(2008) 11 RAJ CK 0029

In the Rajasthan High Court

Commissioner of Income Tax APPELLANT

Vs

Rabindranath Lal RESPONDENT

Date of Decision : 21-11-2008

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

Citation : (2009) 223 CTR 410

Hon'ble Judges : R.S. Chauhan, J;R.M. Lodha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—The AAC allowed deduction of ex gratia payment amounting to Rs. 48,575 received under the Voluntary Retirement Scheme (VRS) u/s 89(1) over and above the exemption provided in Section 10(10C) of the IT Act, 1961.

2. The Revenue took exception to the order of the AAC by filing an appeal before the Tribunal, Jaipur Bench, Jaipur. The Tribunal noticed the decisions of the Madras High Court in the cases of G.N. Badami Vs. Commissioner of Income Tax, and P. Arunachalam Vs. Commissioner of Income Tax, and the decision given by the Jaipur Bench of the Tribunal wherein it was held that the amount received under the VRS constitutes compensation for ''termination of service'' for the purposes of Section 17(3) and that the conditions laid down u/s 89(1) are satisfied and the assessee is entitled to relief on the amount received under the VRS as reduced by exemption u/s 10(1OC) of the Act.

3. In the case of Commissioner of Income Tax Vs. J. Visalakshi, , the question under consideration before the Madras High Court was:whether the ex gratia compensation of Rs. 63,230 received by the assessee consequent on his resignation from the employment is entitled to the relief u/s 89(1) of the IT Act. The Madras High Court considered Sections 89(1) and 17(3) of the IT Act and held thus:

....The question as to whether the assessee is entitled to the relief u/s 89(1) would depend upon the interpretation to be placed on the words ''termination of his employment'', occurring in Sub-secyion 3(f) of Section 17 of the Act. It is necessary to bear in mind that termination of service can take place either by resignation or by dismissal or by compulsory retirement or on attaining superannuation. That being so, we are of the view that there is no justification to confine the meaning of the word ''termination'' only to the case of either voluntary retirement or superannuation, as per the stand taken by the Department. It must be borne in mind that Section 89(1) r/w Section 17(3) of the Act are beneficial clauses intended to grant certain benefits to employees or persons in service. Therefore, while placing interpretation on such clauses, the object with which such clauses are provided in the Act must be borne in mind, the object being to grant certain benefit to the person whose service is terminated. Therefore, if the meaning of the word termination'' is confined to cases of voluntary retirement or superannuation only, the object of the clause will not be fully achieved and it would amount to restricting the scope of the beneficial clause. Hence, we are of the view that the Tribunal is justified in holding that the ex gratia compensation of Rs. 63,230, received by the assessee consequent on his resignation, is entitled to the relief u/s 89(1) of the Act.

4. The view in the case of J. Visalakshi (supra) has been followed by the Madras High Court in the case of Commissioner of Income Tax Vs. M. Raman, . This is what the Madras High Court said:

The assessee has taken voluntary retirement from the service and received an amount of compensation at the time of his voluntary retirement. The question that arises is whether the compensation received by the assessee at the time of voluntary retirement would fall within the provisions of Section 17(3)(i) of the IT Act, 1961, that is, whether it can be regarded as salary and the assessee would be entitled to the relief provided u/s 89 of the IT Act, 1961. This Court in the case of Commissioner of Income Tax Vs. J. Visalakshi, held that if an employee receives at the time of resignation, the amount could be regarded as salary and the assessee would be entitled to the relief provided u/s 89 of the IT Act, 1961. The said principle rendered by this Court in the case of resignation would equally apply to the case of voluntary retirement of an employee from service. Accordingly, the Tribunal was right in holding that the amount received by the employee at the time of voluntary retirement of service would be regarded as salary, and the relief u/s 89 of the IT Act, 1961, would be admissible in respect of the amount received by the assessee from his employer at the time of voluntary retirement.

5. The Delhi High Court in the case of Commissioner of Income Tax Vs. S.N. Chadha, , held that in terms of Section 17(3)(ii) any payment other than those specified in the provision itself is included in the expression ''salary''. After noticing Section 89(1) of the IT Act, the Delhi High Court held thus:

Even a bare reading of the provision makes it clear that it has application to any payment which is made under the provisions of Clause (3) of Section 17 as a ''profit in lieu of salary''. That being the position, the Tribunal was correct in its view that Section 89(1) was applicable to the assessee''s case. Our answer for both the questions is in the affirmative, in favour of the assessee and against the Revenue.

6. Mr. R.B. Mathur, counsel for the Revenue, submitted that the decision of the Madras High Court in the case of M. Raman (supra) has been challenged by the Revenue by filing SLP before the Supreme Court. In this connection, he referred to a Departmental circular which is mentioned at p. 1396 of Chaturvedi & P.K. Saharia''s Income Tax Laws (5th Edition) Suppl. Vol. 3. He would submit that the view of Madras High Court has, thus, not attained finality.

7. The issue that has been raised in the present appeal came up for consideration before us directly in the case of CIT v. T.K. Paliwal IT Appeal No. 141 of 2006. In our order dt. 19th Feb., 2007 in the case of T.K Paliwal (supra), we considered the matter thus:

The Revenue has preferred this appeal u/s 260A of the IT Act, 1961 aggrieved by the order of Tribunal, Jaipur Bench, Jaipur, passed on 28th April, 2006 in group of matters.

2. The short question that has been raised in this appeal is as to whether the relief u/s 89 of the IT Act, 1961 is admissible to the assessee on the VRS amount in excess of the exemption u/s 10(10C) of the IT Act, 1961?

3. It is not in dispute that the assessee, who was an employee of UCO Bank (''the employer''), took the voluntary retirement in the financial year 2001-02 under the Voluntary Retirement Scheme, 2001 (for short ''VRS'') and received an amount of Rs. 11,40,881 from the employer at the time of voluntary retirement. The assessee in his return filed for the asst. yr. 2002-03 included the amount received on voluntary retirement in his taxable income from salary and after claiming an exemption of Rs. 5 lakhs in terms of Section 10(10C) of the IT Act, 1961 (''the said Act''), also claimed relief on excess amount of Rs. 5 lakhs u/s 89 of the said Act. It appears that the case of the assessee was reopened u/s 148 and after getting the response from the assessee, the AO disallowed the relief claimed u/s 89 vide order dt. 28th Oct., 2004. The assessee carried the matter in appeal to the CIT(A). The CIT(A) was satisfied with the contention of the assessee and allowed him the relief u/s 89. The Revenue felt aggrieved by the decision of the CIT(A) and filed an appeal before the Income Tax Appellate Tribunal (for short, ''the Tribunal''). The Tribunal heard the appeal with other connected matters and found no illegality in the order of the CIT(A). It is this order, which is subject-matter of challenge in this appeal.

4. The counsel for the Revenue invited our attention to Rule 21A(1)(e) and Sub-rule (6) of the IT Rules and contended that the payment received by the assessee on voluntary retirement being covered by Clause (e) and there being specific order by the Board in exercise of the power conferred under Sub-rule (6) declining relief u/s 89, the assessee was not entitled to the relief u/s 89 of the IT

Act. He would submit that the judgment of Madras High Court delivered in the case of Commissioner of Income Tax Vs. M. Raman, cannot be applied in the present situation as the statutory provision of Section 10(10C) of the IT Act was not in existence at the time when the said judgment was delivered.

5. That the amount received by the assessee on voluntary retirement is covered by Section 17(3)(r) of the IT Act cannot be doubted. ''Profits in lieu of salary'' includes the amount of any compensation received by an assessee from his employer in connection with the termination of his employment. Cessation of employment because of voluntary retirement is also the termination of employment and the amount of the compensation received by the assessee from the employer in connection thereto is covered by ''profits in lieu of salary''.

6. Before the Tribunal whole emphasis of the Revenue was founded on letter of CBDT dt. 23rd April, 2001, which indicated that the amount upto Rs. 5 lakhs received under VRS was exempt as per provisions of Section 10(10C) and after allowing this exemption, any balance amount was not eligible for relief u/s 89. The Revenue also relied upon further clarification in the letter dt. 4th March, 2004. The letter dt. 4th March, 2004 issued by the CBDT shows that the issue as to whether relief u/s 89 would be eligible for amount of compensation under VRS in excess of limit of exemption provided u/s 10(10C) of the IT Act was considered with the Ministry of Law in view of the judgment in the case of M. Raman (supra) and the Ministry of Law advised filing of SLP and that SLP has been filed before the Supreme Court.

7. We wanted to know from the counsel for the Revenue about the status of the aforesaid SLP which is said to have been filed by the Revenue from the Judgment of Madras High Court in the case of M. Raman (supra). Counsel for the Revenue, however, submits that despite best efforts, he has not been able to get any information in this regard and, therefore, he is not in position to make any statement in this regard. Be that as it may, once it is held that the amount received by the assessee on voluntary retirement under VRS is covered by Section 17, we see no impediment in the assessee getting benefit of Section 89 of the IT Act irrespective of the amount upto Rs. 5 lakhs being exempt u/s 10(10C). The relief u/s 89 of the IT Act is entirely different and cannot be denied merely because an amount upto Rs. 5 lakhs received on voluntary retirement is exempted u/s 10(10C). Section 89 of the IT Act operates in a different field and the relief given to an assessee u/s 89 is for different purpose and cannot be mixed up with the exemption given u/s 10(10C); Clause (viii) of Section 10(10C) which provides that no exemption thereunder shall be allowed in relation to any other assessment year has nothing to do with the relief u/s 89, which is distinct and independent.

8. Our attention was also invited to Section 35DDA of the IT Act. We are afraid, the said section even remotely has no application to the assessee, who Is not employer. This section deals with amortisation of expenditure incurred under VRS by the employer. It has nothing to do with the amount received by an employee

(assessee) from his employer in connection with voluntary retirement under the VRS.

9. The Madras High Court in the case of M. Raman (supra) observed as under:

The assessee has taken voluntary retirement from the service and received an amount of compensation at the time of his voluntary retirement. The question that arises is whether the compensation received by the assessee at the time of voluntary retirement would fall within the provisions of Section 17(3)(i) of the IT Act, 1961, that is, whether it can be regarded as salary and the assessee would be entitled to the relief provided u/s 89 of the IT Act, 1961? This Court in the case of Commissioner of Income Tax Vs. J. Visalakshi, , held that if an employee receives at the time of resignation, the amount could be regarded as salary and the assessee would be entitled to relief provided u/s 89 of the IT Act, 1961. The said principle rendered by this Court in the case of resignation would equally apply to the case of voluntary retirement of an employee from service. Accordingly, the Tribunal was right in holding that the amount received by the employee at the time of voluntary retirement of service would be regarded as salary, and the relief u/s 89 of the IT Act, 1961, would be admissible in respect of the amount received by the assessee from his employer at the time of voluntary retirement.

10. The legal position exposited by the Madras High Court does not get changed because of the provision contained in Section 10(10C).

11. In this view of the matter, the finding of the Tribunal that the assessee is entitled to relief u/s 89 of the IT Act on VRS amount exceeding Rs. 5 lakhs exempted u/s 10(10C) of the IT Act cannot be said to be erroneous.

12. The IT appeal is dismissed accordingly.

8. For the self-same reasons, the order of the Tribunal, therefore, does not call for any interference.

9. The IT appeal is dismissed in limine.