(1999) 09 PAT CK 0095

In the Patna High Court

Case No : C.W.J.C. No''s. 1411, 1414 and 1461 of 1998

Management of I.T.C. Ltd. APPELLANT

Vs

Presiding Officer, Labour Court and Another RESPONDENT

Date of Decision : 29-09-1999

Acts Referred:
Industrial Disputes Act, 1947 — Section 33C(3)

Citation : (2000) 163 CTR 128 : (2000) 244 ITR 731 : (1999) 3 PLJR 817 : (2000) 113 TAXMAN 213

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Jai Krishna, for the Appellant; Ashok Kumar Sinha, in C.W.J.C. No. 1461 of 1998 and Alok Kumar Sinha in C.W.J.C. Nos. 1411 and 1414 of 1998, for the Respondent

Judgement

Aftab Alam, J.—The petitioner is a company incorporated under the Indian Companies Act.

2. On December 6, 1992, the company introduced a scheme of voluntary retirement. A copy of the scheme is at annexure-2. In terms of the Scheme, those permanent workmen of the company who had completed five years of service on December 4, 1992, were eligible to seek voluntary retirement under certain terms and conditions. On the request of voluntary retirement being accepted, the concerned workman was to be paid certain amount as compensation ; the compensation was to be calculated in accordance with any of the three alternative modes, at the option of the concerned workman, as provided under Clause 3 of the Scheme.

3. It is significant to note that in each of the modes for calculation of compensation it was clearly and expressly stated that the Income Tax payable, if any, will be deducted at source as required under the Income Tax Act/Rules currently in force.

4. Four workmen, out of whom three are respondent No. 2 in each of these three writ petitions, opted for voluntary retirement in terms of the Scheme. Their request was accepted and they were paid compensation as provided under the scheme. As further provided under the scheme, from the amount of compensation payable to them, certain amounts were deducted by the petitioner-company at source as Income Tax payable under the Income Tax Act/Rules currently in force.

5. The four concerned workmen then filed petitions u/s 33C(3) of the Industrial Disputes Act which were registered before the Labour Court, Bhagalpur as Miscellaneous Cases Nos. 9 and 28 of 1995 and 1 and 3 of 1996. The Labour Court, by a common order dated December 31, 1997, allowed all the four petitions. It held that the action of the management in making any deductions from the amounts of compensation payable to the four workmen was bad and unsustainable and accordingly directed the management to repay to each of the concerned workmen the amount deducted from their respective compensations.

6. These three writ petitions have been filed by the petitioner-company challenging the order passed by the Labour Court.

7. On hearing Mr. Jai Krishna, learned counsel appearing on behalf of the petitioner-company, Mr. Ashok Kumar Sinha, counsel appearing for respondent No. 2 in C. W. J. C. No. 1461 of 1998, and Mr. Alok Kumar Sinha, counsel appearing for the other two workmen who are respondent No. 2 in the other two writ petitions, I find that the order passed by the Labour Court is wholly unsustainable. In the first place, the maintainability of the petitions u/s 33C(2) in connection with such claim is not free from doubt. Apart from the question of maintainability, even on the merits, I fail to see how the action of the management can be faulted in making deductions at source for payment of Income Tax as it was expressly and unequivocally provided in the Scheme.

8. Mr. Ashok Kumar Sinha and Mr. Alok Kumar Sinha made spirited arguments that the compensation payable to a workman under the scheme of voluntary retirement, was not exigible to Income Tax and the compensation amount was not covered by the definition of income within the meaning of the Income Tax Act. Mr. Alok Kumar Sinha submitted that the compensation paid to the workman was in lieu of his future salary and on being spread out on accrual basis the compensation amount will not be exigible in Income Tax. In support of his submission, he relied upon some decisions of the Supreme Court.

9. Even assuming the submissions made on behalf of the concerned workmen to be correct, they may have a claim for refund against the Income tax Department. But on those pleas they cannot have any claim against the petitioner. The petitioner made the deductions in terms of the express provisions in the scheme and it is also not in dispute that whatever amounts were deducted from the compensation payable to the concerned workman were duly deposited in the Income Tax Department on their behalf.

10. It is, therefore, found and held that the petitioner is not liable to make any further payment/repayment to the concerned workman (respondent No. 2 in each of these cases). The impugned order passed by the Labour Court, Bhagalpur, is accordingly set aside. This order, however, does not mean that the concerned workmen are without remedy. They can make a claim for refund before the Income Tax Department.

11. In the facts and circumstances of this case, it is considered desirable that this court should make certain directions in order to facilitate an early disposal of the claim of these workmen.

12. With this end in view, Mr. Rastogi, learned standing counsel for the Income Tax Department, was requested to appear before the court and in his presence, the following directions are being made.

13. The petitioner-management will supply within two weeks from today, copies of Form No. 16 to each of the workmen showing" the payment of the amount deducted from their compensation to the Income Tax Department. On the basis of Form No. 16, it will be open to each of the concerned workman to make a claim for refund before the Income Tax Officer, Hunger. with a copy of the claim application being sent to the Commissioner of Income Tax, Patna. In their application, the concerned workmen will naturally raise all pleas as may be available to them in support of their claim that the amount deducted from compensation was not exigible to tax and will rely upon such decisions of courts as may support their claim. The Income Tax authorities are expected to have the claim of the concerned workman duly examined and to pass appropriate orders after affording them an opportunity of hearing. If it is found that the amounts paid on their behalf were refundable either in whole or in part, appropriate refund orders will be passed without any delay. It is expected that a final order on the workmen''s claim will be passed within two months from the date of filing" of their applications.

14. Let a copy of this order be given to Mr. Rastogi, for bringing this matter to the notice of the Commissioner of Income Tax.

15. These three writ petitions are thus allowed with the aforesaid observations and directions.

