(2008) 08 MAD CK 0005

In the Madras High Court

Case No : Tax Case Appeal No''s. 535 to 538 of 2008

Commissioner of Income Tax APPELLANT

Vs

S. Padmanabhan RESPONDENT

Date of Decision : 25-08-2008

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

Citation : (2009) 316 ITR 235

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

Bench : Division Bench

Advocate : Pushya Sitaraman, for the Appellant; B.V. Rajan, for the Respondent

Final Decision : Dismissed

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

income tax Act, 1961, to the assessees, who have severed their service connection from their employer-the Reserve Bank of India, under a

scheme framed in the year 2003 called ""Optional Early Retirement Scheme (OERS) 2003"". The assessees were employees of the Reserve Bank

of India and had during the year retired under the Optional Early Retirement Scheme floated by the Reserve Bank of India. The assessees, in their

returns of income for the assessment year 2004-05, claimed exemption u/s 10(10C), out of the compensation received under the said scheme. On

a perusal of Form 16 submitted by the assessees along with the return, it is seen that the employer has not deducted the exemption claimed u/s

10(10C) on the compensation received under the OERS, but has duly deducted the tax, treating the compensation as fully taxable and remitted to

the Government account. The assessees while filing the return have made a claim u/s 10(10C) independently, outside Form 16, in the computation

sheet attached to the return and claimed a refund. The Assessing Officer disallowed the claim of the assessees as the scheme which was adopted

by the assessee was not in consonance with the rules prescribed under rule 2BA of the income tax Rules, 1962. Aggrieved by the said order, the

assessees preferred appeals before the Commissioner of income tax (Appeals), who upheld the orders of the Assessing Officer and dismissed the

appeals. The assessees preferred appeals to the income tax Appellate Tribunal, which allowed the appeals following the decision of this court in

the case of Vaishali A. Shelal in I.T.A. No. 6384/ MDS/06. The correctness of the said order is canvassed by the appellant in this present appeal

by raising the following questions of law:

1. Whether, in the facts and circumstances of the case, the income tax Appellate Tribunal was right in law 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 Scheme?

2. Whether, in 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 fulfill the criteria prescribed under rule 2BA of the income tax

Rules?

2. Heard learned counsel on either side and perused the materials available on record.

3. In these cases the tax effect involved is admittedly less than Rs. 2 lakhs, which is 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.

4. 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 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.

5. 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.

6. It is also pertinent to note that the judgment in which one of us is a party, in the case of 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 CIT v.

Cameo Colour Company [2002] 254 ITR 565 (Bom.) 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. Therefore, following the above

judgments, the appeals are dismissed, as the questions of law raised in these appeals are already answered.