(2007) 02 RAJ CK 0008

In the Rajasthan High Court

Case No : Income-tax Appeal No. 141 of 2006

Commissioner of Income Tax APPELLANT

Vs

T.K. Paliwal RESPONDENT

Date of Decision : 19-02-2007

Acts Referred:
Income Tax Act, 1961 — Section 10(10C), 148, 17, 17(3)(i), 260A

Citation : (2010) 322 ITR 101

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

Bench : Division Bench

Advocate : Samir Jain and Ms. Parinitoo Jain, for the Appellant;

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—The Revenue has preferred this appeal u/s 260A of the income tax Act, 1961, aggrieved, by the order of the income tax Appellate Tribunal, Jaipur Bench, Jaipur passed on April 28, 2006, in group of matters. The short question that has been raised in this appeal is as to whether the relief u/s 89 of the income tax Act, 1961, is admissible to the assessee on the voluntary retirement scheme amount in excess of the exemption u/s 10(10C) of the income tax Act, 1961 ?

2. 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 assessment year 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 income tax 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 Assessing Officer disallowed the relief claimed u/s 89 vide order dated October

28, 2004. The assessee carried the matter in appeal to the Commissioner (Appeals). The Commissioner (Appeals) 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 Commissioner (Appeals) 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 Commissioner (Appeals). It is this order, which is the subject-matter of challenge in this appeal.

3. The counsel for the Revenue invited our attention to rule 21A(e) and sub-rule (6) of the income tax 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 income tax Act. He would submit that the judgment of the 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 income tax Act was not in existence at the time when the said judgment was delivered.

4. That the amount received by the assessee on voluntary retirement is covered by section 17(3)(i) of the income tax 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".

5. 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 VRS 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 VRS 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.

6. 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 VRS 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.

7. 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 an employer. This section deals with amortisation of expenditure incurred under the Voluntary Retirement Scheme by the employer, ft 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.

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

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 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 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.

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

10. 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. The income tax appeal is

dismissed accordingly.

