(2008) 09 MAD CK 0002

In the Madras High Court

Case No : Tax Case (Appeal) No. 1543 of 2008

Commissioner of Income Tax	APPELLANT
Vs	
G. Chandra	RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:
Income Tax Act, 1961 — Section 10(10C), 260A
Income Tax Rules, 1962 — Rule 2BA

Citation : (2010) 326 ITR 336

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Arun Kurien Joseph, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The Revenue filed the appeal u/s 260A of the Income Tax Act, 1961, against the common order of the Income

Tax Appellate Tribunal, Madras, dated September 21, 2007 in I. T. A. No. 466/ Mds./2006.

2. The facts of the case are as follows:

The assessment year is 2004-05. The assessee, who was an employee of the Reserve Bank of India, retired from service under the ""Optional

Early Retirement Scheme"" floated by the Reserve Bank of India. The assessee, in his return of income, has claimed exemption u/s 10(10C), out of

the compensation received under the above Scheme. On a perusal of Form No. 16 submitted by the assessee along with the return, it was found

that the Reserve Bank of India has not deducted the exemption claimed u/s 10(10C) on the compensation received under ""Optional Early

Retirement Scheme"", but it has duly deducted tax, treating this compensation as fully taxable and remitted to the Government account. The

assessee made a claim u/s 10(10C) independently outside Form No. 16, in computation sheet attached to the return and claim a refund. The

Assessing Officer after getting a clarificatory letter from the Reserve Bank of India in which it is stated that the Scheme of Optional Early

Retirement Scheme does not fulfil the conditions laid down under Rule 2BA and hence, the ex gratia paid under the Scheme does not qualify for

exemption u/s 10(10C), rejected the claim of the assessee. Against that order the assessee preferred an appeal before the Commissioner of

Income Tax (Appeals) and the Commissioner of Income Tax (Appeals) upheld the order of the Assessing Officer and dismissed the appeal.

Against that order the assessee preferred a second appeal before the Income Tax Appellate Tribunal and the Income Tax Appellate Tribunal

allowed the appeal. Aggrieved by the said order, the present appeal is filed by the Revenue by formulating the following common question of law:

Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the assessee is entitled to

deduction u/s 10(10C), when the scheme under which the amount was paid does not fulfil the criteria prescribed under Rule 2BA of the Income

Tax Rules ?

3. Heard the learned Counsel for the Revenue and perused the order of the Tribunal.

4. In this case, if the tax effect is worked out, it will come less than Rs. 2 lakhs, i.e., the monetary limit prescribed by the Central Board of Direct

Taxes for filing appeals before the High Court and it does not also fall within the exceptions provided for filing appeal before the High Court, even

where the tax effect is less than Rs. 2,00,000 under Circular F. No. 279/126/98-IT, dated March 27, 2000. Learned Counsel appearing on either

side fairly stated that the tax effect in all these cases worked out to less than Rs. 2 lakhs.

5. An issue similar to the issue in these cases came up for consideration before a Division Bench of this Court in the case of Commissioner of

Wealth-tax Vs. S. Annamalai, , wherein it was held that in order to reduce the litigation for filing Departmental appeals/references before the

Income Tax Appellate Tribunal, High Courts and the Supreme Court, the Central

Board of Direct Taxes, by Circular F. No. 279/126/98-IT,

dated March 27, 2000, re-fixed the monetary limits, however, carving out certain exceptions. The exceptions stated are (i) where revenue audit

objection in the case has been accepted by the Department, (ii) where the Board''s order, notification, instruction or circular is the subject-matter

of an adverse order, (iii) where prosecution proceedings are contemplated against the assessee, and (iv) where the constitutional validity of the

provisions of the Act are under challenge.

6. The Revenue had not made out a case that the issue involved in the appeal before the Tribunal falls within the exceptions provided in the

circular.

7. It is also pertinent to note that the judgment in which one of us is a party, in the case of the Commissioner of Income Tax Vs. Associated

Electrical Agencies, , in which, this Court relying on the Supreme Court decision in CGT v. Executors and Trustees of the Estate of the Late Shri

Ambalal Sarabhai, (1988) 170 ITR 144 (SC) under the Gift-tax Act, the Madhya Pradesh High Court judgment in Commissioner of Income Tax

Vs. Digvijay Singh, the Bombay High Court judgments in the case of Commissioner of Income Tax Vs. Zoeb Y. Topiwala, and in the case of

Commissioner of Income Tax Vs. Camco Colour Co., and held that the long line of judicial opinion is that if the tax effect is less than the one

stated in the circular the Revenue need not agitate the issue on appeal and the circular is binding on them.

8. Therefore, following the above judgements, the appeal is dismissed, as the questions of law raised in this appeal is already answered.