

(1979) 11 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 8618 of 1978

C.P. Ohrie

APPELLANT

Vs

Accountant-General and Others

RESPONDENT

Date of Decision : 13-11-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 37, 37 A, 49 (5)
Income Tax Act, 1961 — Section 10 (10A)

Citation : (1981) 127 ITR 122

Hon'ble Judges : M.K. Srinivasa Iyengar, J

Bench : Single Bench

Advocate : K.R. Prasad, for the Appellant; U.L. Narayana Rao, for respondent
No. 1, S. Rajendra Babu and S.R. Rajasekhara Murthy, for the Respondent

Judgement

Srinivasa Iyengar, J.—The petitioner had joined the Industrial Management Pool (Central Services Class I) of the Government of India in December, 1960, and was an officer of the Civil Services of the Union Government. He was working under the administrative control of the Bureau of Public Enterprises of the Ministry of Finance, Government of India. From there, he was deputed to the Hindusthan Aeronautics Ltd., at Bangalore, a public sector undertaking, in May, 1973, as Controller of Services and continued in that capacity. It transpires that the Government of India decided to abolish the Industrial Management Pool and in that connection gave certain option to the officers borne on the pool. The petitioner was also given such an option and an intimation of termination of his employment under the Govt. of India. In terms of the communication therein, the petitioner exercised the option on February 12, 1977, and the retirement from the Govt. of India's services became effective. It also transpires that, subsequently, the Govt. of India revoked its earlier decision to abolish the pool by a notification dated October 13, 1977, but continued the earlier option given to the officers to be absorbed in public sector undertakings and then, on the officers reiterating the option, they were to be governed by the terms and conditions of the earlier notification. In the communication dated February 5,

1977, reference was made to the terminal benefits that the petitioner would be entitled to. Subsequently, the Under-Secretary to the Govt. of India, Ministry of Finance, sent a communication dated December 28, 1977, to Pay and Accounts Officer, Ministry of Finance, New Delhi, whereby he conveyed the sanction of the President to the permanent absorption of the petitioner in the services of the Hindusthan Aeronautics Ltd., and that the absorption would take effect from the forenoon of April 1, 1977. In paras, (ii), (iii) and (iv) of that communication (Ex. B) details of the pension and gratuity that the petitioner would be eligible for were given. Clause (v), however, specified as follows :

" (v) The officer will exercise an option, within six months of the date of issue of this letter, for either of the alternative indicated below ;

(a) receiving the pro-rata monthly pension and death-cum-retirement gratuity as admissible under (ii), (iii) and (iv) above under the Government of India Rules ;

(b) receiving the pro-rata gratuity and a lump sum amount in lieu of pension worked out with reference to commutation tables obtaining on the date from which pension will be admissible and payable under option orders."

2. It is not in dispute that the petitioner exercised his option under Clause (b). Thereafter, the Accountant-General, Karnataka, Bangalore, issued instructions to the Treasury Officer, Bangalore, on June 30, 1978 (Ex. D), authorising the payment of Rs. 1,31,749.80, being the commuted value of the periodical pension payable, namely, Rs. 889 per month. However, in that very communication, a direction was issued that a deduction of Income Tax at source on two-thirds of this amount, namely, Rs. 87,833.20, should be made. This was on the basis that the petitioner was entitled to exemption from Income Tax only to the extent of one-third of the commuted pension. It is this direction to deduct Income Tax at source on a sum of Rs. 87,833.20 that is challenged in this writ petition.

3. The contention urged for the petitioner is that the payment made in commutation of pension is under a scheme applicable to the members of the civil services of the Union which is a scheme similar to the Civil Pension (Commutation) Rules of the Central Govt. and in terms of Section 10(10A) of the I.T. Act, 1961, the entire amount payable was not to be included in the computation of total income. Support is also derived from Rule 37 and Rule 37A of the Central Civil Services (Pension) Rules, 1972, which came into force on June 1, 1972, and April 21, 1973, respectively. The said rules are as follows :

" 37. Pension on absorption in or under a corporation, company or body.--A Government servant who has been permitted to be absorbed in a service or post in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government shall, if such absorption is declared by the Government to be in public interest, be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from such date as may be determined, in

accordance with the orders of the Government applicable to him :

Provided that no declaration regarding absorption in the public interest in a service or post in or under such corporation, company or body shall be required in respect of a Government servant whom the Government may, by order, declare to be a scientific employee :

Provided further that the provisions of Sub-rule (5) of Rule 49 shall not apply for the purpose of determining pension under this rule."

" 37-A. Payment of lump sum amount to persons on absorption in or under a corporation, company or body.--(1) Where a Government servant referred to in Rule 37 elects the alternative of receiving the death-cum-retirement gratuity and a lump sum amount in lieu of pension, he shall, in addition to the death-cum-retirement gratuity, be granted :

(a) on an application made in this behalf, a lump sum amount not exceeding the commuted value of one-third of his pension as may be admissible to him in accordance with the provisions of the Civil Pensions (Commutation) Rules ; and

(b) a terminal benefit equal to twice the amount of the lump sum referred to in Clause (a) subject to the condition that the Government servant surrenders his right of drawing two-thirds of his pension.

(2) Notwithstanding anything contained in Sub-rule (1), where any lump sum amount, in addition to the death-cum-retirement gratuity had been paid at any time between the period commencing on the 24th July, 1971, and ending with the commencement of the Central Civil Services (Pension) (Second Amendment) Rules, 1973, to any Government servant referred to in Rule 37 who had elected the alternative of receiving the death-cum-retirement gratuity and a lump sum amount in lieu of pension, such payment shall be deemed to have been made in accordance with this rule, if the requirements of this rule have been satisfied."

4. The contention on behalf of the petitioner is that the option that had been given to him and that had been exercised is in accord with Rule 37A and this is the scheme that was applicable to him in regard to the retirement benefit which included the payment of pension also. It is argued that on the petitioner having exercised the option that had been given to him, the rule, in regard to terminal benefits, that was applicable to him, was Rule 37A and the payment made to him is not a payment under the Civil Pensions (Commutation) Rules of the Central Govt. and he would come within the second part of Section 10(10A) which refers to any similar scheme applicable to the members of the civil services of the Union.

5. A statement of objections has been filed on behalf of the respondents, which is common to this writ petition and Writ Petition No. 10596 of 1978 Lt. Col. B.V.S. Rao v. CIT (see p. 130 *infra*) in which it is admitted that the petitioner had opted for receiving the retirement gratuity and a lump sum amount in lieu of pension worked out under the commutation rules as provided under Rule 37A of the

Pension Rules. However, the contention on behalf of the respondents has been that the exemption is applicable only to the lump sum amount not exceeding the commuted value of one-third of the pension paid under Clause (a) of Rule 37A and not in regard to the remaining amount, namely, the two-thirds of the amount payable. The answer to the controversy, in my opinion, is to be found on a true interpretation of the provision in Section 10(10A) of the Income Tax Act, 1961, and the import of Rules 37 and 37A of the Central Civil Services (Pension) Rules, 1972.

6. Shri S. R. Rajasekhara Murthy argued that the petitioner would be a person who was governed by the Civil Pensions (Commutation) Rules of the Central Govt. and, therefore, he would come within the first part of Section 10(10A) and, therefore, cannot claim exemption in regard to anything exceeding the amount payable on commutation of the pension which could be only to the extent of one-third under the said Commutation Rules. It is difficult to accept this submission. The Civil Pensions (Commutation) Rules make provision in regard to commutation of pension in Rules 3 and 4. Rule 4 refers to certain schemes sanctioned by the Govt. of India in the official memorandum dated April 17, 1950, and a modification thereof in the official memorandum dated January 2, 1961, and specifies that a Government servant shall be entitled to commute for a lump sum portion not exceeding one-third of the pension that might be granted to him under the Rules. It further provides that such commutation shall be subject to the condition that the uncommitted residue of the pension shall not be less than Rs. 240 per annum. Rule 3 makes provision for persons who were not governed by the pension schemes referred to in Rule 4. It provides that the Government servant shall be entitled to compute for a lump sum payment any portion not exceeding one-half the pension that might be granted to him under the provisions of the Civil Services Regulations. That also provides that such commutation shall be subject to the condition that the uncommitted residue of the pension shall not be less than Rs. 240 per annum. The said commutation rules, therefore, contains no provision for a lump sum payment in lieu of the payment of the entire pension payable to a person on retirement. The only rule that would be applicable in such a case is Rule 37A of the Central Civil Services (Pension) Rules, 1972. In the main part of the rule the lump sum amount is referred to as in lieu of pension. Sub-clause (a) provides for a calculation of the commuted value of one-third of the pension as may be admissible under the provisions of the Civil Pensions (Commutation) Rules, and Clause (b) makes provision for a terminal benefit equal to twice the amount of the lump sum referred to in Clause (a). This payment is subject to the condition that the government servant surrenders his right of drawing two-thirds of his pension. Therefore, the combined effect of the two clauses in Rule 37A is that a lump sum payment is made in lieu of the entire pension which a person would be entitled to get on retirement. Sub-clause (b) makes it abundantly clear that there is no further liability to make a periodical payment by way of pension which would be existing under the Civil Pensions (Commutation) Rules. By making a payment in

terms of Rule 37A the entire liability in regard to the pension would get wiped out and after the receipt of the pension the official would have no claim against the government in this behalf. It is thus clear that in regard to a person who has been in government service and who was to be absorbed permanently in a public undertaking there was a separate scheme as is to be found in Rule 37A. Even the commutation rules indicate that there were different schemes applicable to several categories of officers of the Union Govt. The commutation rules had been framed in 1925 and Rule 37A was introduced with effect from April 21, 1973 to meet a particular situation which had been sanctioned under the Central Civil Services (Pension) Rules, 1972, by Rule 37 thereof.

7. The word " commutation " is not defined in the rules. In the Chambers Dictionary its meaning is given as to compound for a single payment. In Jowitt's Dictionary of English Law the meaning given is " conversion of the right to receive a variable or periodical payment into the right to receive a fixed or gross payment ". The payments under Sub-clauses (a) and (b) are together in lieu of the entire periodical payments. Different schemes may fix different extents to which commutation may be allowed. The mere circumstance that the extent of commutation was mentioned in the two sub-clauses does not alter the substance of the matter that the entire payment was in lieu of pension that is in commutation of pension.

8. If as is clear the petitioner was governed by the scheme in regard to the payment in commutation of pension as found in Rule 37A and the payment made to him is also in accordance with that rule, it cannot be contended that this payment is not under that scheme, but is a payment received under the Civil Pensions (Commutation) Rules of the Central Govt., i.e., under the first part of Section 10(10A) of the Act. Shri Rajasekhara Murthy, learned counsel for the department, sought to place reliance on the words in that section, namely, " such members or holders being persons not governed by the said Rules ". His argument was that it cannot be said that the petitioner was not a person who was governed by the Civil Pensions (Commutation) Rules, because he was a civil servant under the Union Govt. and these rules would apply to such Government servants. I do not find any substance in this submission. As I have pointed out earlier the petitioner having exercised the option that has been given to him and having been treated as a person coming within the ambit of Rule 37 and to whom automatically Rule 37A would apply would be a person who would not henceforth be governed by the provisions of the Civil Pensions (Commutation) Rules and the payment made to him cannot also be said to be under those Rules. If the payment was to be under those Rules, he could not have been paid a lump sum amount in lieu of his entire pension as has been done.

9. During the course of the arguments, reference was made to the Notes on clauses while introducing Section 10(10A) by the Finance (No. 2) Act of 1965 by which the provision was given retrospective effect from the date the I.T. Act, 1961, came into force and also to the Notes on clauses when a further

amendment was made by the Finance Bill of 1974 with retrospective effect. So far as the amendment in 1974 was concerned, it was mentioned [1974] 93 ITR 81 :

" The amendment seeks to secure that payments received in commutation of pension by all categories of Central Government employees will be exempt from Income Tax. At present, in the case of civilian employees of the Central Government, payments in commutation of pensions covered by the Civil Pensions (Commutation) Rules of the Central Government alone qualify for tax exemption. "

10. By the amendment introduced in 1974 after the words " or under any similar scheme applicable to the members of the " the words " civil services of the Union, etc. ", were introduced just before the words, " members of the defence services ". Whatever the object that might have been stated in the Notes on clauses, it is clear that the implication from the amendment was that there might be a scheme for payment in commutation of pension different from the provisions in the Civil Pensions (Commutation) Rules and persons not governed thereby and accordingly relief should be granted to persons who would not be receiving payments under the Commutation Rules as such but also under other schemes. Whatever be the amount actually received under the Commutation Rules, the relief would be limited to the extent of the amount receivable thereunder. So far as the several schemes are concerned, relief would be available to the extent the payment in commutation of pension would be received under those respective schemes. The relief or exemption provided in Section 10(10A) under such similar scheme cannot be restricted to the extent of the amount received in commutation of pension under the Civil Pensions (Commutation) Rules. If there is a scheme apart from the Civil Pensions (Commutation) Rules by which a person is governed, the operation of Section 10(10A) must extend to the amount received under that scheme by that person and cannot be limited under some other provision. Whenever such a limitation was intended, the legislature has made specific provision in that behalf. For example, in Section 10(10A)(ii) provision is made in respect of payment in commutation of pension received under any scheme of any other employer and the extent to which the amount would not be included in the computation of total income is restricted.

11. The payment of Rs. 1,31,749.80 to the petitioner was received by him by virtue of a scheme which was different from the scheme under the Civil Pensions (Commutation) Rules and, therefore, the entire amount so received was not liable to be included in the computation of the total income by virtue of the provisions of Section 10(10A) of the I.T. Act, 1961. The direction issued by the Accountant-General that two-thirds of the pension, viz., Rs. 87,833.20, was subject to Income Tax, to be recovered by the Treasury Officer was clearly unwarranted by the provisions of Section 10(10A) of the Act. Accordingly, the direction contained in Ex. D is quashed. Parties to bear their own costs.