

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER

I.T.A. No.432/Coch/2018
Assessment Year : 2008-09

Shri Krishnan Achary, Gokulam, Mangaram, Konni, Pathanamthitta-689691. [PAN:ABIPA 9994J]	Vs.	The Income Tax Officer, Ward-3, Thiruvalla.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri Renoy Vincent, Adv.
Revenue by	Shri Mritunjaya Sharma, Sr. DR

Date of hearing	20/02/2020
Date of pronouncement	26 th /02/2020

ORDER

Per GEORGE GEORGE K.,JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the CIT(A), Kottayam dated 18/04/2018. The relevant assessment year is 2008-09.

2. There is delay of 88 days in filing the appeal before the Tribunal. The assessee has filed petition for condonation of delay alongwith affidavit stating the reasons for the delay in filing of the appeal. In the affidavit, it is stated that the assessee was suffering from spondylitis. Due to court vacations and owing to the extremely busy schedule of the advocate engaged by the assessee, he

was able to fix an appointment with him only during the 2nd week of June. However, the said advocate was hesitant in accepting the brief as he was already preoccupied with certain other matter. Being not well versed with the tax laws, the assessee engaged another advocate who prepared the appeal papers by the end of July. Due to natural calamities in August, there was communication gap between the assessee and the advocate. Finally, the appeal was filed on 19/09/2018. The assessee submitted that due to aforesaid reasons, there was delay of 88 days in filing the appeal. The assessee submitted that there are no wilful latches or negligence in not filing the appeal within the statutory time limit and the delay was occurred due to genuine, compelling, bonafide and legitimate reasons. Thus, it was prayed that the delay in filing the appeal may be condoned otherwise the assessee would be put to irreparable loss and injury,

2.1 The Ld. DR present was duly heard.

2.2 I have gone through the condonation petition and the reasons stated in the affidavit for belatedly filing of the appeal. The delay in filing of the appeal cannot be attributable to any latches on the part of the assessee, hence, I condone the delay of 88 days and proceed to dispose off the appeal on merits.

3. The solitary issue that is raised is whether the CIT(A) is justified in confirming the action of the Assessing Officer in disallowing the claim of deduction u/s. 10(10C) of the I.T. Act.

4. The brief facts of the case are as follows:

The assessee is an individual. For the assessment year 2008-09, the return of income was filed on 29/07/2008 declaring total income of Rs.3,03,310/-. During the previous year relevant to the assessment year 2008-09, the assessee was an employee of the State Bank of India. The assessee had opted for "Exit Option Scheme" and had retired from service with effect from 30/06/2007. In the return of income filed for the assessment year 2008-09, the assessee had claimed an amount of Rs. five lakhs was not liable to tax u/s. 10(10C) of the I.T. Act. According to the Assessing Officer, as per CBDT Circular No. F.No.200/34/2009-ITA-1 dated 06/10/2009, employees availing exit option scheme are not eligible for exemption u/s. 10(10C) of the I.T. Act. Therefore, the Assessing Officer was of the view that income to the tune of Rs. five lakhs have escaped assessment and issued notice u/s. 148 of the I.T. Act. In response to the notice, the assessee filed a reply requesting to treat earlier return of income as return filed in response to notice u/s. 148 of the I.T. Act. The objection raised by the assessee was rejected by the AO. The AO held that to avail benefit of exemption u/s. 10(10C) of the I.T. Act, the assessee has to satisfy six conditions mentioned under Rule 2BA of Income Tax Rules, 1962.

According to the Assessing Officer, the assessee in this case has satisfied only the first two conditions of Rule 2BA of I.T. Rules, 1962. The AO concluded that last four conditions mentioned in Rule 2BA of I.T. Rules, 1962, has not been satisfied in this case, hence, claim of benefit of exemption u/s. 10(10C) of the I.T. Act was denied. The relevant finding of the Assessing Officer in rejecting the claim of the assessee u/s. 10(10C) of the I.T. Act reads as follows:

"5. Apart from the first two conditions prescribed in the Income Tax Rule 2BA the balance four conditions can only be certified by the employer. In the present case assessee in his letter dated 12.10.2010 and the subsequent argument put-forth during the proceedings argued that the Exit Option Scheme of State Bank of India is formulated in accordance with the guidelines under Rule 2BA of the I.T. Rules, 1962. The assessee failed to produce a certificate from the employer stating that the scheme is eligible for exemption u/s 10(10C) and in accordance with the conditions formulated under Rule 2BA of the I.T. Rules 1962. In this connection it is worthwhile to note that voluntary retirement scheme is designed in broader sense considering the various aspects mentioned in Rule 2BA and it cannot be equated to any other retirement scheme even though the employee is opting the retirement voluntarily. In addition to the above, in the certificate issued by State Bank of India attached with the return of income in respect of the Exit Option Scheme it is clearly mentioned that the amount of ex-gratia will be added to the income of the employee for the year and income-tax recovered at the applicable rate at source. SBI has also deducted the tax at source including this ex-gratia granted to the employee at the time of retirement. In the certificate also the retirement scheme is mentioned as Exit Option Scheme and there is no reference at the point regarding the eligibility of the conditions prescribed in Rule 2BA of the I.T. Rules 1962 which stipulates the eligibility criteria for exemption u/s 10(10C)."

"7. During the course of assessment proceedings the assessee failed to furnish any details or the working in respect of relief u/s. 89(1) in the prescribed form. In the absence of any claim by the assessee for relief u/s. 89(1), the assessee is completed with an addition of Rs. 5,00,000/- to the returned income being ineligible exemption claimed u/s. 10(10C) as explained above."

5. Aggrieved by the order of the Assessing Officer in denying deduction u/s. 10(10C) of the I.T. Act, the assessee preferred appeal before the first appellate authority. Before the CIT(A), the assessee raised the issue of re-opening of the assessment and also on merits with regard to allowability of exemption u/s. 10(10C) of the I.T. Act. Both the issues raised by the assessee before the CIT(A) were rejected and the appeal of the assessee was dismissed. As regards the claim of deduction u/s. 10(10C) of the Act, the relevant finding of the CIT(A) reads as follows:

“4.3.3. The learned A.R. in the appeal proceedings relied only on certain judicial decisions wherein deduction under section 10(10C) of the Act was granted in the appellate proceedings. However, on perusal of the said decisions, it is observed that relief was granted in those cases based on the facts of those cases. The question of allowability of deduction under section 10(10C) of the Act is a question of fact. It is for the Appellant to bring on record all the relevant evidence to prove that he is covered by the provisions of section 10(10C) of the Act.

4.3.4. The Assessing Officer has given detailed reasons for not allowing deduction and also relied on the circular issued by the CBDT. The Appellant only claimed that the circular is not applicable to him as he has taken voluntary retirement in the FY 2007-08 whereas the circular is issued in the year 2009. However, the circular issued is applicable to all the assesseees who have availed exit option scheme and date of retirement is not relevant. Further, the Appellant has not produced any contrary evidence in the appellate proceedings to prove that the deduction under section 10(10C) of the Act is allowable to the Appellant. In view of these facts, it is held that there is no merit in the grounds raised on this issue and the same are dismissed.”

6. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. Apart from relying on the grounds, the Ld. AR also relied on the following judicial pronouncements during the course of hearing:

- (i) Chandra Ranganathan & Others v. CIT (326 ITR 49) (SC)
- (ii) CIT vs. Koodathil Kallyatan Ambujakshan (2009) (309 ITR 113) (Bom.)
- (iii) CIT & Another vs. Appasaheb Baburao Lambe (2015) (370 ITR 499) (Kar.)

6.1 The Ld. DR on the other hand strongly supported the orders of the Income Tax authorities.

7. I have heard the rival submissions and perused the record. The solitary issue for my consideration is whether CIT(A) is justified in confirming the action of the AO in denying the benefit of claim of deduction u/s. 10(10C) of the I.T. Act. The relevant section, namely, section 10(10C) of the I.T. Act reads as follows:

“10. Incomes not included in total income – 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-.....

(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 under section 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 Institute of Technology Act, 1961 (59 of 1961); or

(viia) any State Government; or

(viib) the Central Government; or

(viic) an institution, having importance throughout India or in any State or States, as the Central Government may, by notification in the Official Gazette, specify in this behalf; 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 or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub-clause (i), a scheme of voluntary separation, to the extent such amount does not exceed five lakhs 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:

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."

7.1 From the provisions of section 10(10C) it is evident that the schemes of voluntary retirement of companies or authorities governing the payment of sums have to be framed in accordance with such guidelines as may be prescribed.

Rule 2BA of the I.T. Rules, 1962 lays down the guidelines for the purpose of section 10(10C). The relevant statutory rule pertaining to the scheme, namely Rule 2BA of the Income Tax Rules, 1962 reads as follows:

“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

(vi) a University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under section 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 Institute 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 or voluntary separation 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, or if the scheme of voluntary separation framed by a public sector company 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 or voluntary separation has been drawn to result in overall reduction in the existing strength of the employees;

(iv) the vacancy caused by voluntary retirement or voluntary separation is not 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 or voluntary separation 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 service left before the date of his retirement on superannuation.

Provided that requirement of (i) above would not be applicable in case of amount received by an employee of a public sector company under the scheme of voluntary separation framed by such public sector company to the extent such amount does not exceed five lakhs rupees.

7.2 As per the above provisions, any amount received by an employee on his voluntary retirement or termination of his service in accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub-clause (i) of the scheme, voluntary separation, to the extent such an amount does not exceed five lakhs rupees, would not be liable to tax by virtue of section 10(10C) of the I.T. Act. The proviso to section 10(10C) of the Act requires the scheme governing the payment of such amount to be framed in accordance with such guidelines including, inter alia, criteria of economic

viability, as may be prescribed. The statutory rules provide that voluntary retirement or voluntary separation benefit shall be extended under section 10(10C) of the Act only if the scheme of voluntary retirement or voluntary separation is framed in accordance with the requirements stated therein. In order to entitle a person the benefit u/s. 10(10C) of the I.T. Act, the provisions of section 10(10C) of the I.T. Act and Rule 2BA of the I.T. Rules should be complied with cumulatively and compliance with some of them would not entitle the employee the benefit as claimed for u/s. 10(10C) of the I.T. Act.

7.3 The CBDT Circular No. 640 (1993) 199 ITR (St.) 2 has also clarified that if all the conditions of section 10(10C) of the Act and Rule 2BA of I.T. Rules are satisfied, then only the assessee would be entitled to the benefit and in those cases, the employer need not deduct tax at source. The Bangalore Bench of the Tribunal in the case of State Bank of Mysore vs. CIT reported in 139 ITD 526 had held that compliance of Rule 2BA is mandatory for availing the benefit of exemption u/s. 10(10C) of the I.T. Act. The above order of the Tribunal was confirmed by the Hon'ble High Court of Karnataka (reported in 356 ITR 468). In the instant case, the assessee has failed to produce certificate from the employer (SBI) stating that the 'exit option scheme' is eligible for benefit of exemption u/s. 10(10C) of the I.T. Act and is in accordance with the guidelines formulated in Rule 2BA of the I.T. Rules. On the contrary, the certificate issued by the State Bank of India (employer of the assessee) along with the return of income in

respect of the above scheme has clearly mentioned that the amount of ex gratia would be added to the total income of the employee for the year and income tax would be recovered at the applicable rate at source. The employer-Bank (SBI) has also deducted tax at source including the ex gratia granted to the employee at the time of retirement. In the certificate also, the retirement scheme is mentioned as 'exit option scheme' and there is no reference regarding fulfilment of conditions prescribed under Rule 2BA of the I.T. Rules, 1962 which stipulates the criteria for exemption u/s. 10(10C) of the I.T. Act.

7.4 As regards the Hon'ble Supreme Court judgment in the case of Chandra Ranganathan and Others vs. CIT (326 ITR 49) relied on by the Ld. AR, I am of the view that the said judgment is not applicable to the facts of the present case. The Hon'ble Supreme Court was considering a case with regard to eligibility of benefit of exemption u/s. 10(10C) of the I.T. Act. The assessee in the case considered by the Hon'ble Supreme Court had received ex- gratia payment on retirement under the voluntary retirement scheme floated by the Reserve Bank of India (RBI). The Hon'ble Supreme Court after referring to the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Koodathil Kallyatan Ambujakshan (309 ITR 113) had held that the said voluntary retirement scheme floated by the RBI was later recognised under Rule 2BA of the I.T. Rules. The Hon'ble Supreme Court after taking note of the concession by the Revenue that retired employees of the RBI would be entitled to the benefit of exemption

section 10(10C) of the I.T. Act, decided the issue in favour of the assessee. The relevant finding of the Hon'ble Supreme Court in the case of Chandra Ranganathan & Others vs. CIT (supra) reads as follows:

“3. During the course of hearing of these appeals, it was brought to the notice that by the subsequent letter dated May, 8 2009, issued by the Central Board of Direct Taxes, as it was indicated that matter had been reviewed on the basis of the judgment of the Bombay High Court dated July 4, 2008, in the case of CIT v. Koodathil Kallyatan Ambujakhsan (2009) 309 ITR 113 (Bom); (2008) 219 CTR (Bom) 80; (2008) 12 DTR 138 and it was held that amounts received by retiring employees of the RBI 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 appellant under section 10(10C) of the Income Tax Act, 1961, as far as the retired employees of he 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 costs.”

7.5 As regards the judgment of the Bombay High Court in the case of CIT vs. Koodathil Kallyatan Ambujakshan (309 ITR 113) (Bom.) is concerned, the voluntary retirement scheme was floated by RBI. The scheme of voluntary retirement floated by RBI was recognized by CBDT and this fact was noted by Hon'ble Apex Court in the case of Chandra Ranganathan & Others (supra).

7.6 The judgment of the Hon'ble Karnataka High Court in the case of CIT & Another vs. Appasaheb Baburao Lambe (supra) relied on by the Ld. AR is also distinguishable on facts. In the case considered by the Hon'ble Karnataka High Court, the Hon'ble Court confirmed the factual finding of the ITAT that all the

conditions under Rule 2BA of the I.T. Rules, 1962 have been cumulatively satisfied. On the contrary in the instant case employer has deducted tax at source u/s. 192 of the I.T. Act on ex-gratia amount received and the employer has not vouched that the conditions mentioned under Rule 2BA has been cumulatively satisfied.

8. For aforesaid reasons, I am of the view that the assessee is not entitled to the benefit of exemption u/s.10(10C) of the I.T. Act. It is ordered accordingly.

9. In the result, the appeal of the assessee is dismissed.

Pronounced in the open court on 26th -02-2020.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place: Kochi

Dated: 26th February, 2020

GJ

Copy to:

1. Shri Krishnan Achary, Gokulam, Mangaram, Konni, Pathanamthitta-689691.
2. The Income Tax Officer, Ward-3, Thiruvalla.
3. The Commissioner of Income-tax(Appeals), Kottayam.
4. The Commissioner of Income-tax, Kottayam
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin