(2010) 03 IPAB CK 0018

In the Intellectual Property Appellate Board

Case No : M.P. No. 3/Mds/2007 In I.T.A. No. 2384/Mds/2007

V.R. Chittanandam APPELLANT

Vs

Asstt. Cit RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:
Income Tax Act, 1961 — Section 10(10C), 254(2)

Citation : (2010) 5 ITR(Trib) 258

Hon'ble Judges : Abraham P. George, A.M.;Vijay Pal Rao, J.M.

Bench : Division Bench

Final Decision : Allowed

Judgement

Vijay Pal Rao, J.M.

1. This miscellaneous petition filed by 1 the Assessee is directed against the order dated 13-6-2008 of this Tribunal in the revenues appeal in I. T. A.

No. 2384/Mds/2007 for the assessment year 2004-05, whereby the appeal of the revenue was allowed by following the decision of the Hon'ble

jurisdictional High Court.

2. We have heard the learned authorised representative as well as the learned departmental representative and considered the relevant records. The

learned authorised representative has submitted that the issue has been settled in view of the decision of the Supreme Court in the case of Chandra

Ranganathan v. CIT f(2010) 326 ITR 49 in Civil Appeal Nop. 6997-7002 of 2009 dated 21-10-2009 (reported as (2010) 326 ITR 49) and the Hon'ble

Bombay Court in the case CIT v. Koodathil Kallyatan Ambujakshan (2009) 309 ITR 113 (Bom) (2008) 219 CTR 80. The revenue has accepted the

said decision of the Hon'ble Bombay High court as the Central Board of Direct

Taxes vide its instruction dated 8-5-2009 instructed the department for

accepting the claim of the employees of the Reserve Bank of India under Section 10(10C). He has further submitted that the issue has even been

decided by the Hon'ble Supreme Court in favour of the Assessee.

3. He has further contended that in view of the decision of Hon'ble apex court in the case of Asstt. CIT v. Saurashtra Kutch Stock Exchange Ltd.

(2008) 305 ITR 227 the non consideration of the decision of the Hon'ble apex court or the Hon'ble jurisdictional High court constitutes a mistake and

the Tribunal can exercise the power of rectification under Section 254(2) of the Income Tax Act.

4. After considering the rival contentions and perusing the relevant record we find that it is settled law that the subsequent decision of hon'ble apex

court or the Hon'ble Jurisdictional High Court is binding on this Tribunal and therefore constitutes an apparent error in the order which is contrary to

the principle laid down in the subsequent decision. Accordingly the subsequent law laid down by the Hon'ble apex court or the Hon'ble jurisdictional

High court has to be considered for rectifying the mistake under Section 254(2) of the Income tax Act.

5. As pointed out by learned Counsel for the Assessee we note that the issue is now settled by the decision of the Hon'ble Supreme Court in the case

of Chandra Ranganathan v. CIT (2010) 326 ITR 49 (SC) wherein the Hon'ble Supreme Court has decided this issue as under (page 50) During the

course of hearing of these appeals it was brought to our notice that by the subsequent letter dated 8-5-2009 issued by the Central Board of Direct

Taxes it was indicted that the matter had been reviewed on the basis of the judgment of the Bombay High Court dated 4-7-2008, in the case of CIT v.

Koodathil Kallyatan Ambujakshan (2009) 309 ITR 113 (Bom) ; (2008) 219 CTR 80 and it was held that amounts received by retiring employees of the

Reserve Bank of India would be eligible for exemption under the aforesaid provisions of the Income tax Act. On behalf of the Union of India and the

Commissioner of Income tax the Respondent herein it was submitted that in view of the said circular the Respondent would allow the benefit of

deduction to the Appellants under Section 10(10C) of the Income Tax Act 1961, as far as the retired employees of the Reserve Bank of India are

concerned.

Having regard to the above the appeals succeed and are allowed The impugned order passed by the High court is set aside and that of the Tribunal is

restored. There will be no order as to cost.

Since the Assessee is an ex-employee of the Reserve Bank of India and therefore in view of the decision of the Hon'ble Supreme Court we hold that

the Assessee is entitled to the benefit of deduction under Section 10(10C) of the Income tax Act. According we modify the impugned order of this

Tribunal and the appeal of the Revenue stands dismissed.

6. In the result the miscellaneous petition filed by the Assessee is allowed.

7. The order was pronounced in the court on 5-3-2010.

