

(2008) 08 MAD CK 0082

In the Madras High Court

Case No : Tax Case (Appeal) No. 1338 of 2008 and M.P. No. 1 of 2008

Commissioner of Income Tax

APPELLANT

Vs

S. Naini

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

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

Citation : (2009) 316 ITR 232

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

Bench : Division Bench

Advocate : J. Naresh Kumar, 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 order of the Income Tax Appellate Tribunal, Madras, dated August 17, 2007, in I.T.A. No. 2451/ Mds/2006.

2. The facts of the case are as follows:

The assessee, who was an employee of the Reserve Bank of India, has filed returns of income for the assessment year 2004-05. During the previous year relevant to the assessment year, the appellant retired from the service under the voluntary retirement scheme offered by the employer-Bank. On retirement, the appellant received several dues including ex gratia worked out by the employer. Out of the ex gratia thus received, the appellant claimed exemption of Rs. 5,00,000 as per the provisions of Section 10(10C) of the Income Tax Act. The balance ex gratia was admitted as income. However, while working out the tax payable on such income, the Assessing Officer examined the matter and concluded that the retirement scheme of the bank did not fulfil the conditions laid down under Rule 2BA and disallowed the exemption. Aggrieved by that order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)

who confirmed the order of the Assessing Officer. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the assessee has filed an appeal to the Income Tax Appellate Tribunal. The Tribunal allowed the appeal following the decision of the Mumbai K-Bench of the Income Tax Appellate Tribunal in a group of 222 appeals in the case of Vaishali A. Shelar v. Asst. CIT in I.T.A. Nos. 6384/Mum/06, etc., dated March 28, 2007 [2008] 113 ITD 1, in the case of Shri C.S. Subramanian as well as Chennai "C" Bench in I.T.A. No. 471/Mds/05, etc., dated April 30, 2007. The correctness of the said order is now canvassed before us in this appeal by the Revenue by formulating the following questions of law:

1. Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the assessee was 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 the voluntary retirement scheme?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was 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 learned Counsel for the Revenue and perused the order of the Tribunal.

4. In this case, the tax amount involved is Rs. 1,62,212, which is less than the monetary limit prescribed by the CBDT 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.

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, the High Courts and the Supreme Court, the Central Board of Direct Taxes, by the Circular F. No. 279/126/98-ITJ, dated March 27, 2000, refixed the monetary limits, however, casting 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 also relied 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 judgments, the appeal is dismissed, as the questions of law raised in this appeal are already answered. Consequently, connected miscellaneous petition is also dismissed.