
(1996) 10 DEL CK 0066
In the Delhi High Court
Case No : C. W. P. No. 820 of 1995.

JODHRAJ SINGH

APPELLANT

Vs

UNION OF INDIA AND OTHERS

RESPONDENT

Date of Decision : 15-10-1996

Acts Referred:

Citation : (1998) 234 ITR 871

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : B. K Sinha for the petitioner, R. D. Jolly with R. N. Verma, for the appearing parties;

Judgement

C. M. NAYAR J-This petition is directed against the respondents for releasing a sum of Rs. 84,000 which has been deducted towards incometax from the payment made to the petitioner under the Voluntary Retirement Scheme.

The petitioner was a permanent employee in Tata Iron and Steel Company at Jamshedpur from September 10, 1957. He took voluntary retirement on July 25, 1992, in view of the scheme and his request for voluntary retirement was accepted by respondent No. 3, vide communication dated July 23, 1992. The total amount accruing to the petitioner in respect of the voluntary retirement benefits was Rs. 3,98,336.70 out of which a sum of Rs. 84,000 was deducted as Income Tax and the balance amount of Rs. 3,14,336.70 was paid to him. The petitioner claims refund of Rs. 84,000 on the ground that, vide notification dated April 1, 1992, issued by the Government a new clause in section 10 of the Income Tax Act, 1961 (hereinafter referred to as "the AcV"), was incorporated, namely, clause (10Q) which provides exemption from Income Tax up to Rs. 5 lakhs payable to an employee as per Voluntary Retirement Scheme. The petitioner, it is contended, is not liable to pay Income Tax as the total benefit accruing to him is less than Rs. 5 lakhs. The petitioner represented to the employer, Tata Iron and Steel Company, for refund of the aforesaid amount but since no reply could be received, legal notice dated July 22, 1994, was served on

the said respondent. Respondent No. 4 sent a reply to the legal notice wherein the following plea was taken :

"At the outset we would like to point out that your client Shri jodh Raj Singh was sanctioned ex gratia payment under the company's old Voluntary Retirement Scheme, vide management's letter dated December 23, 1992. The said scheme was not an approved V. R. S. Scheme of the Government as it was only around November, 1992, the guidelines of the Government came out with regard to extension of Government approved V. R. Schemes on certain conditions to private companies whereby the amounts paid in accordance with an approved scheme were exempt from Income Tax up to a limit u/s 10(10Q) of the Income Tax Act. Our new V. R. S. Scheme was approved by the Commissioner of Income Tax only in November, 1993, which was made effective from January 1, 1994.

As such those who took voluntary retirement under the new scheme from January 1, 1994, have been paid the amounts without any deduction as it was exempted under the Income Tax Act."

Rule was issued in this writ petition and it was enquired from respondents Nos. 1 and 2 as to whether the petitioner was eligible for refund. The communication dated June 21, 1996, addressed to the petitioner from the Ministry of Finance, Government of India, was filed by the respondents and the same was taken on record. The Government took the plea that the benefit of exemption u/s 10(10Q) of the Act was available only if an employee had taken voluntary retirement under the Voluntary Retirement Scheme approved by the Chief Commissioner of Income Tax and the petitioner having taken such retirement prior to the date of approval of the scheme was not entitled to get the benefit of the above-said provision. At this point it may be relevant to reproduce the provisions of section 10(10Q) of the Act which reads as follows

"(10Q) any amount received by an employee of-

- (i) a public sector company ; or
- (ii) any other company ; or
- (iii) an authority established under a Central, State or Provincial Act ; or
- (iv) a local authority ; or
- (v) a co-operative society ; or
- (vi) a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University u/s 3 of the University Grants Commission Act, 1956 (3 of 1956) or
- (vii) an Indian Institute of Technology within the meaning of clause (g) of section 3 of the Institutes of Technology Act, 1961 (59 of 1961) or
- (viii) such institute of management as the Central Government may, by notification in the Official Gazette, specify in this behalf,

at the time of his voluntary retirement in accordance with any scheme or schemes of voluntary retirement, to the extent such amount does not exceed five lakh rupees :

Provided that the schemes of the said companies or authorities or societies or Universities or Institutes referred to in sub-clauses (vii) and (viii), as the case may be, governing the payment of such amount are framed in accordance with such guidelines (including, inter alia, criteria of economic viability) as may be prescribed and such schemes in relation to companies referred to in , sub-clause (ii) or co-operative societies referred to in sub-clause (v) are approved by the Chief Commissioner or, as the case may be, Director-General in this behalf :

Provided further that where exemption has been allowed to an employee under this clause for any assessment year, no exemption there, under shall be allowed to him in relation to any other assessment year."

The reading of this provision, will clearly indicate that the Voluntary Retirement Scheme under which the petitioner sought retirement has to be approved by the Chief Commissioner or, as the case may be, Director General in this behalf. In the present case, the admitted facts are that the petitioner took the voluntary retirement with effect from July 25, 1992. The respondent-company applied for approval of the scheme in November 1993, and the same was approved by the Chief Commissioner vide letter dated November 18, 1993, which will be clearly indicated from the letter dated June 21, 1996, as referred to above.

Learned counsel for the petitioner has vehemently argued that the petitioner shall be entitled to tax exemption on the basis of the provisions as contained in rule 2BA of the Income Tax Rules, 1962, which for mutates the guidelines for the purpose of application of section 10(10Q) of the Act. The following guideline is strongly relied upon (see [1993] 199 ITR 3, 3) : 1

"4. The Board have received a number of queries with reference to these guidelines. These are clarified as under :

Question No. 1 : As rule 2BA regarding guidelines for the purposes of section 10(10Q) has come into force with effect from August 18, 1992, whether the payments made under the schemes of voluntary retirement between 1st April, 1992, and 18th August, 1992, will get the benefit of Income Tax exemption ?

Answer : The provisions of section 10(10Q) of the Income Tax Act have been amended through the Finance Act, 1992, with effect from April 1, 1993. Accordingly, the amended provisions will apply in relation to the assessment year 1993-94 and subsequent years. Though the rule containing the guidelines for the purposes of section 10(10Q) came into force with effect from August 18, 1992, the payments received between April 1, 1992, and August 18, 1992, by the retiring employees of a company under the voluntary retirement scheme will also be entitled for Income Tax exemption u/s 10(10Q) of the Income Tax Act, provided the voluntary retirement scheme is in accordance with the guidelines

contained in the said rule and satisfies the conditions Jaid down in the section."

It will not be necessary to deal with the above contention of the petitioner as the petition can be disposed of, on the short ground that the respondent-company did not apply for approval of the Voluntary Retirement Scheme prior to the date of retirement of the petitioner which was a mandatory requirement under the first proviso to section 10(10C) of the Act. Therefore, the guidelines as referred to will be of no consequence.

In view of the above, the present petition cannot succeed and is, accordingly, dismissed. There will be no order as to costs.