

(1981) 01 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 18719 of 1980

S. Ranganatha Rao

APPELLANT

Vs

Accountant-general and Others

RESPONDENT

Date of Decision : 21-01-1981

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 37, 37A
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 10 (10A) (i)

Citation : (1981) ILR (Kar) 885 : (1981) 129 ITR 130 : (1981) 1 KarLJ 329 :
(1981) 6 TAXMAN 224

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Judgement

Chandrakantaraj Urs, J.—The petitioner is an Income Tax assessee. He joined the service of the Union Govt. in the year 1953 in postal department. Thereafter, he has serving in the Ministry of Finance, Dept. of Expenditure, New Delhi. In the year 1977 he has deputed by the Ministry of Finance to render services for M/s. Thungabhadra Steel Products Ltd., a joint undertaking of the Govt. of India, the Govt. of Karnataka and the Govt. of Andhra Pradesh at Thungabhadra Dam site. In the year 1978 the petitioner chose to be absorbed in the service of the undertaking of the aforementioned Governments and retired voluntarily from the service of the Govt. of India. The petitioner was eligible to certain retirement benefits as he had completed 25 years of service in the Central Govt. It is sufficient to state that he was entitled to either draw pension at the scale permissible or commute the same and draw a lump sum. The petitioner chose to commute his pension and as a result he was entitled to receive the sum of Rs. 93,567.60 as the commuted amount of pension which the Govt. sanctioned. The Accountant-General of Karnataka, Bangalore, by his communication dated August 25, 1980, PAE/Cent/80-81 bearing No. 8411 instructed the District Treasury Officer, Bellary, that two-thirds of the commuted amount may be subjected to tax and the tax deducted at source. Aggrieved by that direction, the petitioner has

approached this court under art. 226 of the constitution, inter alia, contending that the 1st respondent had no authority to issue such a direction as the amount commuted was not liable to tax having regard to sub-s. (10A) (i) of s. 10 of the I. T. Act, 1961 (hereinafter referred to as "the Act"). Section 10(10A)(i) of the Act is as hereunder.

"10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-..... (10A) (i) any payment in communication of pension received under the Civil Pensions (Commutation) Rules of the Central Government or under any similar scheme applicable to the members of the civil services of the Union or holders of posts connected with defence or of civil posts under the Union (such members or holders being persons not governed by the said Rules) or to the members of the all-India services or to the members of the defence services or to the members of the civil services of State or holders of civil posts under a State or to the employees of a local authority or a corporation established by a Central, State or Provincial Act;

(ii) any payment in commutation of pension received under any scheme of any other employer, to the extent it does not exceed -

(a) in a case where the employee receives any gratuity, the commuted value of one-third of the pension which he is normally entitled to receive, and

(b) in any other case, the commuted value of one-half of such pension,

such commuted value being determined having regard to the age of the recipient, the state of his health, the rate of interest and officially recognised tables of mortality :

Provided that the maximum limit of payment specified in sub-clause (ii) (a) or sub-clause (ii) (b) shall not apply in respect of any such payment made before the 19th day of August, 1965."

2. Whether the commuted pension is exempted from taxation has been the subject-matter of decision by the Bombay Income Tax Appellate Tribunal which appears to have held that the same is entitled to exemption under s. 10(10A)(i) of the Act, which decision has been accepted by the department in so far as it relates to the State of Maharashtra. Similarly, in the case of C.P. Ohrie Vs. Accountant-General and Others, Srinivasa Iyengar J. has taken the view that all pensions commuted are entitled to get the same treatment and get the exemption to which they are entitled under s. 10(10A)(i) of the Act. Similarly, in the case of C.K. Karunakaran Vs. Union of India and others, , a Division Bench of the Delhi High Court has held that rr. 37 and 37A of the central Civil Services (Pension) Rules, 1972, outline a scheme of commutation of pension similar to but different from that provided for in the Civil Pensions (Commutation) Rules. The two clauses of r. 37A (1) should not be separated and considered as standing on different footings. The lump sum received under r. 37A (1) should be considered

as one integral whole and was entirely exempt under s. 10(10A)(i) of the Act. Therefore, the terminal benefit received by a civil servant on his retirement from Govt. service and absorption in a public sector corporation under r. 37A (1) (b) of the central Civil Services (Pension) Rules, 1972, equal to twice the amount of the commuted value of one-third of his pension in addition to the lump sum amount under r. 37 (1A) (a) of the commuted value or one-third of his pension was exempt from tax under s. 10(10A)(i) of the Act.

3. After the decision of the Delhi High Court as above, the CBDT have issued a circular bearing No. 286 dated 17th November, 1980. The circular is issued to all the Commissioners of Income Tax. In para. 3 of the said circular it is stated that the Board has been advised that the decision of the Delhi High Court is to be accepted and thereafter, it is further stated that in that view of the matter instruction No. 819 stands withdrawn with immediate effect. It is, therefore, clear that the petitioner's commuted pension is not liable to tax at all and if he is not liable to tax under the Act, then the Accountant-General has no jurisdiction to order deduction of the tax at source. In this view of the matter, the petitioner is liable to succeed and the impugned communication of the 1st respondent, Accountant-General, Karnataka, Bangalore, which is at Annex."G" to the petition, is liable to be quashed and it is so quashed as one without the authority of law. Therefore, the rule issued is made absolute and a writ, accordingly, will issue. In the circumstances of the case, there will be no order as to costs.