(2009) 04 MAD CK 0033

In the Madras High Court

Case No : Tax Case (Appeal) No. 2170 of 2008

Commissioner of Income Tax APPELLANT

Vs

M. Krishnamurthy RESPONDENT

Date of Decision : 23-04-2009

Acts Referred:
Income Tax Act, 1961 — Section 10(10C), 17, 260A, 89, 89(1)

Citation : (2009) 318 ITR 167

Hon'ble Judges : M.M. Sundresh, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : J. Nareshkumar, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—By framing the following question of law:

Whether the amount paid to employees under the voluntary retirement scheme is entitled for deduction?

the Revenue is on appeal before this Court u/s 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal dated

December 16, 2005, passed in I.T.A. No. 817/Mds/2004 in respect of the assessment year 2001-02.

2. The assessee was an employee of the Indian Overseas Bank. During the previous year relevant to the assessment year 2001-02, the assessee

retired from service under the voluntary retirement scheme offered by the said bank. On retirement, the assessee received from the employer bank

several dues including ex gratia. The ex gratia had been worked out by the employer at 60 days salary for each completed year of service or salary

for the number of months of service left, whichever was less. Out of the ex gratia thus received, the assessee claimed exemption of Rs. 5,00,000 as per the provisions of Section 10(10C) of the Act. The balance ex gratia was admitted as income. However, while working out the tax payable on

such income, the assessee claimed relief u/s 89(1) of the Act. The Assessing Officer rejected the claim of the assessee for the relief u/s 89(1) of the

Act and passed the assessment order granting exemption u/s 10(10C) of the Act. On appeal, the Commissioner of Income Tax (Appeals) allowed

the same in favour of the assessee. The Tribunal, on further appeal at the instance of the Revenue, held in favour of the assessee following the order

of this Court in Commissioner of Income Tax Vs. G.V. Venugopal, . The correctness of the said order is canvassed before this Court in this

appeal.

3. We have heard the argument of the learned Counsel for the Revenue.

4. The Tribunal, while dismissing the appeal filed at the instance of the Revenue, followed the Division Bench judgment of this Court in the case of

Commissioner of Income Tax Vs. G.V. Venugopal, . The facts are identical in that case. The question of law is also identical as that of the present

case. The Division Bench has held that the second proviso to Section 10(10C) only refers to exemption claimed in any other year. Every

assessment year is a self-contained unit and the mere fact that the relief u/s 89 had been spread over to several years, did not mean that the relief

was not in respect of a particular assessment year. There was no prohibition to the twin benefits in respect of an amount received under the

voluntary retirement scheme. The relief contemplated u/s 89 (1)is aimed to mitigate the hardship that may be caused on account of the high

incidence of tax due to progressive increase in the tax rate. Payment under the voluntary retirement scheme is covered by the word ""salary"" which

has been given a very wide definition u/s 17. Since the assessee was covered by Section 89, he would get both the benefits. Such decision

squarely covers the question of law framed by the Revenue in this case against the Revenue. Hence, the appeal is dismissed.

