

(1997) 03 BOM CK 0063

Bombay High Court

Case No: IT Ref. No. 64 of 1994

Commissioner of Income Tax

APPELLANT

Vs

D.P. Malhotra

RESPONDENT

Date of Decision: March 28, 1997

Acts Referred:

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

Hon'ble Judges: Pratibha Upasani, J; B.P. Saraf, J

Bench: Division Bench

Advocate: Dr. V. Balasubramanian, T.U. Khatri and J.P. Deodhar, instructed by H.D. Rathod, for the Appellant;

Judgement

Dr. B.P. Saraf, J.

By this reference under s. 256(1) of the IT Act, 1961, the Tribunal has referred the following question of law to this Court for opinion at the instance of the Revenue.

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the decision of the CIT(A) allowing deduction under s. 10(10AA) of the IT Act, 1961 even though the assessee resigned from the employment as per the salary certificate issued by the employer, viz., Shipping Corporation of India Ltd. ?"

2. The assessee is an individual. He was an employee of the Shipping Corporation of India Ltd. During the previous year relevant to the asst. yr. 1982-83, the assessee resigned from his service w.e.f. 29th July, 1981. In the assessment of his income under the IT Act, 1961 ("the Act") for the above assessment year, the assessee claimed deduction under s. 10(10AA) of the Act of the amount received by him from his former employer by way of cash equivalent of unutilised earned leave. This claim of the assessee was rejected by the ITO as he was of the opinion that the assessee having resigned from the employment, the amount received by him by way of leave encashment was not exempt under s. 10(10AA) of the Act. On appeal against the

above order of the ITO, the CIT(A) accepted the claim of the assessee and directed the ITO to grant deduction of the amount received by the assessee by way of cash equivalent of the unutilised earned leave to the extent permissible under s. 10(10AA) of the Act. The order of the CIT(A) was affirmed by the Tribunal. Hence, this reference at the instance of the Revenue.

3. We have heard the learned counsel for the Revenue who submits that the benefit of s. 10(10AA) of the Act is available only in cases where the amount is received by the assessee at the time of his retirement which, according to him, does not include retirement on resignation.

4. We have carefully considered the above submission of the learned counsel for Revenue. However, on a perusal of cl. (10AA) of s. 10 of the Act, we find it difficult to accept the same. Clause (10AA) of s. 10 exempts from tax any payment received by an employee as cash equivalent of the leave salary in respect of the period of earned leave to his credit at the time of his retirement whether on superannuation or otherwise, subject, however, to the limits laid down therein. Prior to the incorporation of this clause, any amount received by an employee on retirement from service by way of cash equivalent of unutilised earned leave was chargeable to Income Tax under the head "salaries". With a view to avoiding hardships to retiring employees, this clause was inserted w.e.f. 1st April, 1978. It was amended by the Taxation Law (Amendment) Act, 1984. By the said amendment, the words "on superannuation" occurring in cl. (10AA) were substituted by the words "whether on superannuation". This amendment was made with retrospective effect from the date of inception of cl. (10AA), i.e., 1st April, 1978. Sec. 10(10AA), so far as is relevant, as it stood at the material time, read as follows :

"Sec. 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 :

10AA(i) any payment received by an employee of the Central Government or a State Government as the cash equivalent of the leave salary in respect of the period of earned leave at his credit at the time of his retirement whether on superannuation or otherwise;

(ii) any payment of the nature referred to in sub-cl. (i) received by an employee, other than an employee of the Central Government or a State Government, in respect of so much of the period of earned leave at his credit at the time of his retirement whether on superannuation or otherwise as does not exceed six months, calculated on the basis of the average salary drawn by the employee during the period of ten months immediately preceding his retirement whether on superannuation or otherwise, or thirty thousand rupees, whichever is less :

Provided that where any such payments are received by an employee from more than one employer in the same previous year, the aggregate amount exempt from

Income Tax under this sub-clause shall not exceed thirty thousand rupees :

Provided further that where any such payment or payments was or were received in any one or more earlier previous years also and the whole or any part of the amount of such payment or payments was or were not included in the total income of the assessee of such previous year or years, the amount exempt from Income Tax under this sub-clause shall not exceed thirty thousand rupees, as reduced by the amount or, as the case may be, the aggregate amount not included in the total income of any such previous year or years.

Explanation. - For the purposes of sub-cl. (ii), -

the entitlement to earned leave of an employee shall not exceed thirty days for every year of actual service rendered by him as an employee of the employer from whose service he has retired.

5. On a plain reading of cl. (10AA) of s. 10, it is clear that exemption is available under the said clause only to retiring employees in respect of the amounts received by them by way of encashment of unutilised earned leave standing to their credit at the time of retirement. This clause is not applicable to any such payment received by an employee while in service. The benefit of this clause is available to an employee only on his retirement, whether on superannuation or otherwise. How or why the retirement took place is irrelevant for that purpose-what is significant is "retirement".

6. The question that arises for our consideration, therefore, is whether termination of employment by resignation amounts to "retirement" within the meaning of this clause or not. If it amounts to "retirement", the case of an employee who has resigned from service would fall under this clause, otherwise not. "Retirement" is a word of wide import. In the context of employment, it means conclusion of a career. According to Legal Thesaurus by William C. Burton, the word "retire" in the context of employment means "conclude a career". It has the following other meanings :

"abdicate, demit, drop out, give notice, give up office, give up work, leave, quit, relinquish, resign, stand aside, take leave, tender one's resignation, vacate."

One of the meanings of the word "retire" is "resign". Similarly, in the same Thesaurus, the following meaning appear of the word "resign".

"abandon, abdicate, abire, abjure, capitulate, cease work, cede, cedar, demit, depart, deponere, desist from, disclaim, divest oneself of, drop out, forego, forsake, give notice, give up, leave, quit, reject, relinquish, renounce, repudiate, retreat, stand aside, step down, surrender, tender one's resignation, vacate, withdraw, yield."

Thus both "retirement" and "resignation" result in the conclusion of the service career. In fact resignation from service is also one of the modes of retirement from service. Resignation is a voluntary act of the employee to retire from service. Once

an employee resigns, his service stand terminated from the date on which his letter of resignation is accepted by the appropriate authority, unless there is any law or statutory rule governing the conditions of service to the contrary. In other words, on acceptance of resignation, the employee stands retired from service. The word "retirement" has not been used in cl. (10AA) in the restricted sense to mean "retirement on superannuation". On the other hand, it is clear from the language of cl. (10AA) itself that it has been used in the widest possible terms to mean and include all cases of retirement, whether on superannuation or otherwise. What is relevant is "retirement" - how it took place is immaterial for the purpose of this clause. It is, therefore, clear that if on retirement, even on resignation by the employee, an employee gets by way of leave encashment any amount, s. 10(10AA) would apply and the assessee will be entitled to the benefit of the said clause to the extent mentioned therein.

7. We are supported of our above opinion by the decision of the Madras High Court in [Commissioner of Income Tax Vs. R.J. Shahney](#) . In that case also the assessee had resigned and retired from employment. The contention of the Revenue was that since the words "whether on superannuation or otherwise" qualified retirement, unless it was a case of retirement from service on attaining a particular age, or some other reason, a case of resignation would not take in. Repelling this contention of the Revenue, the Madras High Court held :

"The retirement may be of various kinds. It may be on superannuation or voluntary. If there is any voluntary retirement from service, we are satisfied that the provisions of s. 10(10AA) would apply."

8. In view of the above, we answer the question referred to us in the affirmative and in favour of the assessee.

9. Reference is disposed of accordingly with no order as to costs.