

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डॉ. एम. एल. मीना, लेखा सदस्य एवं डॉ. एस. सीतालक्ष्मी, न्यायिक सदस्य के समक्ष  
BEFORE: DR. M.L. MEENA, AM & DR. S. SEETHALAKSHMI, JM

आयकर अपील सं./ ITA. No. 128/JP/2022  
निर्धारण वर्ष / Assessment Years : 2018-19

Sh. Surendra Laad 738-A, RK Puram, Sector-A, Kota.	बनाम Vs.	ITO, Ward-2(2), Kota.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAOPL3983B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)  
राजस्व की ओर से / Revenue by : Shri A.S. Nehara (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 24/05/2022  
उदघोषणा की तारीख / Date of Pronouncement : 16/08/2022

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This is an appeal filed by the assessee directed against the order of the Id. CIT(A), National Faceless Appeal centre, Delhi [hereinafter referred to as (NFAC)], dated 30.03.2022 for the Assessment year 2018-19.

2. The assessee raised the following grounds of appeal:-

*"1. The Ld. CIT(A), NFAC has erred on facts and in law in holding that the amount of Rs. 31,90,740/- received by assessee from his employer M/s Instrumentation Ltd. on closure of its Kota unit is not a retrenchment compensation exempt u/s 10(10B) of the Act but is an ex gratia payment received on VRS/VSS which is exempt up to Rs. 5 lacs u/s 10(10c) of the Act, thereby conforming the addition of Rs. 26,90,740/-.*

2. *The appellant craves to alter, amend and modify any ground of appeal*
3. *Necessary cost be awarded to the assessee.”*

3. The brief facts of the case are the assessee had filed return of income on 29.08.2018 showing income of Rs. 8,03,880/-. Further, assessee has filed revised ITR dated 30.08.2018 declaring total income of Rs. 7,93,630/-. The same ITR was processed by the CPC. The case was selected for complete scrutiny under the e-assessment scheme, 2019 with reasons of “different of salary income as per ITR and TDS data” and “refund claimed”. In this case notice u/s 143(2) of the Act was sent on 22.09.2019 and subsequently notices u/s 142(1)j of the act was sent on 18.02.2020 and query letter dated 08.01.2021 through e-mail/e-filing portal which were duly served upon the assessee. On perusal of TDS schedule of ITR filed by the assessee, it was noticed that the assessee had earned an amount of Rs. 34,81,908/- as income under the head salary resulting in tax deduction of Rs. 8,36,435/-. However, the assessee had shown salary income of Rs.7,91,168/- only in part B-TI of the ITR. The assessee has claimed total amount of Rs. 34,90,740/- as exempt income in the ITR. The exempt income and various deductions claimed by the assessee had resulted into a refund of Rs. 8,10,180/- in the ITR filed by the assessee.

4. The AO assessed u/s 143(3) of the IT Act. The computation of tax on the income is as per system generated sheet enclosed herewith and the same forms part of this order. Demand notice u/s 156 is enclosed herewith. Issued penalty notices u/s 270A(1)j of the Act for under reporting in consequences of mis-reporting of income.

5. Being aggrieved by the AO the assessee preferred an appeal before the Id. CIT(A) and the findings are reproduced as under:-

*“ 7. I have carefully considered the facts and circumstances of the case, the observations of the AO, the submissions of the appellant, material available on record and the judicial pronouncements on the subject. The appellant claimed exemption under section 10(10B) in respect of the above ex gratia amount that he received. This amount was treated as compensation at the time of retrenchment of the appellant. The AO, declined the claim, on the ground that it was (a) an ex gratia payment and not a compensation and (b) the status of the employee, in terms of the documentation on record, was of a VRS employee and not a retrenched. Moreover, on perusal of closure document of Kota Unit of M/s Instrumentation Limited issued by Corporate Personnel Department submitted by the appellant, it is found that nowhere in the entire document retrenchment word is used. It means the employees were offered voluntary retirement scheme and who over applied for VRS under the scheme and whose VRS/VSS application was accepted by the competent authority, were relieved. Therefore, in the circumstances, I do not find any need to interfere in the decision of the AO. The AO rightly applied the section 10(10C). The retirement amount received by the appellant was in the form of ex-gratia payment not the compensation. The appellant voluntarily retired from the concerned department. Therefore, it is held that the AO has made the addition reasonably. Thus this ground of the appellant dismissed.”*

6. Being aggrieved by the assessment order, the assessee preferred an appeal before us. The Ld AR for the assessee has reiterated its arguments in written submission for all the grounds which are as under:-

*“1. The assessee was an employee in M/s Instrumentation Ltd. (IL), Kota (A Government of India Enterprise). It has two units, one at Kota, Rajasthan and another at Palakkad, Kerala. M/s Instrumentation Ltd. was in loss since a long period of time and therefore, the Government of India in the cabinet meeting held on 30.11.2016 decided to close down the Kota unit of IL and transfer the Palakkad unit to the Government of Kerala.*

2. In order to affect the closure of Kota unit of IL, the Department of Heavy Industry offered Voluntarily Retirement Scheme (VRS)/ Voluntarily Separation Scheme (VSS) to the employees of Kota unit (PB 10). Accordingly, on opting the same assessee received total amount of Rs.52,81,908/- of which Rs.31,90,740/- was received as VR Exgratia. The assessee claimed the amount of Rs.31,90,740/- as retrenchment compensation exempt u/s 10(10B) of the Act. The AO, however, held that the same is an ex gratia payment received on VRS/VSS which is exempt upto Rs.5 lacs u/s 10(10C) of the Act and thus made addition of Rs.26,90,740/-.

3. The Ld. CIT(A) confirmed the action of AO by holding that AO correctly has declined the claim on the ground that it was (a) an ex gratia payment and not a compensation; and (b) the status of the employee, in terms of the documentation on record, was of a VRS employee and not a retrenched employee. Moreover, on perusal of closure document of Kota Unit of M/s Instrumentation Limited issued by Corporate Personnel Department submitted by the assessee, it is found that nowhere in the entire document retrenchment word is used. It means, the employees were offered voluntary retirement scheme and whoever applied for VRS under the scheme and whose VRS/ VSS application was accepted by the competent authority were relieved. Thus, AO has rightly applied section 10(10C). The retirement amount received by the appellant was in the form of ex-gratia payment not the compensation.

*Submission:-*

1. The only issue in the present case is whether the amount of Rs.31,90,740/- received by the assessee on closure of Kota unit of IL is retrenchment compensation or an ex gratia payment received on VRS/VSS. From the facts stated above it can be noted that assessee has no option but to leave the company as the Government of India in the cabinet meeting held on 30.11.2016 decided to close down the Kota unit of IL and transfer the Palakkad unit to the Government of Kerala(PB 9). Section 10(10B) read with Explanation (a) to section 10(10B) provides that compensation received by a workman at the time of the closing down of the undertaking in which he is employed shall be deemed to be compensation received at the time of his retrenchment and such

*compensation would be exempt. As against this as per section 10(10C) any amount received by an employee on his voluntarily retirement or termination of his service in accordance with any scheme of voluntarily retirement or voluntarily separation to the extent such amount does not exceed Rs.5 lacs is exempt. Thus, what needs to be decided is that the compensation received by the assessee is a retrenchment compensation u/s 10(10B) of the Act or amount received towards voluntarily retirement u/s 10(10C).*

*2. The lower authorities did not accept the claim of assessee on the ground that in the closure document issued by Corporate Personnel Department submitted by the assessee (PB 10-15), nowhere the word retrenchment is used which means that the employees were offered voluntary retirement scheme and whoever applied for VRS under the scheme and whose VRS/ VSS application was accepted by the competent authority were relieved. In this connection it is submitted that merely because the scheme was styled as VRS would not mean that the monetary benefits received by assessee due to shut down of the organization in which he was working is an ex gratia payment received on VRS/VSS. One has to see the object and intent behind it. The nomenclature or a description given cannot and should not be allowed to change the true nature of transaction. If the entire facts of the case are analysed, there is no dispute that the compensation is received by the assessee at the time of closing down of Kota unit of IL and therefore, the same is deemed to be compensation received at the time of retrenchment u/s 10(10B). Section 10(10C) applies only when an employee voluntarily retires from his services. This clause is not applicable as assessee is not taking any voluntarily retirement rather he is retrenched from his services on account of closing down of the undertaking. Thus, the compensation received by the employee is on account of retrenchment and not because of voluntarily retirement. Hence, such compensation is exempt u/s 10(10B) and not u/s 10(10C).*

*3. In this connection reliance is placed on the decision of Single Bench of Hon'ble Madras High Court in case of Hindustan Photo Film Workers Welfare Centre (CITU) Vs. Govt. of India (2017) 151 DTR 185 (PB 16-28). In this case also, the Department of Heavy Industry approved the implementation of VRS package for the employees of HPF at 2007 notional pay scales as mentioned at Pg 4 of the order (PB 19). The*

*Hon'ble High Court after considering the entire scheme and object & intent of the scheme, at Para 31 held as under:-*

*31. As mentioned above, the Government of India had recommended a scheme to give relief to the employees of HPF. This proposal was approved by the Cabinet Committee on Economic Affairs and such approval was a non-plan budgetary support. The Government of India did not authorise the HPF to bring out a VRS package, but what was approved was a non-plan budgetary support, which is in the nature of a grant given by the Central Government to the second respondent for a specific purpose and a specific reason. The purpose is to rehabilitate the employees of HPF and the reason being that the employees have been receiving the pay scales as of 1987, the increase in the cost of living has made it very difficult for them to survive and meet their financial obligations and the Government thought fit to offer this package to enable the employees to come out of the financial crises. If such was the sanction made by the Central Government, it undoubtedly would qualify the parameters laid down under sub-s. (10B) of s. 10 of the IT Act. This is so because the monetary benefit which will accrue to the employees is in the nature of a compensation, which is pursuant to a decision taken by the Government of India specifically for the employees of HPF. Therefore, the amount would be exempted from income-tax in terms of the first proviso under s. 10(10B) of the IT Act. In terms of cl. (2) of first proviso, the ceiling limit is Rs. 5,00,000. The second proviso states that the first proviso shall not apply in respect of any compensation received by a workmen in accordance with any scheme, which the Government may, having regard to the need for extending the special protection to the workmen in the undertaking to which such scheme applies and other relevant circumstances, approve in its behalf. The compensation which is received by the workmen would fall within the definition of compensation found in explanation to s. 10(10B).*

*The above decision was affirmed by Divisional Bench of Hon'ble Madras High Court in case of CIT Vs. Hindustan Photo Film Workers Welfare Centre &Ors. (2021) 207 DTR 253 (PB 29-32). Thus, the case of assessee is squarely covered by this decision. In the absence of any contrary decision, the same should be applied in the case of assessee also.*

*In view of above, addition confirmed by Ld. CIT(A) be directed to be deleted.”*

7. The Ld. DR, on the other hand strongly supporting the order of the CIT(A).

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Ld AR for assessee submitted documentary evidence in the compilation of Paper Book containing of 32 pages. The Ld AR for the assessee started his arguments with interesting note of a different case of an individual, who is salaried person and was an employee in M/s Instrumentation Ltd. (IL), Kota (A Government of India Enterprise). The Ld AR for the assessee submitted the company has two units, one at Kota, Rajasthan and another at Palakkad, Kerala. The said company (M/s Instrumentation Ltd) was in loss since a long period of time and therefore, the Government of India in the cabinet meeting held on 30.11.2016 decided to close down the Kota unit of IL and transfer the Palakkad unit to the Government of Kerala and subsequently notice was issued by the Chairman and Managing Director for the closure of Kota unit of Instrumentation Ltd as per the guidelines of 07.09.2016 on closure.

9. The Ld AR for the assessee has submitted the documentary evidence before both the AO and the ld. CIT(A) and also now before us ,which is reproduced in page No 9 of the PB as under:-

*“ CHAIRMAN-CUM-MANAGING DIRECTOR*

*CMD/T/GEN/2016*

*December 8, 2016*

*Ministry of heavy industry & public enterprises has intimated vide its letter dated 8<sup>th</sup> Dec., 2016 the decision of the union cabinet in its*

*meeting held on 30/11/2016 for closure of kota unit of instrumentation limited (IL) and transfer of palakkad unit of IL to the government of kerala in a time bound manner as per DPE guidelines dated 07/09/2016 on closure.*

*(M.P. Eshwar)*

*Chairman & Managing Director”*

10. The issue raised by the bench is retrenchment compensation on the closure or ex gratia payment received on VRS/VSS from the employer will be covered under section 10(10B) and under section 10(10C)). We observed that the company M/s Instrumentation Ltd. was in loss since a long period of time and therefore the Government of India in the cabinet meeting held on 30.11.2016 decided to close down the Kota unit of IL and transfer the Palakkad unit to the Government of Kerala. In this case of the assessee has not opted VRS /VSS. offer was given to the assessee by the employer company. The closure of the company by offering VRS/VSS Scheme to employees of the Kota Unit of IL in its letter dated 19.12.2016 is as under:-

*“Instrumentation Limited Kota*

*(Corporate Personnel Department)*

*IL/CPD/P&R-56/16-17*

*Dated 19.12.2016*

*Sub: Closure of Instrumentation Ltd. Kota complex by offering voluntary retirement Scheme (VRS)/ Voluntary Separation Scheme (VSS) package for its permanent employees who are on rolls of the company.*

*Ref: DHI's letter No. 5(1)/2016-PE-VIII dated 8<sup>th</sup> Dec, 2016*

***The Department** of Heavy Industry, Ministry of Heavy Industry & Public Enterprises has communicated the approval of proposal of closure of Kota Unit of Instrumentation (IL) including offering of Voluntary Retirement Scheme (VRS) /Voluntary Separation Scheme (VSS) to employees of the Kota Unit of IL and in principle approval of transfer of Palakkad Unit of **IL to the** Government of Kerala. The approval is as follows:*

*1. Closure of Kora Unit of IL, which includes all the facilities and assets except the Palakkad Unit; in accordance with the provisions of Industrial Disputes Act, 1947 (ID Act) and in principle approval for transfer of Patakkad Unit of IL to GOK*

*2. Offering VRS/VSS to existing employees of Kota Unit of IL, as on date of opening of VRS/VSS based on 2007 notional pay scales with gratuity and leave encashment also at 2007 notional pay scales in accordance with DPE guidelines dated 7.09.2016 on closure; payment of salary/statutory/other dues of employees/employees of company.*

*Accordingly, VRS/VSS for all the permanent employees who are on the roll of the company is introduced with immediate effect in supersession of earlier Schemes with the approval of the Competent Authority, as “ ONE TIME BENEFIT”. Those employees who apply under the scheme and whose VRS/VSS application is accepted by the Competent Authority will be relieved.*

*Details of VRS/VSS and procedure are as under-*

*1. The voluntary retirement scheme (VRS/Voluntary Separation Scheme (VSS) shall be operative with immediate effect and the last date of submission of applications is 18.01.2017. The employees shall submit their VRS/VSS applications in the prescribed format indicating clearly the VR Option/VS option under which ( Option-A/Option-B1 or Option-B2 as per eligibility of employee), they opt for VRS/VSS as detailed in the enclosure. The employees whose VRS/VSS applications are duly accepted will be relieved thereby serving employee- employer relationship.*

*2. Salary/emoluments mentioned under the Option (s) and EL encashment shall be calculated on the basis of 30 days a month. The VRS/VSS compensation/ ex-gratia will be computed as on the date of relieving. Accordingly, the eligibility period will also be reckoned as /up to the date of release of the applicant for computing the completed/balance years of service. The basis pay and DA only will be considered for computation of VRS/VSS compensation/ex-gratia.*

*3. For the purpose of computing the VRS/VSS compensation/ex-gratia, any part of completed years of service or leftover service (considering the superannuation age as 60 years) shall be calculated on prorata basis.*

*4 The VRS/VSS compensation/ex-gratia, as well as Gratuity and Leave salary will be calculated as on date of relieving of the employee. This will be calculated on basis pay notionally fixed in 2007 pay scale and paid to the employees separated under VRS/VSS. This amount will not be recalculated under any circumstance in future nor will such relieved employees have any right or claim over the same on any future date.*

*5. The employee shall submit their VRSS/VSS applications in the prescribed format in triplicate indicating clearly the option under which they opt for VRS/VSS through proper channel to the Competent Authority. The undersigned will communicate the acceptance of VRS/VSS to the employee indicating the date of relieving based on the management decision. The VRS/VSS compensation/Ex-gratia, Gratuity, EL encashment, pending salary and other terminal benefits will be released to the employees on receipt of funds from Govt. of India/DHI.*

*Employees would have to opt for VRS/VSS by 18.01.2017 (Wednesday) failing which they would be eligible only for retrenchment compensation in accordance with the provisions of the Industrial Disputes Act, 1947(ID Act).*

*The Unit Heads shall forward the details of the recommended VRS/VSS applications to AGM (HR & IR), IL, Kota on daily basis for obtaining approval of Competent Authority. AGM (HR & IR) will forward the approved application to AGM(F&A).*

*This issues with the approval of the competent authority.*

*AGM((HR & IR)”*

11. To take into deep explanation of the meaning of retrenchment, Sec. 10(10B & Sec. 10(10C) are as follows :

*“Retrenchment’ means the termination of the service, by the employer, of a workman for any reason other than a punishment imposed by way of disciplinary action. Termination of an employee in such a manner is financially compensated by the employer, and such financial compensation is termed as ‘retrenchment compensation’. Section 10(10B) of the Income Tax Act provides*

*exemption towards such retrenchment compensation received by the workman. The exemption provisions of section 10(10B) along with the amount of exemption available thereon is explained in the present article. Exemption available under section 10(10B) of the Income Tax Act– Provisions of section 10(10B) exempt any compensation received, at the time of retrenchment, by the workmen under- The Industrial Disputes Act, 1947, or Any other Act or Rules, any orders or notifications issued there under, or Any standing orders or under any awards, contracts of service or otherwise. An amount of exemption available under section 10(10B) of the Income Tax Act.*

*The following amount is available as an exemption under section 10(10B)– 1. The amount of retrenchment compensation received; or 2. The amount specified by the Central Government (i.e. INR 5 Lakhs); or 3. The amount calculated as per the provisions of section 25F(b) of the Industrial Disputes Act, 1947 i.e. an amount equal to 15 days average pay for each completed year of the service or part thereof in excess of 6 months. However, it should be noted that the above exemption limit is not applicable in respect of the retrenchment compensation received, by the workman, in accordance with any scheme approved by the Central Government. However, such a scheme should be with regard to the need for extending the special protection to the workman in the undertaking to which such scheme applies and other relevant circumstances. Certain important points about Exemption towards retrenchment compensation received by workman Section 10(10B) Any compensation received under following circumstances shall be deemed to have been received at the time of retrenchment and, accordingly, an exemption under section 10(10B) shall be available- Any compensation received by the workman at the time of the closing down of the undertaking. Any compensation received by the workman at the time of transfer of the management or ownership of the undertaking shall be deemed to be compensation received at the time of retrenchment only under*

*the following circumstances- The new terms and conditions of the service are in any way less favorable to the workman as compared to the terms and conditions immediately before the transfer; or The service of the workman should have been interrupted by such transfer; or The new employer is legally not liable to pay to the workman (in the event of his retrenchment) compensation on the basis that the service of the workman has been continuous and has not been interrupted by such transfer.*

### *Section 10(10C)*

*Provisions of section 10(10C)– Provisions of section 10(10C) exempt any compensation received at the time of voluntary retirement or voluntary separation or termination of service provided all the conditions are satisfied- 1. The compensation should have been received at the time of voluntary retirement or termination of service. However, in the case of an employee of the public sector company, the compensation should have been received at the time of voluntary separation. 2. The compensation should have been received by the specified categories of an employee (list of the same is provided under the next point). 3. The compensation should have been received in accordance with the scheme of voluntary retirement. In the case of a public sector company, the compensation should have been received in accordance with the scheme of voluntary separation. Categories of employees eligible for exemption under section 10(10C) of the Income Tax Act– Exemption under section 10(10C) is available towards the amount received (receivable) on voluntary retirement or termination of service by an employee of the following undertaking-*

*A public sector company, or A local authority, or Any other company, or Any State Government, or The Central Government, or An authority (established under the Central or State or Provincial Act), or A University incorporated or established by / under a Central or State or Provincial Act, or An Institution acknowledged to be a University under section 3 of the University Grants Commission Act, or An Indian Institute of Technology, or An institution of management as notified by the Central Government, or An institution (having*

importance throughout India or in any state) as notified by the Central Government. The maximum amount of exemption available under section 10(10C) of the Income Tax Act– Lower of the following amount is available as a maximum exemption under section 10(10C)– The actual amount received under voluntary retirement / voluntary separation scheme; or INR 5 Lakhs. Other noticeable point of section 10(10C) of the Income Tax Act– If an exemption under section 10(10C) is allowed to the employee in any assessment year, then no exemption shall be allowed to him in any other assessment year. Meaning thereby that the exemption under section 10(10C) is available only once. In case relief under section 89 has been allowed to the employee in respect of any amount received/ receivable on his voluntary retirement/ voluntary separation/ termination of service for any assessment year, then, the exemption under section 10(10C) shall not be allowed to him for any other assessment year. Guidelines prescribed under rule 2BA of the Income Tax Rules- The exemption under section 10(10C) of the Income Tax Act is available only if the voluntary retirement scheme is framed, by the company/ authority/ co-operative society/ university/ institute, satisfying the below criteria prescribed under rule 2BA- 1. The scheme applies to an employee who has either completed 10 years of service or has completed 40 years of age. 2. It should be noted that the above criterion doesn't apply to the amount received by the employee of a public sector company under the voluntary separation scheme framed by the public sector company. 3. The scheme should apply to all the employee, which includes workers and executives of a company or a co-operative society or an authority, except directors of a company or a co-operative society. 4. The voluntary retirement / voluntary separation scheme should have been drawn to result in an overall drop in the current strength of the employees. 5. The vacancy resulted from the voluntary retirement / voluntary separation scheme is not to be filled up. 6. The voluntary retiring employee shall not be employed in another company/ concern belonging to the same management. 7. The amount receivable of the employee under the voluntary retirement / voluntary separation scheme should not exceed- a. The amount equal to 3 months salary for each completed years of service; or b. The amount equal to salary at the time of retirement X balance months of service left before the date of retirement/ superannuation. Please note 'salary', as mentioned above, includes basic salary, dearness allowance (if forms part of retirement benefit) and commission based on fixed percentage of turnover.”

12. Considering the facts and circumstances of the case in view of the definition and explanations of Sec 10(10B) and Sec 10(10C), we are of the opinion that the assessee has genuine claim for the compensation received by him within the definition of compensation as per explanation to Sec10(10B). Respectfully following the decision of Hon'ble Madras High Court in case of CIT Vs. Hindustan Photo Film Workers Welfare Centre &Ors. (supra) are identical fact the assessee grievance is accepted as genuine. Accordingly, the addition of Rs. 26,90,740/- is hereby deleted.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 16/08/2022.

Sd/-

( डॉ. एम. एल. मीना )  
(Dr. M.L. Meena )

लेखा सदस्य / Accountant Member  
जयपुर / Jaipur  
दिनांक / Dated:- 16/08/2022.

Sd/-

(डॉ. एस.सीतालक्ष्मी)  
(Dr. S. Seethalakshmi)

न्यायिक सदस्य / Judicial Member

**\*Santosh**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Sh. Surendra Laad, Kota.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(2), Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 128/JP/2022 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar