

**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

DATED THIS THE 10TH DAY OF DECEMBER, 2014

PRESENT

THE HON'BLE MR.JUSTICE MOHAN .M. SHANTANAGOUDAR

AND

THE HON'BLE MR.JUSTICE K.N.PHANEENDRA

I.T.A. NO.100115/2014

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX,
DR. B.R.AMBEDKAR ROAD,
BELGAUM.
2. THE ASSISTANT COMMISSIONER,
OF INCOME TAX, CIRCLE-I,
BELGAUM.

... APPELLANTS

(BY SRI. Y V RAVIRAJ, ADV.)

AND

SHRI. APPASAHEB BABURAO KAMBLE,
PLOT NO. 3681, JEEVAN JYOTI,
BASAVESHWAR NAGAR EXTENSION,
RAMTIRTH NAGAR, BELGAUM.
PAN: ACQPK0674G.

... RESPONDENT

THIS ITA IS FILED U/S.EC.260A OF THE INCOME-TAX ACT, 1961 AGAINST ORDER PASSED IN ITA.NO.263/PNJ/2013 DATED 06.06.2014 FOR THE ASSESSMENT YEAR 2008-09, ON THE FILE OF THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI, THE APPEAL FILED BY THE ASSESSEE ARE ALLOWED.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, **MOHAN .M. SHANTANAGOUDAR .J.**, DELIVERED THE FOLLOWING:

JUDGMENT

The respondent/assessee is a retired employee of State Bank of India, Belgaum; he filed his return of income on 04.06.2008 for the assessment year 2008-2009 by declaring the total income of Rs.6,94,390/-; during the said year, the assessee had exercised option of voluntary retirement under the 'Exit Option' scheme and claimed ex-gratia/compensation amount as determined under Section 10 (10C) of the Income Tax Act. Though the original Authority disallowed the claim of the assessee on the ground that the scheme of State Bank of India did not satisfy the conditions laid down under Rule 2BA of the Income Tax Rules, 1962, the first Appellate Authority has allowed the claim of the assessee by allowing the appeal filed by the assessee. The said order of the first Appellate Authority is confirmed by Income Tax Appellate Tribunal.

2. The order of the first Appellate Authority as confirmed by the Income Tax Appellate Tribunal are questioned in this appeal.

3. The Department has raised the following two questions of law:

- i) Whether the Tribunal is justified in not considering the fact that the Commissioner of Income Tax (Appeals) has erred in ignoring e-circular on "EXIT OPTION" Scheme issued by the State Bank of India, Corporate Centre, Mumbai wherein, as per Para-10, it is clearly mentioned that no exemption of Ex-gratia from income tax under section 10(10C) of the Income Tax Act, 1961, is intended in that Scheme?
- ii) Whether the Tribunal is justified in upholding the findings of the Commissioner of Income Tax (Appeals) that the conditions mentioned in Rule 2BA of the Income Tax Rules 1962 have been met ignoring the e-circular of the State Bank of India, as well as the Board's

Instruction No.200/34/2009-IT.I dated 06.10.2009 wherein, it is clearly mentioned that the scheme framed by the State Bank of Patiala and State Bank of India does not lay out eligibility for deduction under section 10(10C)?

4. So far as the first question of law is concerned, the Income Tax Appellate Tribunal on facts has concluded that the respondent/assessee has served for a period of more than 10 years and at the time of retirement he was more than 40 years. Second 'Exit Option' Scheme of the State Bank of India was introduced to reduce the staff. It was just impossible to continue new environment of computerization applied to the workers and officers. The scheme has resulted in overall reduction of the employees. The assessee has furnished the declaration that he has not accepted any commercial employment in any company or concern belonging to the same management. Thus on facts, the first Appellate Authority has concluded that all the conditions laid down in Rule 2BA of the Income Tax

Rules are fulfilled. Hence, virtually the first question of law as raised by the Department is answered by the first Appellate Authority. Such order of the first Appellate Authority is confirmed by the Income Tax Appellate Tribunal. In addition to the same, any provision giving benefit to the assessee generally will be interpreted in favour of the assessee generally.

5. In respect of the second question of law, as raised by the Department, is no more res-integra in view of the judgment of the Bombay High Court in the case of **COMMISSIONER OF INCOME TAX VS. KOODATHIL KALLYATAN AMBUJAKSHAN (2009) 309 ITR 113**. In the said judgment, the Bombay High Court has ruled that CBDT clarification based on RBI's letter stating that the receipts under Voluntary Retirement Scheme did not qualify for exemption under Section 10 (10C) of Income Tax Act is not binding on the Courts. The said judgment is holding the field for more than five years and the same is

being followed by other courts. In view of the same, the second question of law does not arise for consideration. In view of the same, no interference is called for. Appeal fails and the same stands dismissed.

**SD/-
JUDGE**

**SD/-
JUDGE**

Ct-byg/jm/-