

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA**  
[Before Shri N. V. Vasudevan, JM & Shri M. Balaganesh, AM]

**I.T.A No.2340/Kol/2013**  
**Assessment Year: 2004-05**

Smt. Smita Chatterjee  
(PAN: ACTPC0105B)  
99B, Kumarpara Lane, Kolkata-700042  
(Appellant)

Vs.

Deputy Commissioner of Income-tax,  
Circle-22, Kolkata.  
(Respondent)

&

**I.T.A No.2341/Kol/2013**  
**Assessment Year: 2004-05**

Mr. Debashis Mukherjee  
(PAN: ADMPPM8649L)  
69/8/4, Baruipara Lane, Kol-700035.  
(Appellant)

Vs.

Deputy Commissioner of Income-tax,  
Circle-22, Kolkata  
(Respondent)

&

**I.T.A No.2342/Kol/2013**  
**Assessment Year: 2004-05**

Smt. Jayanti Mitra  
(PAN: ADNPM0315N)  
12/114B, Prince Anwar Shah, Kol-700068.  
(Appellant)

Vs.

Deputy Commissioner of Income-tax,  
Circle-22, Kolkata  
(Respondent)

&

**I.T.A No.2343/Kol/2013**  
**Assessment Year: 2004-05**

Smt. Papia Bhandari  
(PAN: AGXPB7130K)  
P-941, Lake town, Block-A,  
4<sup>th</sup> floor, Kol-700089.  
(Appellant)

Vs.

Deputy Commissioner of Income-tax,  
Circle-22, Kolkata  
(Respondent)

&

**I.T.A No.2344Kol/2013**  
**Assessment Year: 2004-05**

Smt. Shampa Nair  
(PAN: ABOPN8932H)  
25/2A/1, Jheel Road, Kol-700031.  
(Appellant)

Vs.

Deputy Commissioner of Income-tax,  
Circle-22, Kolkata  
(Respondent)

&

**I.T.A No.2345/Kol/2013**  
**Assessment Year: 2004-05**

Smt. Sonali Kundu  
(PAN: AEOPK3589G)  
32/35, Chandi Ghosh Road, Kol-700040.  
(Appellant)

Vs.

Deputy Commissioner of Income-tax,  
Circle-22, Kolkata  
(Respondent)

&

**I.T.A No.2346/Kol/2013**  
**Assessment Year: 2004-05**

Smt. Lata Pandey  
(PAN: AFLPP9490H)  
7Y, Picnic Garden, 1<sup>st</sup> Lane, Kol-700039  
(Appellant)

Vs. Deputy Commissioner of Income-tax,  
Circle-22, Kolkata  
(Respondent)

&amp;

**I.T.A No.2347/Kol/2013**  
**Assessment Year: 2004-05**

Smt. Soma Mitra  
(PAN: ADNPM0455F)  
53/C, Harish Mukherjee Road, Kol-700025  
(Appellant)

Vs. Deputy Commissioner of Income-tax,  
Circle-22, Kolkata  
(Respondent)

&amp;

**I.T.A No.2348/Kol/2013**  
**Assessment Year: 2004-05**

Mr. Gautam Mitra  
(PAN: ADMPM8653J)  
34, Padma Pukur Road, Kol-700020  
(Appellant)

Vs. Deputy Commissioner of Income-tax,  
Circle-22, Kolkata  
(Respondent)

&amp;

**I.T.A No.2349/Kol/2013**  
**Assessment Year: 2004-05**

Mr. Sreedhar Mukhopadhyay  
(PAN: AEZPM3906L)  
262D/1, Bangur Avenue, Block-A, Kol-55  
(Appellant)

Vs. Deputy Commissioner of Income-tax,  
Circle-22, Kolkata  
(Respondent)

&amp;

**I.T.A No.2350/Kol/2013**  
**Assessment Year: 2004-05**

Smt. Kalyani Kumar  
(PAN: AGDPK5031A)  
Block-2, flat-11B, Ekta Heights  
56, Raja S.C. Mullick road, Kol-700032.  
(Appellant)

Vs. Deputy Commissioner of Income-tax,  
Circle-22, Kolkata  
(Respondent)

Date of hearing: 18.05.2016

Date of pronouncement: 01.06.2016

For the Appellants: S/Shri B.K. Ghosh, Pijush Dey & M.K. Banerjee, FCA  
For the Respondent: Shri Sallong Yaden, Addl. CIT, Sr. DR

**ORDER****Per Bench:**

All these appeals by assessee are arising out of separate orders passed u/s. 154 of the Income-tax Act, 1962 (hereinafter referred to as "the Act") of CIT(A)-XIV, Kolkata vide Appeal No. 175,156,175,155,143,183,161,149,186,171&162/CIT(A)-XIV/Kol/10-11 dated 12.06.2013. Since facts are identical and grounds are common, except variance in amounts in all these appeals, we dispose them off by this common order for the sake of convenience. Smt. Kalyani Kumar, ITA No. 2350/Kol/2013 is treated as the lead case and facts of that case are considered for adjudication herein and decision taken thereon would apply with equal force for the remaining assesseees.

2. Brief facts of this issue are that return of income of the assessee for AY 2004-05 was filed on 06.08.2004 showing returned income of Rs.26,27,900/-. The return was processed on 21.02.2005. The case was selected for scrutiny. Notices u/s. 143(2) and u/s. 142(1) were duly served on the assessee. In response to these notices, the assessee furnished some necessary documents and explained the contents of the return. The Ld.AO observed that the assessee derived salary from the Hongkong and Shanghai Banking Corporation Ltd. of 21, B. B. D. Bag, Kolkata, and received total Voluntary Retirement Service (in short VRS) benefit of Rs.25,34,587/- from the same bank during the relevant previous year and claimed exemption of Rs.5,00,000/- u/s. 10(10C) of the Act. The Ld. AO observed that as per Sec. 10(10C) read with Rule 2BA of the I. T. Rules, an amount not exceeding five lakh rupees out of the amount received by an employee on his voluntary retirement or resignation of his service in accordance with any scheme of voluntary retirement, shall not be included in computing his total income if the amount received 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. From the copies of the last pay slip and individual worksheet, the Ld AO ascertained that Basic Pay of the assessee was Rs.10,120/- and months left for his normal retirement was 270.21 months. The product of these two was Rs.27,34,525/-. As the assessee has received VRS Lumpsum exceeding this amount, the Ld AO held that she is not entitled to exemption u/s. 10(10C) of the Act. The assessee did not prefer any appeal against this assessment order. She instead chose to prefer rectification petition u/s. 154 of the Act

on 09.03.2010 pointing out the mistake apparent on record. The Ld. AO disposed of the said rectification petition on 29.09.2010 by observing as under:

*“In his submission the A/R of the assessee requested to grant exemption u/s. 10(10C) which was rejected by the AO in the assessment made u/s. 143(3) of the I. T. Act and pleaded to rectify the order u/s. 154 of the I. T. Act. The jurisdiction of section 154 is confined to the rectification of mistake apparent from the records and it does not envisage the rectification of error of judgment.*

*In this case the assessee in his rectification u/s. 154 claimed to grant exemption u/s. 10(10C) which was denied by the AO in his order u/s. 143(3). The purview of section 154 is restricted to the issues which was not considered and decided in the orders passed by the AO. Thus the rectification petition filed by the assessee on the issues already decided by the AO in his order u/s. 143(3) is outside the scope of section 154 of the I. T. Act. Thus the rectification petition filed u/s. 154 of the Act by the A/R of the assessee is hereby deleted.”*

3. The assessee preferred appeal against the order passed u/s. 154 of the Act before the Ld. CIT(A). The Ld. CIT(A) disposed of the appeal by observing as under:

*“7.I have carefully considered the submissions of the appellant. As regard the first ground of the assessee it is seen that the Assessing Officer had considered the submission of the assessee while rejecting the claim of exemption u/s. 10(10C) of the Income Tax Act, 1961 in the order passed u/s. 143(3). After considering all the facts, provisions of the Act and the provisions of the Rules the Assessing Officer had taken judgment and denied the exemption u/s. 143(3). Once the assessment order has been passed after considering the facts and provisions of Law the Assessing Officer cannot interfere with such an order unless there is a mistake apparent from record. The appellant had chosen to file the petition u/s. 154 instead of an appeal against the said order u/s. 143(3) of the Act. The scope of section 154 is restricted to the issues, which have not been considered and decided in the orders passed u/s. 143(3). Since the issue of granting or otherwise of the exemption u/s. 10(10C) of the Income Tax Act had already been considered and decided by the Assessing Officer after due consideration of facts and law, an amendment as requested by the assessee on the same issue is outside the ambit of section 154 and thus the Assessing Officer has rightly rejected the assessee’s application as there was no mistake apparent from the records. There is no scope for the Assessing Officer to change his opinion u/s. 154 of the I. T. Act, 1961. The jurisdiction u/s. 154 is confined to the rectification of the mistakes apparent from the records and it does not envisage the rectification of error of judgment or rectification of a debatable issue where the provisions of facts and law have been properly considered. Accordingly the first ground of the assessee has no merit and it is dismissed.*

8. As regards the second ground the Assessing Officer has given a clear cut finding that the provisions of the rule 2BA of the Income Tax Rules, 1962 read with section 10(10C) of the I. T. Act, 1961 were not satisfied in the assessee’s case. In accordance with the section 10(10C) of the Act an exemption to the extent of Rs.5,00,000/- is admissible from any amount received or receivable by the employee under a scheme of Voluntary Retirement framed by the employer. However, in accordance with the first proviso to section 10(10C) the exemption as mentioned aforesaid is allowable if the scheme is framed in accordance with the requirements as prescribed under Rule 2BA. One of the requirements of the Rule 2BA is as under:

*“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 of service left before the date of his retirement on superannuation.”*

*The AO has given clear cut finding in the order passed u/s.143(3) that the above requirement prescribed under the Rule 2BA has not been fulfilled in this case. Either during the proceedings u/s. 154 or the appellate proceedings, this finding of the Assessing Officer could not be controverted by the appellant. The issue raised by the assessee in this ground is debatable and it is outside the scope of section 154 of the Act. Since the ground raised has no merit, it is dismissed.*

9. *As regards ground no. 3 the issue raised in the ground is not tenable as the reliance placed by the assessee on the ratio laid down by the Hon'ble Calcutta High Court in the case of SAIL DSP VR. EMPLOYEES ASSOCIATION 1998 Vs. UNION OF INDIA & OTHERS 262 ITR 638 is misplaced as the facts in that case are different from facts of the present case. The case relied upon by the assessee pertained to employees of SAIL wherein the Hon'ble High Court has given the finding that the scheme for Voluntary Retirement floated by SAIL confirmed to Rule 2BA. The Hon'ble High court also gave the finding that nowhere there was any provision in the scheme which could be said to be in conflict with the requirements of Rule 2BA. However, in the present case, the issue relates to the Voluntary Retirement Scheme floated by the Hongkong & Shanghai Banking corporation Limited, and the Assessing Officer gave the finding in the assessment order that the scheme was not in conformity with Rule 2BA of the Income Tax Rules, 1962. Hence, there is no error apparent from the records in the order passed by the Assessing Officer. Hence this ground is also dismissed.”*

4. The assessee preferred rectification petition u/s. 154 of the Act before the Ld. CIT(A) on 10.12.2012 with a prayer seeking to rectify the Ld. CIT(A)'s order on the following basis:

i) *Forty employees of Hongkong and Shanghai Banking Corporation Ltd. filed appeals to the Hon'ble Income-tax Appellate Tribunal, Kolkata against your order on the identical issue relating to the assessment year 2004-05. The Hon'ble ITAT, “B” Bench, by a consolidated order dated 30<sup>th</sup> March, 2012 held in favour of those forty employees and vacated orders of the lower authorities.*

ii) *Let us now take note of a Third Member decision of this very Tribunal in the case of DCIT - vs. - Krishna Gopal Saha (121 ITD 368 (TM ) wherein the assessee was a former employee of Standard Chartered Bank and admittedly the Voluntary retirement scheme offered by the SCB was not in conformity with Rule 2BA of the Income Tax Rules (as noted in paragraph 3.1 of the lead order). Yet, the Third Member decision was that to the extent of Rs.5,00,000/- the assessee was eligible for deduction u/s. 10(10C). In coming to this conclusion, the Tribunal, inter alia, took note of Hon'ble jurisdictional High Court's guidance in the matter. What is held by the Tribunal in this Third Member decision is at the minimum a possible view of the matter, and so far as this Division Bench is concerned a binding judicial precedent.*

iii) *We find that as held by Hon'ble Calcutta High Court in the case of SAIL DSP VR Employees' Association (supra), undoubtedly Their Lordships held that there is no conflict between the VRS Scheme of the SAIL employee and Rule 2BA, but Their Lordships also observed as follows :-*

*"An expression used in the statute is not always to be interpreted literally or grammatically. Sometimes, it has to be interpreted having regard to the context in which the expression is used and having regard to the object and purpose for which the same is enacted. Section 10(10C) was inserted in order to make voluntary retirement attractive so as to reduce human complements for securing economic viability of certain companies. This object was elaborated by various Departmental circulars and*

*explanatory statements issued from time to time. Similarly, r. 2BA which was inserted by the IT (Sixteenth Amendment) Rules, 1992, were amended from time to time. All these go to show that this was intended to make a voluntary retirement more attractive and beneficial to the employee opting for voluntary retirement. Therefore, this has to be interpreted in a manner beneficial to the optee for voluntary retirement, if there is any ambiguity"*

iv) *It is thus free from any doubt that, as held by Hon'ble jurisdictional High Court, that the provisions of section 10(10C) are to be "interpreted in a manner beneficial to the optee for retirement, if there is any ambiguity". In view of this binding legal position, it is clear that on the point of ambiguity, if any, an interpretation in favour of the assessee is to be adopted. That is how, according to Hon'ble jurisdictional High Court, section 10(10C) is to be interpreted.*

v) *The real question, therefore, is whether or not these decisions of Hon'ble jurisdictional High Court can be subject matter of rectification under section 154. On this question, we find guidance from Hon'ble Supreme Court's judgment in the case of ACIT - vs - Saurashtra Kutch Stock Exchange Ltd. (305 ITR 227) wherein Their Lordships have held that non-consideration of a judgment of Hon'ble jurisdictional High Court is also a mistake apparent on record, which can be rectified under section 154. What follows, inter alia, is that in a situation in which Hon'ble jurisdictional High Court is not followed, such a non-consideration is clearly a mistake apparent on record.*

5. The Ld. CIT(A) disposed of this 154 petition vide his order dated 12.06.2013 by observing as under:

*"In this case, all relevant points and case laws have been duly considered while passing the appellate order.*

*3. By moving the rectification application against the appellate order, the appellant has sought to review the said order which is not allowable u/s. 154 of the I. T. Act, 1961. As the relevant case laws were considered and a speaking order was passed, it is held that there is no mistake apparent from record. Hence, there is no merit in the rectification application. Accordingly, the rectification application/petition of the appellant is rejected."*

The assessee preferred an appeal before us against this order dated 12.06.2013.

6. The Ld. AR relied on the Third Member decision of this Tribunal in the case of DCIT Vs. Krishnagopal Saha 121 ITR 368(TM ) and Hon'ble Calcutta High Court decision in *SAIL DSP VR. EMPLOYEES ASSOCIATION 1998 Vs. UNION OF INDIA & OTHERS (2003) 262 ITR 638 (Cal)* and Hon'ble Supreme Court in the case of *ACIT Vs. Saurashtra Kutch Stock Exchange Ltd. 305 ITR 227 (SC)* and argued that non-consideration of jurisdictional High Court and Tribunal's decision is a mistake apparent from record and accordingly, prayed for granting relief of exemption u/s. 10(10C) of the Act for the assessee. In response to this, the Ld. DR argued that voluntary retirement services compensation offered by the HSBC was not in conformity with Rule 2BA of the I. T. Rules, 1962 and hence, relied on the orders of the lower authorities.

7. We have heard rival submissions and perused the material available on record and the case laws cited above. The facts stated hereinabove remained undisputed and hence, the same are not reiterated for the sake of brevity. We find that the Hon'ble Calcutta High court in the case of *SAIL DSP VR. EMPLOYEES ASSOCIATION*, supra had held as under:

*Section 10(10C) : Exemption : Availability and extent of :*

*Section 10(10C) uses the expression "any amount received by an employee . . . at the time of his voluntary retirement in accordance with any scheme or schemes of voluntary retirement". . . . It is the meaning of the word "amount received" is important in this case. Whether this expression includes all the amounts payable under the scheme or only the compensation payable in lieu of cessation of employment. In other words, whether this will also include the retirement or superannuation or terminal benefits which the employee is otherwise entitled to receive even without the scheme simply on cessation of employment without having voluntarily retired. The expression "amount received" even if we interpret it literally or grammatically would be some thing other than the terminal benefits. Inasmuch as, the terminal benefits are otherwise payable on cessation of employment under the provisions of the statute. An employee cannot be deprived of such dues on any ground whatsoever unless provided in the respective statutes governing those respective terminal benefits. An expression used in the statute is not always to be interpreted literally or grammatically. Sometimes it has to be interpreted having regard to the context in which the expression is used and having regard to the object and purpose for which the same is enacted. Section 10(10C) was inserted in order to make voluntary retirement attractive so as to reduce human complements for securing economic viability of certain companies. This object was elaborated by various departmental circulars and explanatory statements issued from time to time. Similarly, rule 2BA, which was inserted by the Income-tax (Sixteenth Amendment) Rules, 1992, was amended from time to time. All these go to show that this was intended to make the voluntary retirement more attractive and beneficial to the employee opting for voluntary retirement. Therefore, this has to be interpreted in a manner beneficial to the optee for voluntary retirement, if there is any ambiguity. Therefore, while searching for the meaning of the word "amount received" used in section 10(10C), we are to look into the section itself and rule 2BA as well. Rule 2BA prescribes the limit. Initially, it was one and one half month's salary for each completed year of service since amended to three months' salary for each completed year of service or the salary for the months remaining after voluntary retirement till retirement. This clearly indicates that it is only the compensation part payable on account of cessation of employment, which is the amount intended in section 10(10C), inasmuch as, on the date an employee opts for voluntary retirement, he is already entitled to the accumulation of the provident fund in his account governed by the Provident Funds Act and the scheme, gratuity payable under the Payment of Gratuity Act, encashment of leave pay under the leave rules and pension payable under the pension rules, if there be any. These are all terminal benefits to which an employee is entitled even without the scheme. This entitlement cannot be taken away under any scheme. Therefore, if these amounts are also payable under the scheme, the same would not be a component of the compensation for voluntary retirement and is not an amount receivable on account of voluntary retirement. Therefore, the terminal benefits cannot be brought within the scope and ambit of the expression "amount received" used in section 10(10C).*

*Such question is to be dealt with having regard to the context in which the expression is used and having regard to the purpose and object and its grammatical and literal meaning. As discussed above, we do not find any difficulty in construing the meaning of the expression "amount received" even by literal and grammatical meaning which is*

*something different from an amount receivable by an employee under a particular statute or enactment or rules and to which he is otherwise entitled even without the voluntary retirement scheme and which has already accrued to him and of which he cannot be deprived.*

*For all these reasons, we are unable to persuade ourselves to agree with the contention argued with ability by Mr. Some and Mr. Banerjee to the extent it relates to the amount receivable under clause 4.1(i) of the scheme. The appeal, therefore, succeeds to that extent. The respondent shall adjust the amount of tax already deducted, in respect of the amount exempted, with the tax payable hereafter on the other amounts or on the amount beyond rupees five lakhs, under the said scheme, if there be any, and refund the balance, if any remaining out of taxes already deducted. In case any amount remaining after adjustment, in that event, such amount be refunded to the respective employees within a period of three months of the instalment last payable or within one year from date whichever is later by the concerned authority with whom the tax is lying in deposit. However, the respondent SAIL shall recalculate the amount adjustable or refundable, as the case may be. Such calculation relating to the respective employees shall be furnished by SAIL to the appellant as well as to the income-tax authority within a period of three months from communication. In order to obtain adjustment, the employees shall approach the respondent SAIL and for obtaining refund the employees shall approach the Income-tax Department.”*

8. We find that the Third Member decision of this Tribunal in the case of Krishnagopal Saha, supra had held that in respect of an assessee who was a former employee of Standard Chartered Bank were admittedly voluntary retirement scheme offered by Standard Chartered Bank was not in conformity with Rule 2BA of the Rules held that assessee was eligible for exemption u/s. 10(10C) of the Act to the extent of Rs. 5 lacs. We also find that the Hon’ble Supreme Court in the case of Saurashtra Kutch Stock Exchange Ltd., supra had held that non-consideration of a judgment of a jurisdictional High Court is also a mistake apparent on record, which can be rectified u/s. 154 of the Act.

9. We hold that the provisions contained in the Rules cannot override the provisions contained in the Act. Rule is only a subordinate piece of legislation. The Act specifically provides for granting exemption u/s. 10(10C) of the Act to the extent of Rs. 5 lacs and applying the ‘purposive test’ of those provisions, we hold that the assessee should be given the benefit of exemption u/s. 10(10C) of the Act to the extent of Rs. 5 lacs. Hence, non-consideration of the judgment of Hon’ble Calcutta High Court and the Third Member decision of this Tribunal by the Ld. CIT(A) and also by the Ld. AO automatically results in mistake apparent on record, which ought to have been rectified u/s. 154 of the Act by the Ld. AO and the Ld. CIT(A). Hence, we have no hesitation in

allowing the ground raised by the assessee. The aforesaid decision will apply in all the other appeals of the assessee.

10. In the result, all the appeals of assessee are allowed.

11. Order is pronounced in the open court on 01.06.2016

**Sd/-**  
(N. V. Vasudevan)  
Judicial Member

**Sd/-**  
(M. Balaganesh)  
Accountant Member

Dated : 1<sup>st</sup> June, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANTS -
- 2 Respondent –
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.