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**(2007) 10 RAJ CK 0085**  
**In the Rajasthan High Court**  
**Case No : Income-tax Appeal No. 152 of 2006**

Commissioner of Income Tax

APPELLANT

Vs

S.N. Sharma

RESPONDENT

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**Date of Decision :** 31-10-2007

**Acts Referred:**

Income Tax Act, 1961 — Section 10(10C), 17, 17(3)(i), 35DDA, 89

**Citation :** (2010) 322 ITR 105

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

**Bench :** Division Bench

**Advocate :** Parinitoo Jain, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

1. In D.B. income tax Appeal No. 141 of 2006 (CIT v. T.K. Paliwal on February 19, 2007 (since reported in [2010] 322 ITR 101 (Raj) ), the Division Bench held thus (page 103):

5. That the amount received by the assessee on voluntary retirement is covered by section 17(3)(i) of the income tax Act, 1961, 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 income tax Appellate Tribunal the whole emphasis of the Revenue was founded on letter of the Central Board of Direct Taxes dated April 23, 2001, which indicated that the amount up to Rs. 5 lakhs received under voluntary retirement scheme was exempt as per the 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 dated March 4, 2004. The letter dated March 4, 2004, issued by the Central Board of Direct

Taxes shows that the issue as to whether relief u/s 89 would be eligible for amount of compensation under voluntary retirement scheme in excess of limit of exemption provided u/s 10(10C) of the income tax Act was considered with the Ministry of Law in view of the judgment in the case of Commissioner of Income Tax Vs. M. Raman, 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 special leave petition, which is said to have been filed by the Revenue from the judgment of the Madras High Court in the case of Commissioner of Income Tax Vs. M. Raman, . Counsel for the Revenue, however, submits that despite the best efforts, he has not been able to get any information in this regard and, therefore, he is not in a 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 voluntary retirement scheme is covered by section 17, we see no impediment in the assessee getting benefit of section 89 of the income tax Act irrespective of the amount up to Rs. 5 lakhs being exempt u/s 10(10C). The relief u/s 89 of the income tax Act is entirely different and cannot be denied merely because an amount up to Rs. 5 lakhs received on voluntary retirement is exempted u/s 10(10C). Section 89 of the income tax 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 Income- tax Act. We are afraid, that the said section even remotely has no application to the assessee, who is not the employer. This section deals with amortisation of expenditure incurred under the voluntary retirement scheme 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 Voluntary Retirement Scheme.

9. The Madras High Court in the case of Commissioner of Income Tax Vs. M. Raman, observed as under (page 856 of 245 ITR):

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 income tax 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 income tax Act, 1961. This court in the case reported in 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 income tax 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 Appellate 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 income tax 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 expounded 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 income tax Appellate Tribunal that the assessee is entitled to relief u/s 89 of the income tax Act on voluntary retirement scheme amount exceeding Rs. 5 lakhs exempted u/s 10(10C) of the income tax Act cannot be said to be erroneous.

Ms. Parinitoo Jain, the counsel for the Revenue submits, and in our view, fairly that the controversy raised in this income tax appeal stands squarely concluded by the forenoted judgment.

2. This appeal is, accordingly, dismissed.