

(2008) 02 MAD CK 0023

In the Madras High Court

Case No : Tax Case (Appeal) No's. 22, 101, 419, 425, 1353, 1360 and 1397 of 2007

Commissioner of Income Tax

APPELLANT

Vs

M. Chelladurai and Others

RESPONDENT

Date of Decision : 25-02-2008

Acts Referred:

Income Tax Act, 1961 — Section 10(10C), 143(1), 143(2), 192, 244A

Income Tax Rules, 1962 — Rule 2B, 2BA

Institutes of Technology Act, 1961 — Section 3

University Grants Commission Act, 1956 — Section 3

Citation : (2008) 218 CTR 61 : (2009) 317 ITR 370 : (2009) 176 TAXMAN 31

Hon'ble Judges : K. Raviraja Pandian, J; Chitra Venkataraman, J

Bench : Division Bench

Advocate : J. Narayanasamy, for the Appellant; Quadir Hoseyn, A. Palaniappan and J. Balachander for S. Sridhar and C.V. Rajan, for the Respondent

Final Decision : Allowed

Judgement

K. Raviraja Pandian, J.—In these appeals, the Revenue assails the order of the Tribunal granting the relief of deduction u/s 10(10C) of the

IT Act, 1961 to the respective assessees, who have severed their service connection from their employer with the ICICI Bank and the RBI, under a

scheme framed in the year 2003 called "ICICI Bank Early Retirement Option 2003" and "Optional Early Retirement Scheme (OERS) 2003",

respectively.

2. Tax Case (Appeal) Nos. 101, 410, 22, 425 and 1360 of 2007 relate to the employees of ICICI Bank and Tax Case (Appeal) Nos. 1353 and

1397 of 2007 relate to the employees of RBI.

3. As the relief sought for; the contentions raised and the ultimate decision

rendered are one and the same, except the assessee in each of the appeals, these appeals are taken together and are disposed of by this common order. Tax Case (Appeal) No. 101 of 2007 is taken as a typical case in respect of the employees of the ICICI Bank and Tax Case (Appeal) No. 1353 of 2007 is taken as a typical case in respect of the employees of RBI.

Tax Case Appeal No. 101 of 2007 (ICICI Bank Ltd.)

4. The assessee filed return of income for the asst. yr. 2004-05 on 10th Oct., 2004 admitting the income of Rs. 4,25,310. A scrutiny assessment was initiated in the case of assessee. The assessee claimed deduction u/s 10(10C) of the IT Act, 1961 for a sum of Rs. 5 lakhs from the benefit received on his voluntary retirement under the scheme called ""Early Retirement Option Scheme"". During the course of scrutiny proceedings, the assessee was required to file a copy of the scheme so as to find out whether the assessee was entitled to the benefit u/s 10(10C) of the IT Act.

The assessee, by his letter dt. 7th March, 2005, has stated that the scheme was not available and hence could not produce the same. The AO, in the absence of scheme, was of the view that the assessee was not entitled to deduction u/s 10(10C). On that reasoning, the claim of the assessee was disallowed by observing as follows:

The assessee claimed deduction u/s 10(10C) of the IT Act of Rs. 5 lakhs from his benefits received on his voluntary retirement. In this connection he was asked to file a copy of the Employees Retirement Option Scheme by which he has availed voluntary retirement. In his letter dt. 7th March, 2005 he stated that the scheme is not available and hence he could not file the same. Therefore, in the absence of any scheme approved for voluntary retirement from the employer, it cannot be allowed any deduction u/s 10(10C). Therefore, the assessee's claim u/s 10(10C) is disallowed.

5. The assessee went on appeal to the CIT(A). Even before the CIT(A), the assessee was required to furnish a copy of the retirement scheme of the bank. However, the assessee did not file the copy, but claimed that the other employees availed the deduction and therefore, the deduction claimed by the assessee should be allowed. The CIT(A) ultimately concluded by observing as follows:

The AO afforded an opportunity to the appellant and required him to file copy of the scheme of ICICI Bank by which the appellant availed

voluntary retirement. The appellant has replied in writing that the scheme was not applicable to him. During the course of appellate proceedings, the

appellant could not submit copy of scheme of voluntary retirement. In the circumstances, I find that the AO has correctly denied the deduction u/s

10(10C). The order of the AO is confirmed.

6. On further appeal to the Tribunal, at the instance of the assessee, the Tribunal after narrating the facts culminating the filing of the appeal before it

observed as under:

The AO disallowed the claim of the assessee since the assessee had not filed the details of the Employees Retirement Option Scheme. The CIT(A)

also confirmed the order of the AO on the same ground. Now, the assessee before us, during the course of hearing, filed a copy of Early

Retirement Option 2003 from his employer ICICI Bank Ltd., which is called as The ICICI Bank Early Retirement Option, 2003". In this view of

the matter, we have no hesitation in upholding the claim of the assessee for the relief u/s 10(10C). Accordingly, this appeal of the assessee is

allowed.

The correctness of the same is canvassed in Tax Case (Appeal) No. 101 of 2007 by raising the following questions of law:

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is eligible for the benefit of Section

10(10C), without even going into the details of the Early Retirement Option Scheme to see if it fulfils the criteria laid down for Voluntary

Retirement Schemes?

2. Whether on the facts and circumstances of the case, the Tribunal was right 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 IT Rules?

As already stated, the other tax case appeals are identical to this appeal.

Tax Case Appeal No. 1353 of 2007 (RBI)

7. The assessee was the employee of RBI, Chennai. She retired voluntarily under the Optional Early Retirement Scheme and cash compensation in

a sum of Rs. 15,62,960 was received by her. The employer has deducted tax in a sum of Rs. 4,81,000 from the payment related to the early retirement offer. The assessee filed return of income for the asst. yr. 2004-05 admitting a total income of Rs. 15,62,960. The assessee claimed deduction u/s 10(10C) of the Act to the extent of Rs. 5 lakhs. The assessee filed a revised return on 2nd Dec, 2004 admitting a revised income of Rs. 1,06,900 and claimed refund of Rs. 2,15,186. The return of income was processed u/s 143(1) of the Act and a refund of Rs. 2,25,946 was granted to the assessee with interest u/s 244A of the Act.

8. Notice u/s 143(2) of the Act was served on the assessee. The AO, taking note of the scheme with reference to the statutory provisions and the instructions of the Jt. CIT, dt. 29th Nov., 2006 has held against the assessee as he was of the view that the scheme framed by the RBI does not fulfil the conditions enumerated in Clauses (iii) and (iv) of Rule 2BA of the IT Rules.

9. The assessee filed an appeal before the CIT(A), who by his order dt. 19th Feb., 2007 taking note of the letter of the RBI explaining the scope of the section and also taking note of the relevant clause in the scheme has ultimately held that the AO was justified in denying exemption u/s 10(10C) of the Act. The assessee carried the matter on further appeal to the Tribunal.

10. The Tribunal finding that the issue stood covered in favour of the assessee by the decision of the Tribunal rendered in the case of Vaishali A.

Shelar in ITA No. 6384/Mum/2006 reported as (2008) 113 ITD 1 held that the assessee was entitled to the relief u/s 10(10C) in respect of the

sums received under OERS upto a sum of Rs. 5 lakhs. That order is assailed before us by the Revenue by raising the following questions of law:

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is eligible for the benefit of Section 10(10C), without even going into the details of the Early Retirement Option Scheme to see if it fulfils the criteria laid down for Voluntary Retirement Schemes?

2. Whether on the facts, and circumstances of the case, the Tribunal was right 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 IT Rules?

11. Heard the learned Counsel on either side and perused the materials available on record.

12. As the claim is made u/s 10(10C) of the IT Act, we are of the view that the relevant provision has to be extracted:

10. Incomes not included in total income.½In computing the total income of a previous year of any person, any income falling within any of the

following clauses shall not be included½....

(10C) any amount received by an employee of-

(i) a public sector company; or

(ii) any other company; or

(iii) an authority established under a Central, State or Provincial Act; or

(iv) a local authority; or

(v) a co-operative society; or

(vi) a university established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a university u/s 3 of the

University Grants Commission Act, 1956 (3 of 1956); or

(vii) an Indian Institute of Technology within the meaning of Clause (g) of Section 3 of the Institutes of Technology Act, 1961 (59 of 1961); or

(viiia) any State Government; or

(viiib) the Central Government; or

(viic) an institution, having importance throughout India or in any State or States, as the Central Government may, by notification in the Official

Gazette, specify in this behalf; or

(viii) such institute of management as the Central Government may, by notification in the Official Gazette, specify in this behalf, at the time of his

voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in the case of a public

sector company referred to in Sub-clause (i), a scheme of voluntary separation, to the extent such amount does not exceed five lakh rupees:

Provided that the schemes of the said companies or authorities or societies or universities or the institutes referred to in Sub-clauses (vii) and (viii),

as the case may be, governing the -payment of such amount are framed in

accordance with such guidelines (including, inter alia, criteria of economic viability) as may be:

Provided further that where exemption has been allowed to an employee under this clause for any assessment year, no exemption thereunder shall be allowed to him in relation to any other assessment year;

The relevant statutory rule pertaining to the scheme is Rule 2BA of the IT Rules which reads as follows:

2BA. Guidelines for the purposes of Section 10(10C)½The amount received by an employee of-

- (i) a public sector company; or
- (ii) any other company; or
- (iii) an authority established under a Central, State or Provincial Act; or
- (iv) a local authority; or
- (v) a co-operative society; or
- (vi) a university established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a university u/s 3 of the University Grants Commission Act, 1956 (3 of 1956); or
- (vii) an Indian Institute of Technology within the meaning of Clause (g) of Section 3 of the Institutes of Technology Act, 1961 (59 of 1961);
- (viii) such institute of management as the Central Government may, by notification in the Official Gazette, specify in this behalf,

at the time of his voluntary retirement, or voluntary separation shall be exempt under Clause (10C) of Section 10 only if the scheme of voluntary

retirement framed by the aforesaid company or authority, or co-operative society or university or institute, as the case may be, or if the scheme of

voluntary separation framed by a public sector company is in accordance with the following requirements, namely:

- (i) it applies to an employee who has completed 10 years of service or completed 40 years of age;
- (ii) it applies to all employees (by whatever name called) including workers and executives of a company or of an authority or of a cooperative society, as the case may be, excepting directors of a company or of a co-operative society;
- (iii) the scheme of voluntary retirement or voluntary separation has been drawn

to result in overall reduction in the existing strength of the employees;

(iv) the vacancy caused by voluntary retirement or voluntary separation is not to be filled up;

(v) the retiring employee of a company shall not be employed in another company or concern belonging to the same management;

(vi) the amount receivable on account of voluntary retirement or voluntary separation of the employee does not exceed the amount equivalent to

three months' salary for each completed year of service or salary at the time of retirement multiplied by the balance months' service left before the

date of his retirement superannuation:

Provided that requirement of (i) above would not be applicable in case of amount received by an employee of a public sector company under the

scheme of voluntary separation framed by such public sector company.

13. As per above provisions, any amount received by an employee on his voluntary retirement or termination of his service in accordance with the

scheme or schemes of voluntary retirement or in the case of public sector company referred to in Sub-clause (1) of the scheme, voluntary

separation to the extent such an amount does not exceed Rs. 5 lakhs. The proviso to Section 10(10C) requires the scheme governing the payment

of such amount to be framed in accordance with the guidelines including, inter alia, criteria of economic viability as may be prescribed. The

statutory rules provide that the voluntary retirement or voluntary separation benefit shall be extended u/s 10(10C) only if the scheme of voluntary

retirement or voluntary separation framed is in accordance with the requirements stated therein.

14. Now, let us consider the scheme framed by the respective banks. Clause (2) of the scheme framed by ICICI Bank Ltd. read as follows:

2. Need for introduction of the scheme:

The competitive landscape has been changing very rapidly particularly in the last couple of years. There has been paradigm shift in the competitive

environment necessitating fresh look at the business strategies we adopt and implement. This leaves a significant impact on the way we do business,

and all other components of the organization including its employees. A combative multi-prolonged strategy to out-execute competition is the need

of the hour. Additionally, capability and skill enhancement of employees requires a priority attention. Appropriate response from employees is crucial for achieving the organizational goals.

Some of our employees find the current environment too pressurizing. Many of them, who have been with the organization for a long period of time have regularly expressed a desire to have an early exit option. The scheme is being introduced in response to the competitive environment, on the one hand and the desire of employees on the other.

The object for introduction of Optional Early Retirement Scheme in the RBI, as set out in its Administration Circular No. 1, dt. 11th Aug., 2003 reads as under:

Introduction of Option Early Retirement Scheme

As a result of several innovative measures taken by the bank during the last 2/3 years, a need has arisen for providing some alternative optional facilities and work opportunities to our staff, providing training and re-skilling opportunities and such other measures which are location specific and which can provide additional benefits to the staff/officers who wish to avail of them. Several suggestions were made to the management that, in the altered context, some of the employees would like to look at an opportunity to seek retirement at their own discretion provided the scheme is attractive and provides them with additional financial benefits so that they can pursue other interests actively. Accordingly, it has been decided to introduce Optional Early Retirement Scheme (OERS) as given in the annexure, which has been approved by the Committee of the Central Board at their meeting held on 6th Aug., 2003.

15. From the above, it is obvious that the scheme has been introduced for the purpose of enhancement of the competitive environment of the employer banks. The competitive environment was sought to be achieved by getting rid of the employer's unproductive and unwanted employees making them to leave voluntarily by granting some incentive for doing so. Such pruning of unproductive and unwanted employees benefits the speedy competitive growth and prosperity of the employer banks which also have a bearing on the national economy. In addition to that, the schemes are the outcome to fulfil the desire of the employees, who found the competitive environment too pressurizing to them and expressed their

desire to have an early exit with some benefits. It is also relevant to mention here that during the relevant period a private schedule bank merged with ICICI Bank Ltd.

16. From the reading of various clauses contained in the scheme, it is manifest that the scheme was not intended as staff reduction measure, but a soft exit option made available to those interested employees who were seeking alternative option to the level of adaptability and change, that the current environmental demands or those who are desirous of early retirement after a long and exhaustive period of service with the organisation.

Thus, the schemes framed are not in accordance with the requirement of Rule 2BA of the IT Rules. The requirement of the statutory provisions is

that the exemption from tax u/s 10(10C) is available on the amount received under a scheme of voluntary retirement or a voluntary separation

framed in accordance with the guidelines prescribed and specified in Rule 2B. As the schemes had not been introduced for the purpose of making

over the reduction in the existing strength of the employees and do not provide that the vacancy caused by the voluntary retirement or voluntary

separation shall not be filled up, the requirements (iii) and (iv) of Rule 2BA have not been fulfilled.

17. The employers who are the authors of the schemes, the better persons to explain as to how they conceived the schemes, informed the

Department in the following manner:

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1. u/s 10(10C) of the Act, exemption from tax is available on amounts received under scheme of voluntary retirement or scheme of voluntary

separation framed in accordance with the guidelines prescribed in Rule 2BA of the Rules. As explained earlier, since the ERO 2003 Scheme of the

bank does not satisfy all the requirements specified in Rule 2BA of the Rules, the compensation paid under this scheme does not qualify for the

exemption u/s 10(10C).

2. One of the important conditions specified for eligibility of ERO Scheme for tax exemption u/s 10(10C) is that the vacancy caused by the

voluntary retirement or voluntary separation is not filled in. It may be noted that the ICICI Bank ERO 2003 Scheme was not intended as a staff

reduction but a soft exit option to address the interest of those of its employees

who were seeking alternative options to the level of adaptability

and change that the current environment demands or those who are desirous of early retirement after a long period of service with the organization.

The same is brought out in point No. 2 of the ICICI Bank IRO Scheme 2003, copy of which is enclosed as annexure for your reference. Hence, it

is observed that the bank had adopted proactive strategies to meet the competitive challenges in the financial services sector and therefore,

required a vibrant and flexible organization capable of swiftly adapting to the demands of change. The vacancies caused on account of soft exit

option of the employee were proposed to be filled in through replacements at lower costs.

3. As per the provisions of Section 10(10C) r/w Rule 2BA, the exemption is available to scheme of voluntary retirement offered to employees who

have completed 10 years of service or completed 40 years of age. However, the ICICI Bank ERO 2003 Scheme did not fulfil this condition also

as it was offered to employees who had completed at least 7 years of service and completed 40 years of age as on 31st July, 2003. The same is

brought out in point No. 4 of the ICICI Bank ERO Scheme 2003, copy of which is enclosed as annexure for your reference.

4. As our ERO Scheme could not be designed as an eligible scheme enjoying exemption under 10(10C), ICICI Bank as the person responsible

for paying any income chargeable under the head "Salaries" deducted tax at source from salaries of ERO optees without grant of exemption u/s

10(10C) in accordance with the provisions of Section 192.

RBI's communication dt. 19th April, 2005:

(c) Clause (iii) of Rule 2BA provides that the scheme should have been framed in order to result in overall reduction in the existing strength of

employees. Bank's Optional Early Retirement Scheme has not been framed for that purpose but for providing some alternative optional facilities

and work opportunities to the bank staff.

(d) Clause (iv) of Rule 2BA provides that the vacancy caused by voluntary retirement is not to be filled up. Bank has not bound itself not to fill up

the vacancies arising out of ORES. It is open to the bank to make need based recruitment against such vacancies, if and when considered

appropriate by the bank.

(e) Under the bank's scheme, the employee was eligible for ex gratia amount equal to pay plus dearness allowance for the number of years of actual completed year of service or part thereof in excess of six months or pay plus dearness allowance for remaining months of service reckoned upto the date on which the employee would retire on superannuation, whichever is less.

Accordingly, in view of the differences between the Bank OERS and the guidelines laid down in Rule 2BA of the IT Rules, the ex gratia paid under bank's scheme does not qualify for exemption u/s 10(10C) of the IT Act. As such, the bank has not allowed the exemption u/s 10(10C) of the IT Act, 1961, to the employees who had opted for OERS.

18. In order to entitle the person the benefit u/s 10(10C) of the Act the provisions of Section 10(10C) and Rule 2BA should be complied with cumulatively and compliance of some of them would not entitle the employee the benefit as claimed for.

19. CBDT Circular No. 640 has also clarified that if all the conditions specified in Section 10(10C) and Rule 2BA of the Rules are satisfied, then only the assessee would be entitled to the benefit and in those cases, the employer need not deduct at source. Thus, it is clear that the scheme is not strictly in accordance with Section 10(10C) and Rule 2BA.

20. For the foregoing reasons, we are not in acceptance with the order of the Tribunal.

21. Accordingly the order of the Tribunal is set aside and the appeals are allowed answering the question of law in favour of the Revenue.