(1999) 04 DEL CK 0066

In the Delhi High Court

Case No : Letters Patent Appeal No. 71 of 1997

Jodhraj Singh APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 21-04-1999

Acts Referred:

Income Tax Act, 1961 — Section 10(10C)
Institutes of Technology Act, 1961 — Section 10(10C), 3
University Grants Commission Act, 1956 — Section 3

Citation : (2000) 113 TAXMAN 199

Hon'ble Judges : Manmohan Sarin, J;Arun Kumar, J

Bench : Division Bench

Advocate : Barun Sinha, for the Appellant; R.D. Jolly, Ms. Prem Lata Bansal, Ms. Deepa Rathore Das and Ms. Padmini Kumar, for the Respondent

Judgement

Sarin, J.—The appellant has preferred this letters patent appeal against the judgment and order dated 15-10-1996 - JODHRAJ SINGH Vs. UNION OF INDIA AND OTHERS, , by which the learned Single Judge dismissed Civil Writ Petition No. 820 of 1995, filed by the appellant, seeking a mandamus to the respondents for release of Rs. 84,000 deducted as income tax from the amount paid to the appellant under the Voluntary Retirement Scheme. The facts relevant for the purpose of this appeal may be briefly noted :

(i) The appellant was employed with the Tata Iron and Steel Co. (TISCO) at Jamshedpur. He took voluntary retirement on 25-7-1992 under a Voluntary Retirement Scheme. The appellant''s request for voluntary retirement was accepted by TISCO on 23-7-1992, to be effective from the afternoon of 25-7-1992. The appellant received Rs. 3,14,336.70 as retiral benefits under the scheme, but after deduction of 84,000 as income tax.

(ii) The appellant claimed that the amounts payable to him under the Voluntary Retirement Scheme were exempt from income tax and, hence, the amount of Rs. 84,000 was not liable to be deducted. He relied on section 10 (10C) of the income tax Act, 1961, which was added by the Finance Act, 1992, whereby income tax exemption was given up to Rs. 5,00,000 for amounts payable under the approved Voluntary Retirement Scheme.

(iii) The appellant had sought refund of Rs. 84,000 from the respondents. The respondents declined the request of the appellant and contended that income tax was liable to be deducted as the appellant was not entitled to exemption from income tax under the Voluntary Retirement Scheme under which the appellant retired.

2. The learned Single Judge dismissed the writ petition filed by the appellant, holding that the essential requirement u/s 10 (10C) of the scheme being an approved one, was not satisfied and, hence, the benefit of exemption from payment of income tax could not be availed of.

3. It would be worthwhile at this stage to reproduce section 10 (10C) :

(10C) 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 the 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, the 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 thereunder shall be allowed to him in relation to any other assessment year;

4. It would be seen that in terms of the above section, the amount received by an employee on voluntary retirement from a public sector company, up to a sum of Rs. 5 lakhs, would be exempt from income tax, subject to the said amount being paid under an approved Voluntary Retirement Scheme.

5. The learned counsel for the appellant urged before us that section 10(10C)of the Act was made effective from 18-8-1992. Guidelines had been issued in the form of rule 2B(A) stipulating the requirements, which the Voluntary Retirement Scheme must meet for exemption from income tax. It is urged that the benefit was also extended to employees who had taken voluntary retirement between 1-4-1992 to 18-8-1992. The learned counsel, therefore, urged that the appellant could not be made to suffer on account of any delay on the part of the employers in formulating a scheme, to meet the requirements of section 10(10C) and the rules framed thereunder.

6. The learned counsel for the appellant also relies on a Board Circular answering a query with regard to the guidelines, which reads as under:

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

Question 1 : As rule 2BA regarding guidelines for the purposes of section 10(10C) has come into force with effect from the 18th day of August, 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(10C) of the income tax Act have been amended through the Finance Act, 1992, with effect from 1st April, 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(10C) came into force with effect from 18th August, 1992, the payments received between 1st April, 1992, and 18th August, 1992, by the retiring employees of a company under the voluntary retirement scheme will also be entitled for income tax exemption u/s 10(10C) 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 laid down in the section.

7. The above clarification would also not advance the appellant''s case as it itself recognise that the Voluntary Retirement Scheme must satisfy the conditions laid down u/s 10(10C) of the Act, viz., the scheme being an approved one.

8. We find from the record that the appellant''s request for voluntary retirement had been accepted on 23-7-1992, and he was relieved with effect from 25-7-1992. It is also the admitted position that in the instant case the employers of the appellant sought approval of the Voluntary Retirement Scheme only on 3-11-1993. The said scheme was approved on 18-11-1993. A copy of the

approval of the scheme has been produced before us. It is seen from the approval order that the scheme was approved operative from 16-11-1993, till 31-3-1994. Thus, it is clear that the appellant''s retirement and payment received by him were not under an approved scheme, which is a sine qua non for availing of the exemption u/s 10(10C). The appeal has no merit and is dismissed.

