regard to the subsequent development viz., the judgment delivered by the honourable Supreme Court in Civil Appeals Nos. 6997 to 7002 of 2009 Chandra Ranganathan''s case (supra), which were against the order of the Division Bench of this court referred to above, the honourable Supreme Court held that the assessees are entitled to claim exemption u/s 10(10C) of the Act. Hence, the matter has been finally decided by the honourable Supreme Court and therefore, the assessees viz., the petitioners herein, are entitled to claim exemption u/s 10(10C) of the income tax Act and therefore, the order of the respondent, rejecting the applications for rectification of the assessment order is set aside. In the result, all the writ the petitions are allowed and the respondent is directed to grant exemption u/s 10(10C) of the income tax Act to the petitioners on the basis of the honourable Supreme Court judgment referred to above and pass orders within a period of 12 weeks from the date of receipt of copy of this order. No costs.