

(2001) 04 CAL CK 0017

In the Calcutta High Court

Case No : Writ Petition No. 12262 of 1999 with CAN 3621 of 2000

SAIL-DSP VR Employees' Association

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-04-2001

Acts Referred:

Income Tax Act, 1961 — Section 10(10C), 17(3)
Income Tax Rules, 1962 — Rule 2, 2BA, 2BA(2)
Institutes of Technology Act, 1961 — Section 3(g)
University Grants Commission Act, 1956 — Section 3

Citation : (2001) 168 CTR 582 : (2001) 250 ITR 30 : (2001) 118 TAXMAN 570

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : A.K. Konar, Q.F. Rahaman and A.K. Hazra, for the Appellant; Tapas Kumar Banerjee, C.L. Singh and Md. Nizamuddin, for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.—In this petition voluntarily retired employees' association of the erstwhile employees of Steel Authority of India Limited and Durgapur Steel Plant have approached for the relief of exemption from paying any Income Tax u/s 10(10C) of the Income Tax Act, 1961. Under the Scheme, according to the writ petitioner, they are fully exempted from paying Income Tax but the concerned employer is systematically deducting taxes at source.

2. The learned lawyer for the writ petitioner contends that the scheme under which the members of writ petitioner No. 1 voluntarily retired do come within the purview of Section 10(10C) of the Income Tax Act, 1961, read with Rule 2BA of the Income Tax Rules, 1962. He contends that though the monetary benefits given in terms of the voluntary retirement scheme are being paid quarterly in a year spreading over each and every month in equal proportion. So it was not open for respondent Nos. 2 and 3 to deduct Income Tax at source for payment to the Income Tax Department. He has taken me through various terms and conditions of voluntary retirement scheme. According to him, all the eligibility criteria to get exemption are fulfilled. Therefore, whatever amounts have already

been deducted should be refunded and the future deduction shall be prohibited.

3. Mr. Tapas Kumar Bandopadhyay, learned lawyer appearing for the Steel Authority of India, contends that if the scheme for voluntary retirement is read properly then it would appear that it is not a scheme within Rule 2BA of the Income Tax Rules, 1962. He draws my attention to Clause 4(1) and submits that the scheme of payment and the mode thereof is nothing short of payment of salary month by month and every month. It is actually payment of deferred monthly salary. Moreover, in terms of Clause 7 the employer concerned is subjected to payment of usual taxes. This has to be read along with another circular dated May 25, 1998. It is the obligation of the employer to deduct Income Tax at source so it has deducted.

4. The learned lawyer for respondent No. 5 contends that the Steel Authority is justified in deducting tax at source and he contends that payment of benefit under the voluntary retirement scheme is nothing but payment of monthly salary, if not then it should be treated to be profit from income. In support of his submission, he relies on a decision of the Madras High Court in P. Arunachalam Vs. Commissioner of Income Tax, .

5. He contends that in the aforesaid judgment it has been held amongst other that payment received in terms of the voluntary separation scheme has been treated to be under the head "Salary" of Income Tax. So this judgment has laid down the principle. Therefore, there is no scope for escapement.

6. Having heard the learned lawyers for the parties it appears to me that two points have fallen for consideration of this court, viz., (1) whether having regard to the terms and conditions of the voluntary retirement scheme the writ petitioners are entitled to exemption u/s 10(10C) and Rule 2BA, and (2) whether the terms and conditions in the scheme fulfilled the eligibility criteria as mentioned in Rule 2BA.

7. The citation of the learned lawyer for the Revenue being the case referred to above needs to be dealt with at the first instance since by the aforesaid judgment it has been held that the compensation received at or in connection with the termination of employment by its employer, is liable to be treated as profit in lieu of salary. So, it is assessable under the head "Salary" u/s 17(3)(i) of the Income Tax Act, 1961.

8. A bare perusal of the aforesaid judgment makes it clear that the said judgment is not applicable in this case as it was a case of an employee who had voluntarily retired from a limited company at a time when this exemption u/s 10(10C) of the Act was not available as it has been inserted by the Finance Act, 1987, with effect from April 1, 1987. In the case cited the employee concerned separated himself from employment on December 1, 1981. So, the exemption granted u/s 10(10C) read with Rule 2BA was not applicable in that case. In this case the points are absolutely different. Therefore, the judgment is wholly inappropriate and misleading so to say.

9. Before I examine whether this voluntary retirement scheme is in consonance with Section 10(10C) of the Income Tax Act, 1961, read with Rule 2BA of the Income Tax Rules, 1962, it is appropriate to examine the scope and purview of the aforesaid section. So I quote the aforesaid section.

"(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, 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." It will appear from a careful reading of the aforesaid section that it contemplates a one-time payment of the amount not exceeding Rs. 5 lakhs and the aforesaid benefit will only be available when such right vis-a-vis liability will accrue upon such payment and this exemption can be granted once and this will be clear from the second proviso which provides--"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."

10. It is abundantly clear that there is no scheme or idea of deferred payment. Until and unless payment is made the question of accrual of liability to pay tax does not arise. Therefore, in my view, in order to avail of the aforesaid scheme there must be a one-time payment and must conform to other conditions which have been laid down in the rule. Therefore, it is appropriate to set out Rule 2BA which has been framed in terms of the aforesaid Section 10(10C).

"Rule 2BA. The 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 shall be exempt under Clause (10C) of Section 10 only if the scheme of voluntary retirement framed by the aforesaid company or authority or co-operative society or University or institute, as the case may be, is in accordance with the following requirements, namely :--

(i) it applies to an employee who has completed 10 years of service or completed 40 years of age ;

(ii) it applies to all employees (by whatever name called) including workers and executives of a company or of an authority or of a co-operative society, as the case may be, excepting Directors of a company or of a co-operative society ;

(iii) the scheme of voluntary retirement has been drawn to result in overall reduction in the existing strength of the employees ;

(iv) the vacancy caused by voluntary retirement is not to be filled up ;

(v) the retiring employee of a company shall not be employed in another company or concern belonging to the same management ;

(vi) the amount receivable on account of voluntary retirement of the employee does not exceed the amount equivalent to three months salary for each completed year of service or salary at the time of retirement multiplied by the

balance months of service left before the date of his retirement on superannuation.

Explanation.--In this rule, the expression "salary" shall have the same meaning as is assigned to it in Clause (h) of Rule 2 of Part A of the Fourth Schedule."

11. I have gone through the scheme concerned. In my opinion, the scheme does not conform to the conditions laid down in the aforesaid section as well as the rule. Firstly, as I have said the section does not contemplate monthly payment and further it is not clear to me whether the benefit which is being or might be received by way of monthly payment does exceed the amount calculated at the rate of three months' salary for each completed years of service. In the petition it has not been stated specifically that the benefit being received by the employees does not exceed the amount as mentioned in the aforesaid rule. Moreover, in terms of the scheme both the employees and the employer have agreed to pay the necessary Income Tax. The scheme is nothing short of an agreement and if the parties accept any of the terms which are not unlawful then the same squarely binds both the contracting parties. Terms of payment of Income Tax which is otherwise payable, is not contrary to law. Under the Income Tax Act there is no prohibition, against payment of any tax which is otherwise payable, in the matter of benefit derived from the voluntary retirement scheme. The privilege and/or right which has been given u/s 10(10C) of the aforesaid Act cannot be termed to be an embargo or prohibition so as to render the contractual terms to be invalid and illegal and for which, such term is liable to be struck down. Besides, I do not find any challenge having been thrown by the petitioner against the aforesaid terms for payment of Income Tax. The payment has been received by each of the employees by way of monthly payment and in lieu of salary. The Department and the concerned company are perfectly justified in deducting and/or realising the taxes after giving due standard deduction.

12. Therefore, I hold that there is no merit in this writ petition and the same is dismissed. There will be no order as to costs.

13. Urgent xerox certified copy of this judgment, if applied for, be supplied expeditiously.