

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “एकल” चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH  
BENCH “SMC” CHANDIGARH**

**श्री संजय गर्ग, न्यायिक सदस्य  
BEFORE: SH. SANJAY GARG, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No.281/CHD/2023  
निर्धारण वर्ष / Assessment Year : 2017-18

Shri Martin Ekka, S/o Shri Lalsay Ekka, C/o Dhiman Bansal & Associates, 68, Shiv Shakti Colony, Pinjore.	बनाम	The ITO, Ward-1, Panchkula.
स्थायी लेखा सं./PAN NO: AAEP4364R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Smt. Neelam Dhiman, C.A.

राजस्व की ओर से/ Revenue by : Shri Dharamvir, JCIT, Sr.DR

सुनवाई की तारीख/Date of Hearing : 26.03.2024

उद्घोषणा की तारीख/Date of Pronouncement : 27.03.2024

**आदेश/ORDER**

The present appeal has been preferred by the assessee against the order dated 30.03.2023 of the Commissioner of Income Tax (Appeals) NFAC, Delhi pertaining to 2017-18 assessment year. The assessee in this appeal has taken following grounds of appeal :

- 1. That on the facts and circumstances of the case the order passed by the learned National Faceless CIT(A) is bad both in the eyes of law and on facts.*
- 2. The learned CIT(A) erred in dismissing appeal that there was no genuine reason of condonation of delay whereas Orders in his colleague cases were passed in Jan 2020 to March 2020 and when it comes to his knowledge, he immediately filed the appeal in the month of March 2020.*

*Even on 25.03.2018 HMT Ex-employee Association represented the case to Joint Commissioner in written but no response or guidance was provided to employees. A jobless person does not want to stuck in litigation by claiming wrong refund so he has not filed any appeal. So, delay be condoned and income of Rs. 23,72,554 Rs. 21,18,827 for VRS, Rs. 1,7,715 for gratuity and Rs. 96012 for Leave Encashment) may please be reduced and Balance Tax of Rs. 4,15,805 be refunded along with due interest.*

*3. The learned National Faceless CIT(A) erred in not condoning delay of appellant for 823 days wherever in the case of colleague of appellant Faceless CIT Appeals condoned the delay of 973 days in his colleague having PAN AEYPR9974A. Hon'ble Chandigarh ITAT SMC bench has also condoned the delay of his colleague Deepak Budhani in ITA/514/CHANDI/2022 for 2 Years. 5 Months and 17 days So delay be condoned and income of 23,72,554 (Rs. 21,18,827 for VRS, Rs. 1,57,715 for gratuity and Rs. 96012 for Leave Encashment) may please be reduced and Balance Tax of Rs. 4,15,805 be refunded along with due interest.*

*4. The learned National Faceless CIT(A) erred in not considering additional claim of appellant wherever there is no bar on appellate authorities to consider the claim of assessee. We have relied upon the decision Wipro Finance Ltd. Vs. CIT [2022] 443 ITR 250 (SC) wherein Apex Court allowed the additional claim of assessee which was first claimed at Tribunal. In CIT Vs. Jai parabolic Springs Ltd it was held that the appellate authorities have power to allow relief to assessee which was otherwise entitled even though no claim was made by assessee in the return. So, income of 23,72,554 (Rs. 21,18,827 for VRS, Rs. 1,57,715 for gratuity and Rs. 96012 for Leave Encashment) may please be reduced and Balance Tax of Rs. 4,15,805 be refunded along with due interest.*

*5. The learned National Faceless CIT(A) erred in dismissing appeal because tax was not deductible or payable on closure compensation announced by the Central Govt in public interest for the employees of HMT Ltd. Tractor Division u/s 10(10B) of the Income Tax Act, 1961. Rs. 21,18,827 for VRS Rs. 1,57,715 for excess Gratuity and Rs. 96012 for excess leave encashment is part of compensation announced by Central Govt in its Press Release dated 27<sup>th</sup> October 2016. As per Article 265 of Constitution no tax shall be levied or collected except by authority of law. If the claim of assessee is not allowed then it is the case of unjust enrichment of Income Tax department, So, income of 23,72,554 may please be reduced and Tax of Rs. 4,15,805 be refunded along with due interest.*

2. The short issue involved in this appeal is relating to taxability of the compensation received by the assessee on his voluntary retirement from M/s HMT Ltd. (Tractor Division). In the original return filed by the assessee, the assessee offered

the said amount of Rs.23,72,554/- (Rs. 21,18,827/- for VRS, Rs.1,7,715/- for gratuity and Rs.96,012/- for Leave Encashment) as part of his taxable income and the return was processed u/s 143(1) of the Act. Subsequently, the assessee came to know that certain amounts received under the VRS were exempt in terms of provisions of section 10(10B) of the Act. Accordingly, the assessee filed an appeal against the intimation passed u/s 143(1) of the Act and submitted before the Ld. First Appellate Authority that the assessee was an illiterate person and was not aware of the fact that the amount received under VRS was exempt. This appeal before the Ld. NFAC was delayed by 2 years 5 months and 17 days. The Ld. NFAC observed that the assessee could not demonstrate any sufficient cause for the delay in filing the appeal and proceeded to dismiss the assessee's appeal in limine. Against this in limine dismissal by the Ld. NFAC, the assessee has now approached this Tribunal.

3. At the outset, the ld. Counsel for the assessee stated that the matter is squarely covered by the decision of the Coordinate Bench of this Tribunal dated 07.09.2022 in ITA No.514/CHD/2022 in the case of Deepak Budhani Vs ITO, Panchkula wherein under similar circumstances, the delay in filing the appeal before the ld. CIT(A) has been condoned by

the Tribunal and the matter has been restored to the file of the Id. CIT(A) for decision afresh.

4. The Id. Counsel for the assessee has also placed reliance on the decision dated 20.09.2023 of the Co-ordinate Bench of this Tribunal in bunch of cases with lead case in ITA No.83/CHD/2023 in the case of Shri Suresh Pal Chauhan Vs ITO, Panchkula, the facts and issue involved therein being identical to the case of the assessee, wherein the Tribunal, after considering the decision of the Id. CIT(A) in the case of other employees, wherein relief has been granted by the Id. CIT(A) and after having detailed discussion on the merits of the case, has decided the issue in favour of the assessee. The relevant part of the order of the Tribunal, for the sake of ready reference is reproduced hereunder :

*“6. We have heard the rival contentions and perused the material available on the record. The issue under consideration relates to whether the assessee is eligible for exemption under section 10(10B) or under section 10(10C) of the Act and it would therefore be necessary to refer to the relevant provisions which have a bearing on the matter under consideration.*

7. The provisions of Section 10(10B) read as under:

*“any compensation received by a workman under the Industrial Disputes Act, 1947 (14 of 1947), or under any other Act or Rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, at the time of his retrenchment:*

*Provided that the amount exempt under this clause shall not exceed-*

(i) an amount calculated in accordance with the provisions of clause (b) of section 25F of the Industrial Disputes Act, 1947 (14 of 1947); or

(ii) such amount, not being less than fifty thousand rupees, as the Central Government may, by notification in the Official Gazette, specify in this behalf, whichever is less:

Provided further that the preceding proviso shall not apply in respect of any compensation received by a workman in accordance with any scheme which the Central Government may, having regard to the need for extending special protection to the workmen in the undertaking to which such scheme applies and other relevant circumstances, approve in this behalf.

Explanation. For the purposes of this clause-

(a) 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;

(b) compensation received by a workman, at the time of the transfer (whether by agreement or by operation of law) of the ownership or management of the undertaking in which he is employed from the employer in relation to that undertaking to a new employer, shall be deemed to be compensation received at the time of his retrenchment if-

(i) the service of the workman has been interrupted by such transfer; or

(ii) the terms and conditions of service applicable to the workman after such transfer are in any way less favourable to the workman than those applicable to him immediately before the transfer; or

(iii) the new employer is, under the terms of such transfer or otherwise, legally not liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer;

(c) the expressions "employer" and "workman" shall have the same meanings as in the Industrial Disputes Act, 1947 (14 of 1947)

8. The provisions of Section 10(10C) read as under:

"any amount received" or receivable 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 Institutes of Technology Act, 1961 (59 of 1961); or

(viiia) any State Government; or

(viiib) the Central Government; or

(viiic) an institution, having importance throughout India or in any State or States, as the Central Government may, by notification in the Official Gazettes, 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.

"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 (1), a scheme of voluntary separation, to the extent such amount does not exceed five lakh 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:

*Provided also that where any relief has been allowed to an assessee under section 89 for any assessment year in respect of any amount received or receivable on his voluntary retirement or termination of service or voluntary separation, no exemption under this clause shall be allowed to him in relation to such, or any other, assessment year."*

9. The relevant guidelines for the purposes of Section 10(10C) are contained in Rule 2BA which read as under:

*"2BA. Guidelines for the purposes of section 10(10C)*

*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; 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 Institutes of Technology Act, 1961 (59 of 1961); or*
- (viii) 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 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 the voluntary retirement or voluntary separation is not to 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 of 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.*

*Explanation. In this rule, the expression 'salary' shall have the same meaning as is assigned to it in clause (h) of rule 2 of Part A of the Fourth Schedule."*

10. Section 10(10B) talks about compensation received by a workman at the time of his retrenchment. It has been clarified that compensation received by a workman at the time of closing down of the undertaking in which he is employed shall be deemed to be compensation received at the time of his retrenchment. It has been provided that such compensation could be determined and paid to the workman either under the

Industrial Disputes Act of 1947 or under any other Act or Rules, orders or notifications issued there under or under any standing orders or under any award, contract of service or otherwise. Thus, the determination and payment of compensation doesn't necessarily be as per the Industrial Disputes Act and it could be under any other Act, rules, orders, instructions, award, etc. Further, it has been specifically provided that there could be a scheme which the Central Government may approve in this behalf having regard to the need for extending special protection to the workmen in the undertaking to which such scheme applies and other relevant circumstances and the workman receives the compensation in accordance with the scheme so approved. Further, depending upon whether the compensation is determined as per the Industrial Disputes Act or otherwise, the quantum of compensation so determined and received by the workman shall not exceed five lakh rupees. However, in case, where the scheme is specifically approved by the Central Government and the compensation is paid as per the scheme so approved, the limitation on quantum of exemption to the extent of five lakh rupees shall not apply and thus, whole of the compensation so received shall be exempt.

11. Section 10(10C) talks about any amount received or receivable 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, a scheme of voluntary separation. It has been further provided that the schemes governing the payment of such amount are framed in accordance with such guidelines (including inter alia criteria of economic viability) as may be prescribed. It has been further provided that quantum of exemption shall not exceed five lakh rupees.

12. We therefore find that one of the fundamental differentiation between the two exemption provisions and the respective sphere these provisions operate in lies in the nature and intent of the scheme – whether the scheme is for extending special protection to the workmen in the undertaking in the context of closing down of the undertaking or whether the scheme is for employees seeking voluntarily retirement or voluntary separation and the scheme is drawn up to result in overall reduction in the existing strength of the employees and to enable economic viability of the undertaking which continues to operate and function and there is no proposal or intent to close down the undertaking.

13. The inter-play between the aforesaid exemption provisions keeping in view the objective of the scheme and nature of benefit which flows to the workmen/employees under the

package came up for consideration before the Hon'ble Madras High Court in case of **Hindustan Photo Films Workers vs Government of India** (*Supra*) and it was held that the same has to be tested based on its plain language without adding any interpretation and the relevant findings are contained at para 28-34 of its order which reads as under:

*"28. Having held so, the only other question that remains to be decided is with regard to deduction of tax at source. Section 10 of the IT Act falls in Chapter III and it deals with incomes not included in total income. Section 10 states that in computing the total income of a previous year of any person, any income falling within any of the clauses mentioned therein shall not be included. For the purpose of this case, sub-section (10B) & (10C) of Section 10 would be relevant, which are quoted herein below:-*

*Incomes which do not form part of Total Income Incomes not included in total income.*

*10. 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.*

*.....*

*S.10(10B) any compensation received by a workman under the Industrial Disputes Act, 1947 (14 of 1947), or under any other Act or Rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, [at the time of his retrenchment:*

*Provided that the amount exempt under this clause shall not exceed:-*

*(i) an amount calculated in accordance with the provisions of clause (b) of Section 25F of the Industrial Disputes Act, 1947 (14 of 1947); or*

*(ii) such amount, not being less than Rs. Five lakhs, as the Central Government may, by notification in the Official Gazette, specify in this behalf, Whichever is less:*

*Provided further that the preceding proviso shall not apply in respect of any compensation received by a workman in accordance with any scheme which the Central Government may, having regard to the need for extending special protection to the workmen in the undertaking to which such scheme applies and other relevant circumstances, approve in this behalf.*

*Explanation:- for the purposes of this clause:-*

*(a) 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;*

*(b) compensation received by a workman, at the time of the transfer (whether by agreement or by operation of law) of the ownership or management of the undertaking in which he is employed from the employer in relation to that undertaking to a new employer, shall be deemed to be compensation received at the time of his retrenchment if:-*

*(i) the service of the workman has been interrupted by such transfer; or*

*(ii) the terms and conditions of service applicable to the workman after such transfer are in any way less favourable to the workman than those applicable to him immediately before the transfer; or*

*(iii) the new employer is, under the terms of such transfer or otherwise, legally not liable to pay to the workman, in the event of his retrenchment, compensation on*

the basis that his service has been continuous and has not been interrupted by the transfer;

(c) the expressions employer and workman, shall have the same meanings as in the Industrial Disputes Act, 1947 (14 of 1947);

.....

S.10(10C) any amount received (or receivable) by an employee of:-

(i) a public sector company; or .....

(viii) such institute of management as the Central Government may, by notification in the Official Gazette, specify in this behalf, [on his] [voluntary retirement or termination of his service, in accordance with any scheme or schemes or voluntary retirement or in the case of a public sector company referred to in sub-clause (i), a scheme or voluntary separation, to the extent such amount does not exceed five lakh 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:];

29. The case of the revenue is that the package given to the workmen is a VRS package and it would fall within Section 10(10C)(viii) and accordingly, taxable if the receipt exceeds the exempted limit. The case of the petitioner is that the severance package received by them would fall within Section 10(10B) and shall not be included as income in computing total income of the employees. The contention of the revenue that TDS proceeding is independent of the other provisions of the Act cannot be disputed, but however, what the revenue seeks to a state is that it is for the Assessing Officer to examine as to whether the receipts in the hands of the employee is a compensation for a closure or a package received as a Voluntary Retirement settlement.

30. Admittedly, the instant case, is not a case of a single assessee, but a large section of employees of HPF Ltd., a Government of India company. If it is clear from the plain language adopted in the scheme as regards the nature of benefit which is extended to the employees, then the employees need not be driven to approach the Assessing Officers to establish that the receipts are not taxable in their hands. Therefore, the nature of the benefit which flows to the employees under the package has to be tested on its plain language without adding any interpretation.

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-section (10B) of Section 10 of the Income Tax 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 Section 10(10B) of the IT Act. In terms of clause (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 Section 10(10B).

32. In such circumstances, this Court has no hesitation to hold that the package having been received by the workmen as compensation pursuant to the decision taken by the Central Government to offer special protection to the employees of HPF, the same stands exempted from deduction to income tax.

33. W.P.No.18608 of 2015; the petitioner in this Writ Petition is an association of officers working in HPF and the relief sought for by them is also identical. The yardstick applicable to workmen as defined under the Industrial Disputes Act, cannot be made applicable to the officers. Therefore, under normal circumstances whatever reasoning assigned by this Court in the preceding paragraphs would apply to the employees in the workmen category. Nevertheless, the Central Government does not make any distinction in its press information, dated 28.02.2014, nor do the impugned proceedings/circular, as it has extended the special benefit to all the employees of HPF. Therefore, in the given facts and circumstances, whatever is the interpretation given by this Court while testing the prayer made in the Writ Petitions filed by the workers would equally apply to this Writ Petition filed by the officers association.

34. In the result, the Writ Petitions are partly allowed on the following lines:-

(i) The declaratory relief sought for to declare the proceedings dated 20.03.2014, and the circular dated 21.03.2014, as illegal, is rejected and the relief sought for to pay 72 months, salary stands rejected.

(ii) It is held that the receipts in the hands of the employees of the HPF, pursuant to the severance package announced by the Central Government and intimated vide proceedings/circular is held to be a special privilege/protection granted to the employees of the HPF Ltd and therefore, the provisions of the Section 10(10B) of the Income Tax Act, 1961 are attracted and accordingly, the same shall not fall within the definition of income, while computing the total income of concerned employee and income tax cannot be deducted from the severance package paid to the employees of HPF.

(iii) Pursuant to interim orders dated 22.12.2015, the amounts deducted towards income tax was directed to be kept in deposit to the credit of the Writ Petition in Indian Bank, High Court Branch. In the light of the finding rendered supra holding that no income tax is recoverable from the severance package, the amount deducted as income tax shall be disbursed to the respective employees by the respondents.

(iv) It is reiterated that in these writ petitions, the Court has considered the VRS package and the consequential circular issued by the HBF relief sought for, for payment of 72 months salary instead of 60 months salary as proposed in the VRS Scheme and not to deduct income tax on the amount payable to them as in respect of recovery which were sought to be made pursuant to the circular dated 10.07.2013 and 01.07.2013 were already been quashed by this Court in W.P.Nos.24460, 24355 and 25491 of 2013 dated 29.11.2016.

(v) The respondents shall comply with the above directions within a period of one month from the date of receipt of a copy of this order as during the pendency of these writ petitions, all the employees have exercised their right to accept the

*severance package though without prejudice to their rights in the writ petition. Now the writ petition has been finally disposed of, it is only the implementation of the severance package which shall be done within one month from the date of receipt of a copy of this order.*

*(vi) As agreed to by the employees of the HBF, all the employees on receipt of the severance packages in terms of the above direction shall vacate and hand over vacant possession of the quarters within a period of one month from the date on which they received the monetary benefits. No costs. Consequently, connected Miscellaneous Petitions are closed.*

14. In the aforesaid case, it was held by the Hon'ble Madras High Court that 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-section (10B) of Section 10 of the Income Tax 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 under Section 10(10B) of the IT Act. It was further held by the Hon'ble High court that the yardstick applicable to workmen as defined under the Industrial Disputes Act, cannot be made applicable to the officers. Therefore, under normal circumstances whatever reasoning assigned by this Court in the preceding paragraphs would apply to the employees in the workmen category. Nevertheless, the Central Government does not make any distinction in its press information, dated 28.02.2014, nor do the impugned proceedings/circular, as it has extended the special benefit to all the employees of HPF. Therefore, in the given facts and circumstances, whatever is the interpretation given by this Court while testing the prayer made in the Writ Petitions filed by the workers would equally apply to this Writ Petition filed by the officers association.

15. In the instant case, what is therefore relevant to determine is what has been approved by the Government of India and the objective and purposes thereof and the nature of the benefit

which ultimately flows to the employees. In this regard, we refer to press note dated 27/10/2016 issued by the Ministry of Heavy Industries and Public Enterprises, Department of Heavy industry and the contents thereof reads as under:

*"Budgetary support to HMT Ltd for payment of outstanding salary/wages and other statutory dues, introduction of VRS/VSS and closure of operations of Tractor Division and transfer of land to Government entities*

1. The Cabinet has today approved the proposal for budgetary support to HMT Ltd. for payment of outstanding salary / wages and other employee related dues and closure of HMT Tractor Division by offering attractive VRS / VSS at 2007 notional pay scales and transfer of selected parcels of land at Bangalore and Kochi to Government entities.

2. HMT Ltd., a Central Public Sector Enterprise under the Ministry of Heavy Industries and Public Enterprises of the Government of India was established at Bangalore in 1953 with the objective of producing machine tools required for building an industrial edifice for the country. HMT played a key role in laying the foundation for evolution of engineering and manufacturing capabilities in the country. HMT Tractor Division was established in Pinjore, Haryana in 1971 to manufacture HMT Tractors. Performance of the company started to decline in the '90s, in the post liberalisation economic environment with rising costs, stiff competition from international players and availability of imported goods at cheaper rates. Several efforts were made in past to arrest the declining trend but it could not succeed to turn around. HMTL's profit making tractor business was affected due to poor off-take, under-utilisation of capacity and working capital constraints, etc. It was observed that continuation in Tractor Business with its insignificant market share in the sector may not be a financially viable and sustainable option for HMT Ltd., and hence it would be prudent to close the tractor business, make an exit from this segment and focus on the core sector of machine tools.

3 The Tractor Division has been incurring losses continuously and is unable to pay the salaries and other statutory dues of its employees. The employees of Tractor Division based at Pinjore have not been paid salary since July, 2014 and other statutory dues are also pending since Nov. 2013. The statutory dues (Terminal benefits, PF, Gratuity, Leave encashment etc.) are also pending for the employees of other Divisions of HMTL [Corporate Head Office(CHO), Common Service Division (CSD) and Food Processing Machinery unit, Aurangabad (FPA)]. In view of the deteriorating position of the company and hardship being faced by the employees due to non-payment of salary / wages and other retirement dues, it has been decided to close down the Tractor Division of HMT Ltd by offering attractive VRS/VSS to its employees and clearing all their dues.

4. It will have a financial implication (cash outgo) of Rs. 718.72 crore for payment of outstanding salary, wages and statutory dues, VRS/VSS ex-gratia payments and clearing of Tractor Division's liabilities towards Bank, creditors etc.

5. The Cabinet has also accorded approval for transfer of selected small parcels of HMT land at Bangalore and Kochi to different Govt. entities for their use in larger public interest."

16. We also refer to office order No. 15/16 dated 4/11/2006 issued by HMT Ltd containing details of the VRS/VSS scheme for the permanent employees who are on rolls of the Tractor Division and the contents thereof read as under:

*"The Administrative Ministry vide letter No. 1-0501/8/2015-PE.X dated 4<sup>th</sup> November 2016 has communicated that the Union Cabinet In its meeting held on 27<sup>th</sup> October 2016 considered and approved the closure of operations at HMT Tractor Division with offer of an attractive and Improved VRS/VSS package based on 2007*

notional pay scales, in relaxation of DPE guidelines disallowing pay revision in sick/loss making CPSEs, as against the current pay scales of 1997, to all the permanent employees who are on the rolls of Tractor Division as on the date of notification.

Accordingly, the approved VRS/ VSS Is Introduced In supersession of earlier Schemes, as a "ONE TIME BENEFIT", for all the permanent employees on the rolls of HMT Tractor Division, with Immediate effect. The employees who apply under the Scheme and whose VRS/VSS application is accepted by the Competent Authority will be relieved in a phased manner. The Scheme is subject to the following:

1. The Voluntary Retirement Scheme(s) (VRS)/ Voluntary Separation Scheme(s) (VSS) shall be operative with Immediate effect and shall be in force upto 5th December 2016. The employees should submit their VR/VS application In the prescribed format indicating clearly under which scheme (Scheme-A, Scheme B1 or Scheme 82) they opt for VR/VS as detailed In the enclosure. Once the VR/VS application is duly accepted and the employee relieved, the employee-employer relationship stands severed.

2. The VRS/VSS ex-gratia shall be calculated on the Salary (2007 notional basic pay DA) mentioned under the Scheme(s) on the basis of 30 days a month. Only 2007 notional basic pay and DA will be considered for computation of VRS/VSS ex-gratia.

3 The eligibility period for computing the completed years of service will be reckoned as, upto the date of release of the applicant, for the purpose of calculation of VRS/VSS ex-gratia. Any part of completed years of service or leftover service (considering the superannuation age as 60 years) shall be calculated on pro-rata basis for the purpose of computing the VRS/VSS ex-gratia.

4. For the purpose of Earned leave encashment, the limit of accumulation of Earned Leave as on date of relieving of the employees will be subject to a maximum of 180 days (up to PS-IV Grade), 240 days (for grades PS-V to PS-VIII) and 300 days for (PS-IX and above).

5. The eligible VRS/VSS Ex-gratia, Gratuity and Earned Leave Encashment will be calculated based on the sum of Basic Pay notionally fixed in 2007 Pay Scale and DA applicable in 2007 Pay scale, on the date of release. This amount will not be recalculated under any circumstances in future nor will such relieved employees have any right or claim over the same on any future date.

6. The settlement allowance will be as per 1997 pay scale.

7. The VRS/VSS benefits which Includes Ex-gratia, Gratuity, EL encashment and other terminal benefits as well as pending salaries, will be released to the employees on receipt of funds from Govt. of India/DHI.

The employees should register their names In the Employee Resource Centre (ERC) and submit their VRS/VSS applications in the prescribed format In triplicate indicating clearly the Scheme under which they opt for VRS/VSS, to the Sanctioning Authority through proper channel. The Sanctioning Authority will communicate the acceptance of VRS/VSS to the employee indicating the date of relieving based on the decision of the Management in view of the operational requirements. It may be noted that VRS/VSS application once submitted cannot be withdrawn.

The Unit HRM/Finance Chiefs shall forward the details of the recommended VRS/VSS applications In Annexure-I to JGM(HR), HMT Limited, CHO Bangalore and to the Assistant General Manager (CF), HMT Limited, 'CHO Bangalore in Annexure-II, Annexure-III, Annexure-IV and Annexure-V on daily basis for obtaining administrative approval of the Competent Authority.

Further, It may be noted that the Government has also communicated that employees not opting for VRS would be retrenched under the Industrial Disputes Act, 1947 as the Tractor Division is proposed to be closed down.

*This is issued with the approval of the Competent Authority."*

17. We also refer to letter No. 1-0501/8/2015-PE.X dated 4/11/2006 on the subject of budgetary support to HMT Ltd for payment of outstanding salary/wages, other statutory dues, introduction of VRS/VSS and closure of operation of the Tractor Division and transfer of land to Govt. entities issued by the Under Secretary, Ministry of Heavy Industries and Public Enterprises, Department of Heavy industry, Government of India and addressed to the Chairman and Managing Director of HMT Ltd and the contents thereof read as under:

*"Subject:- Budgetary support to HMT Ltd for payment of outstanding salary/wages and other statutory dues, Introduction of VRS/VSS and closure of operations of Tractor Division and transfer of land to Government entities*

*Sir,*

*I am directed to say that Cabinet in its meeting held on 27.10.2016 considered a Note dated 23.09.2016 and Supplementary Note dated 01.10.2016 and on the above subject and approved the following-*

*(i) Closure of operations at HMT Tractor Division with offer of attractive and improved VRS/VSS package to allow ex-gratia and terminal benefits based on 2007 notional pay scales, In relaxation of DPE guidelines disallowing pay revision in sick/loss making CPSES, as against the current pay scales of 1997, to all the employees of Tractor Division. Employees not opting for VRS would be retrenched under the Industrial Disputes Act, 1947 as the Tractor Division is proposed to be closed down.*

*(ii) Infusion of funds of Rs 716.72 Cr as interest free loan for the said VRS/VSS with ex-gratia and terminal benefits based on 2007 notional pay scales for all employees of the Tractor Division (Rs 335,00 Cr), clearing of employee related liabilities (Rs.271.05Cr) of HMTL and settlement of other liabilities (Rs 112.67 Cr) In respect of HMT Tractor Division.*

*(i) Restructuring of Balance Sheet of HMTL by reduction of paid-up capital to the extent of accumulated losses of Tractor Division amounting to Rs. 848.49 Crore against Govt. of India paid up equity shareholding in the company of Rs. 1204.09 Crore and write-off of Govt. loans provided to HMT Ltd. (Re 72.02 Cr) along with accrued Interest (Rs 18.56 Cr) to be frozen as on 31/03/2016, with no further liability of Interest.*

*(iv) Sale of land not currently in use at Pinjore unit to the Govt. of Haryana on mutually agreed terms and compensation as mentioned in Para 2.9 which may be seen as under-*

*"HMT Ltd. Board is also in favour of monetizing the currently unutilized land at Pinjore by transferring the same to the Government of Haryana (GoH) against suitable compensation. It is relevant to state that there exists a dispute on the matter of ownership of the land at Pinjore between HMT Ltd and the GoH. The Issue is presently before the High Court of Haryana and Punjab, GoH is agreeable, In principle, to compensate HMT Ltd. for the said land. The Company has identified 448 Acres of at present unutilized land in Pinjore which can be transferred. Govt. of Haryana has however, indicated that out of the above, only 306 acres can be utilized by them and the rest are covered by thick plantations, water bodies/Nullah etc. GoH/HSIDC is prepared to pay 50% of the land cost (on 50:50 sharing basis) at the circle rates ranging between Rs. 23 Lakh to Rs. 1.25 crore per acre which will be assessed after finalisation of the land pockets. However, the compensation offered by GaH is inadequate, and there is a lack of clarity on the compensation against remaining land pockets of 140 acres (446306 acres). This issue is proposed to be negotiated in detail with GoH. The process of transferring of land to GoH on mutually agreed terms and negotiation of suitable*

compensation will be undertaken in a time bound manner after the due approval of Cabinet."

In addition, sale of other assets, which will become surplus after closure of the Tractor Division. The Company would explore the possibilities of using the productive resources, for example, factory premises of HMT Tractor Division with clearly demarcated land and buildings, plants and machineries, for leasing out on 'As Is Where is' basis to interested private parties engaged preferably in Capital Goods or Auto sector, on medium or long term basis after duly safeguarding the Govt Interest Failing this, an alternative option for strategic sale of the HMT Tractor Factory, Pinjore to national or International parties may be explored in consultation with DIPAM.

In case, the productive resources/ assets of HMT Tractor Limited at Pinjore fall to elicit response of MSME Industries under medium and long term lease, falling which alternative option of strategic sale of the HMT Pinjore factory, Pinjore to national and International parties will be explored, In case, even this does not fructify then the company shall follow DPE guidelines dated 7th September, 2016.

(v) Transfer/sals of Identified land parcels of HMT to various Govt. entitles as under,  
a) Ex post facto approval for formal transfer of 0.74 acre land in Bangalore to M/s Raman Research Institute, an autonomous Institution under the Department of Science and Technology, Govt. of India.

b) Approval for accepting Transferable Development Rights (TDR) from the civic agency Bruhat Bangalore Mahanagara Palika(BBMP) in lieu of 80,000 sft.. land taken over for road widening In Bangalore.

c) Prior approval for the transfer/sale of 3 acres of land, sought by National Investigation Agency (NIA) and 1.047 acre by Kerala Industrial Infrastructure Development Corporation (KINFRA) in Kochi, Kerala at circle rate or market rate determined by CPWD, whichever is higher.

d) Prior approval for the transfer/sale of about 5.8 acres of land at Bangalore, to Income Tax Department and Central Excise Deptt. at circle rate or market rate determined by CPWD, whichever is higher.

2. In view of the above, you are requested to take appropriate action as approved by Cabinet and complete the process as per the timelines enclosed herewith."

18. In case of **Shri Prem Pal** (*supra*) who was one of the employees of HMT Ltd., Tractor Division and who opted for the VRS scheme and had received the VRS compensation, the matter came up for consideration before the Ld. CIT(A), Panchkula who vide his order dt. 30/01/2020 has held that the assessee was eligible for exemption under section 10(10B) of the Act as the compensation received by the assessee at the time of VRS qualifies the parameters as laid down under section 10(10B) of the Act. The Ld. CIT(A) has discussed at length the intent and the objectives behind the HMT VRS scheme as well as compared the fact pattern with the case of Hindustan Photo Film Workers Vs. The Government of India (*Supra*) wherein the matter came up for consideration before the Hon'ble Madras High Court and the relevant findings of the Ld CIT(A) are contained at para 5.2 to 5.2.3 of his order which read as under:

"5.2. Held: I have gone through the facts of the case and written submission filed by the appellant and assessment record. Brief facts of the case are that appellant is one of the employees of the HMTL-TD. This Tractor Division/Unit of HMTL was a loss-making Central Government Public Sector Undertaking for the last several years. Government of India in its Cabinet Meeting dated 27th October 2016 approved budgetary support to HMTL for payment of outstanding salary, introduction of VRS/VSS and closure of operations of Tractor Division. A press release was also issued on the same day. In compliance to this, an Office Order No. 15/16 dated 4th November 2016 regarding VRS/ VSS scheme was announced by HMTL Bangalore for all the permanent employees who were on the rolls of

Tractor Division as on that date. That scheme further envisages that employees not opting for VRS would be retrenched under the Industrial Disputes Act, 1947 as the Tractor Division is proposed to be closed down. Tax was deducted at source on compensation received at the time of VRS Appellant by way of revised return claimed that the said compensation is exempt under Second proviso and first explanation of Section 10(10B) of Act. For this appellant placed reliance on the case of Hindustan Photo Film Workers Vs. The Government of India WP No.18566 of 2015 dated 17.03.2017. AO on the other hand held that facts of the above case are different than the present case and disallowed claim of the appellant made u/s 10(10B) of the Act on following findings that (1) sum received by the appellant on account of VRS/VSS was not of the nature of compensation on termination of employment or compensation on closure of industry ie HMTL-TD. This amount is receipt on account of voluntary retirement, (ii) appellant was not retrenched in accordance with provisions of Industrial Dispute Act, 1947(1 D Act) or under any other Act or award in terms of section 10(10B). The order under Industrial Dispute Act 1947 in the case HMT Ltd was passed on 14.2.2017 whereas the appellant accepted the VRS/VSS introduced on 4.11.2016. The appellant had not received payment pursuant to award under I.D.Act, 1947, hence the appellant is also not covered by the explanation (a) to section 10(10B), (ii) the case of the appellant does not fall under the second proviso to section 10(10B) as the VRS/VSS amount received by him was not of the nature of compensation as the Central Government's offer of VRS/VSS announced on 27.10.2016 does not suggest that it was introduced having regard to the need for extending special protection to the employees of HMTL-TD, (iv) the case of the appellant is covered by provisions of section 10(10C) of the Act as he had opted the scheme voluntarily and he has not furnished any evidence opposing the scheme of VRS/VSS Further, the scheme also provided that employees not opting for VRS/VSS shall be retrenched. Since, the appellant has not been retrenched the amount received by him is of the nature of receipt on voluntary retirement or voluntary separation and accordingly, he is entitled to exemption of Rs.5,00,000/- out of the VRS/VSS receipts AO made addition of Rs.23,12,978/- in the total taxable income of the appellant.

5.2.1. Both these Public Sector Undertakings (PSU) ie. HPF & HMTL-TD are monitored by the Department Heavy Industries (DHI), Government of India. Most of the PSUs except BHEL are loss making undertakings for the last several years. DHI has tried its best to revive these units but off late took a considered view that loss making PSUs be closed as these are even not in a position to pay salary/wages of workers on its own. Every quarter these PSUs require budgetary support from Government of India to pay dues of employees/workers though it is not their (PSU) right. VRS/WSS of HMTL-TD is also result of these facts and circumstances. This intent and purpose is also emanating from the Press release dated 27.10.2016 issued wherein it is stressed that Cabinet approves Budgetary support to HMT Ltd for payment of outstanding salary, introduction of VRS/VSS and closure of operations of Tractor Division, Transfer of land to Government entities have been approved. Press release states that HMTL, a Central Public Sector Enterprise under the Ministry of Heavy Industries and Public Enterprises of the Government of India was established at Bangalore in 1953 with the objective of producing machine tools required for building an industrial edifice for the country. HMT has played a key role in laying the foundation for evolution of engineering and manufacturing capabilities in the country. HMT Tractor Division was established in Pinjore, Haryana in 1971 to manufacture HMT Tractors Performance of the company started to decline in the '90s, in the post liberalization economic environment with rising costs, stiff competition from international players and availability of imported goods at cheaper rates. Several efforts were made in past to arrest the declining trend but it could not succeed to turn around HMTL's profit making tractor business was affected due to poor off-take, under-utilization of capacity and working capital constraints, etc. It was observed that continuation in Tractor Business with its insignificant market share in the sector may not be a financially viable and sustainable option for HMTL and hence it would be prudent to close the tractor business, make an exit from this segment and focus on the core sector of machine tools. It is further stated that the Tractor Division has been incurring losses continuously and is unable to pay the salaries and other statutory dues of its employees. The employees of Tractor Division based at Pinjore have not been

paid salary since July, 2014 and other statutory dues are also pending since Nov. 2013. The statutory dues like Terminal benefits, PF, Gratuity, Leave encashment etc. are also pending for the employees of other Divisions of HMTL i.e. Corporate Head Office (CHO), Common Service Division (CSD) and Food Processing Machinery unit, Aurangabad (FPA). In view of the deteriorating position of the company and hardship being faced by the employees due to non-payment of salary/ wages and other retirement dues, it has been decided to close down the Tractor Division of HMT Ltd by offering attractive VRS / VSS to its employees and clearing all their dues. Salient features of the press release are that (1) the Union Cabinet has approved the budgetary support to HMTL for payment of outstanding salary/wages and other employee related dues. It also approved closure of HMT Tractor Division by offering attractive VRS/VSS at 2007 notional pay scales, (ii) It will have a financial implication (cash outgo) of Rs 718.72 crore for payment of outstanding salary, wages and statutory dues, VRS/VSS ex-gratia payments and cleaning of Tractor Division's liabilities towards Bank, creditors etc., and (ii) the Cabinet has also given its approval for transfer of selected small parcels of HMT land at Bangalore and Kochi to different Government entities for their use in larger public interest. These facts and circumstances clearly lead to the closure of HMTL-TD and employees who do not opt for VRS/VSS will be retrenched. The logical corollary is that if none of the employees opt for VRS/VSS they will sure shot be retrenched. Of course some of the employees were not in favour of VRS Scheme as at this age nobody would get second job so they were interested in transfer and 150 persons who have not opted for VRS were retrenched by the Government subsequently and their cases are still pending with Punjab and Haryana High Court. Hence, it was a case of forced VRS on the employees as they have no choice.

5.2.2. Let's understand the facts of VRS package of Hindustan Photo Film Workers (HPF) and HMTL-TD as per comparative chart given below.

HPF	HMTL-TD
HPF was Govt. Company under Department of Heavy Industries.	HMTL is Govt. Company under Department of Heavy Industries.
HPF had no subsidiary	<b>HMT is a holding Company and following subsidiaries:-</b> HMT Machine Tools Limited-[Tractor Division Pinjore is under closure]. HMT (International) Limited HMT Watches Ltd, ( Under Closure)

	HMT Chinar Watches Ltd(Under Closure ) HMT Bearings Ltd have( Under Closure ) Closure was of Tractor Division of HMTL only
Closure was of HPF	
HPF was sick company.	HMT was sick company.
Cabinet Approved Closure of HPF in on 28 <sup>th</sup> Feb 2014	Cabinet Approved Closure of HMTL-TD i.e. Tractor Plant on 27 <sup>th</sup> Oct 2016.
Cabinet Approved <u>Non Plan Budgetary</u> Funds for payment of VRS/VSS Package.	Cabinet Approved <u>Budgetary Funds</u> as per DPE Guidelines dated 7 <sup>th</sup> September 2016 for payment of outstanding salary / wages and other employee related dues and VRS/VSS Package to all permanent employees.
CCEA has recommended a sum of <u>Rs.181.54</u> crore towards implementation of VRS at 2007 notional pay scales for all the employees of the Company and to take further action for the closure of the Company. Accordingly, VRS at 2007 notional pay scales has been implemented in the Company from January 2015. As on 31st March 2017, <u>466</u> employees have been relieved under this VRS Scheme	CCEA has approved a sum of <u>Rs.718.72</u> crore towards implementation of VRS at 2007 notional pay scales for all the employees of the Company and to take further action for the closure of the Company. Accordingly, VRS at 2007 notional pay scales has been implemented in the Company from November 2016. As on 31st March 2017, <u>850</u> employees have been relieved under this VRS Scheme. <u>150</u> employees retrenched in January 2018 and their case is pending with Punjab and Haryana High Court
Scheme was floated on 21.03.2014	Scheme was floated on 04.11.2016.
VRS at 2007 notional pay scales has been implemented in the Company from January 2015. This has been done by granting a onetime relaxation of the DPE guidelines for all the employees of HPF.	VRS at 2007 notional pay scales has been implemented in the Company from November 2016. This has been done by granting a onetime relaxation of the DPE guidelines for all the employees of HMTTD.
Central Government even prior to announcing VRS package had taken a decision to close down the establishment. Therefore, it was the submission that it is a case of a closure.	Central Government even prior to announcing VRS package had taken a decision to close down the establishment. Therefore, it is plea of the appellant that it is a case of a closure.
Employees were getting 1987 pay scales.	Employees were getting 1997 pay scales. Ministry of Heavy Industries & Public Enterprises Circular dated 28 <sup>th</sup> September 2016 mentioning Department of Public Enterprises (DPE), Ministry of Heavy Industries & Public Enterprise has recently issued guidelines CPSEs in non-strategic sector which have no scope for revival and are to be closed in a timebound manner. Since there are employees working in these CPSEs, Government decided that closure should not cause hardship to them and has now laid down a uniform policy to give workers VRS at 2007 notional pay scale irrespective of the pay scale in which they are working.
In 2015-16 FY 447 employees took VRS In 2016-17 FY 19 employees took VRS	In 2016-17 FY 850 employees took VRS
As on 31.03.2017 there were 170 permanent employees.	As on 31.03.2018 there were 103 permanent employees.
The operations of the Company have come to a standstill due to disconnection of power to the Polyester X-Ray Plant and R&D from May 2013 and non-availability of funds to procure the raw materials.	The operations of the Tractor Division have come to a standstill due to disconnection of power to the Tractor Plant and R&D from March 2017.

5.2.3. The facts, intent and purpose of HMTL-TD are identical with the facts of HPF.Ld. AO has failed to appreciate finer details and observations of the Hon'ble Madras High Court when the Court observes that the package is not a VRS but a case of closure. It is true that the package is called "VRS" but the nomenclature of the package would be irrelevant, but what would be relevant is purpose for which the package has been sanctioned. There is no option available to the employees as the company has been closed down and therefore, the quantum which is sought to be given to the employees should be construed as compensation for

*closure. The package dated 28.02.2014, sanctioned for employees of HPF, is special package exclusively dedicated and designed for the employees of HPF. The VRS Scheme for the employees of HMTL-TD is also exclusive and specific package for the Tractor Division, Pinjore. The earmarked money under budgetary support to HMTL for payment of outstanding salary / wages and other employee related dues and also for closure of HMT Tractor Division by offering attractive VRS/VSS at 2007 notional pay scales. Thus funds have been earmarked for a specific purpose. As per facts and circumstances described in detail in the Press release under the head "Background", the employees can hardly resist to take a stand against the said package. This view is further strengthened, if we peruse that in financial year 2016- 17, 850 employees of HMTL-TD took VRS and 150 employees who did not offer for VRS were retrenched in January 2018. Hence, VRS scheme must be read in the nature of retrenchment compensation/ compensation on termination of employment on account of closure of HMTL-TD. The purpose behind this scheme in no uncertain terms is to rehabilitate the employees of HMTL-TD. 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 it fit to offer this package to enable the employees to come out of the financial crises. This view eloquently emerges, if we carefully peruse the intent and purpose behind the scheme. It is to reiterate that in the said press release, it is categorically stated that the Tractor Division has been incurring losses continuously and is unable to pay the salaries and other statutory dues of its employees. The employees of Tractor Division based at Pinjore have not been paid salary since July, 2014 and other statutory dues are also pending since November, 2013. The statutory dues like Terminal benefits, PF, Gratuity, Leave encashment etc. are also pending for the employees of other Divisions of HMTL ie. Corporate Head Office (CHO), Common Service Division (CSD) and Food Processing Machinery Unit, Aurangabad (FPA). In view of the deteriorating position of the company and hardship being faced by the employees due to non-payment of salary / wages and other retirement dues, it has been decided to close down the Tractor Division of HMT Ltd by offering attractive VRS / VSS to its employees and clearing all their dues. In view of these facts and circumstances and by placing reliance on the case of HPF supra (SLP filed by the Union Government has also been dismissed by the Hon'ble Supreme Court), it is my considered opinion that the compensation received by the appellant at the time of VRS qualifies the parameters laid down under section 10 (10B) of Act. AO is directed to delete the addition. The Grounds of Appeal Nos.1 &2 are allowed."*

19. Having perused the aforesaid material available on record, we have no hesitation but to agree with the aforesaid findings of the Id CIT(A). The Id CIT(A) has rightly held that the money has been earmarked under budgetary support by the Government of India to HMT for payment of outstanding salary / wages and other employee related dues and also for closure of HMT Tractor Division by offering attractive VRS/VSS at 2007 notional pay scales. It has been rightly held that the purpose behind this scheme in no uncertain terms is to rehabilitate the employees of HMTL-TD as 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 it 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-section (10B) of Section 10 of the Income Tax Act as 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 HMT. The Id CIT(A) has rightly held that the facts of the present case are *pari-materia* with that of Hindustan Photo Films (Supra) which has been decided by the Hon'ble Madras High Court and the matter therein has attained finality in view of dismissal of the SLP by the Hon'ble Supreme Court. Therefore, in light of the same, we are of the considered view that in the instant case, the whole of the amount of voluntary retirement compensation would be exempted from income tax in terms of the second proviso to Section 10(10B) of the Act.

20. Subsequently, following the decision in case of Shri Prem Pal (Supra), in case of Shri Karam Pal (Supra), the Ld. CIT(A), Panchkula vide his order dt. 31/01/2020 pertaining to the A.Y. 2017-18, has again decided the matter in favour of the assessee.

21. Further, the Ld. CIT(A), NFAC, Delhi in case of Shri Raj Kumar Singh pertaining to A.Y 2017-18 vide order dt. 18/08/2021 has again decided the matter allowing the exemption under section 10(10B) of the Act and the relevant findings reads as under:

"7. In this case, the appellant had opted for Voluntary Retirement Scheme introduced by HMT Ltd, on closure of its Tractor Division in Bellary Road, Bangalore in the year 2016. The appellant had received Voluntary Retirement benefits and filed the return of income declaring total income at Rs.57,86,720/- after Chapter VIA deductions and claimed rebate u/s. 89 of the I.T. Act, 1961. Accordingly, the CPC, Bengaluru has processed the return, treating the VR benefit as part of total income.

8. In this connection, the provisions of Section 10(10B) of the Income Tax Act are reproduced, as below.

"Any compensation received by a workman under the Industrial Disputes Act, 1947 (14 of 1947), or under any other Act or Rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise,

.....

Explanation - For the purposes of this clause-

1. 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;

(emphasis supplied)

8.1 From the above provisions, it is clear that the income received on opting for Voluntary Retirement Scheme is an exempted income and does not form part of total income. Therefore, in view of the above discussion and after having gone through the case law relied upon by the appellant, the amount received by the appellant on opting for Voluntary Retirement is exempt u/s. 10(10B) and hence, the ground of appeal, is allowed."

22. Similarly, in case of Shri Kedar Singh Mewari, the Ld. CIT(A), NFAC Delhi vide its order dt. 31/03/2021 pertaining to A.Y 2017-18 has decided the matter in favour of the assessee

and the relevant findings are contained at para 4.2 to 4.9 which read as under:

"4.2 The appellant was working as Deputy Manager, Finance, with HMT watches Ltd, Ranibagh. On 06/01/2016, the Cabinet Committee on Economic Affairs, chaired by the Prime Minister, Shri Narendra Modi, gave its approval for offering VRS package to mitigate the hardships being faced by the employees of HMT Watches Ltd. This was announced through a press release by the Government of India. According to this scheme of compensation, the appellant received an amount of Rs. 24,06,050/- as the compensation amount during the Assessment Year 2017-18.

4.3 The Assessing Officer observed that the appellant's case would neither fall under section 10(10C) of the Income Tax Act nor under section 10(10B) of the Act. The Assessing Officer observed that the compensation scheme was not in conformity with the prescribed guidelines as mentioned in section 10(10C) of the Act, read with the Rule 2BA of the IT Rules, 1962. Further, the Assessing Officer observed that no material was brought on record by the appellant that such a scheme was notified by the Central Government in the official Gazette for the purpose of granting exemption from taxation under section 10(10B) of the Act.

4.4 Appellant pleaded that the compensation received at the time of closure of the factory clearly fell under the provisions of section 10(10B) of the Act. Appellant also brought to the notice that under similar circumstances the courts held that the package received by the workmen's compensation pursuant to the decision taken by the Central Government to offer special protection to the employees, stand exempted from direction of income tax. Appellant relied on the decision in the case of Hindustan Photo Films, in written appeal numbers 616 and 753 to 758 of 2017 and C.M.P Nos. 10332 to 10337 of 2017 double judge bench order dated 29/06/2017. Appellant also relied on the Supreme Court judgement in order dated 19/02/2018 SLP (Civil) Diary No(s). 37247/2017.

4.5 Appellant's submissions were carefully considered. It is clear that the appellant received the compensation amount subsequent to the closure of his employer, HMT watches Ltd, Ranibagh. The closure of the company and subsequent compensation to employees was made according to the decision of the Cabinet Committee on Economic Affairs (CCEA) chaired by the Prime Minister Shri Narendra Modi, vide press notification dated 06/01/2016, by the Government of India.

4.6 Section 10(10B) of the Income Tax Act, 1961 exempts any compensation received by a workman under the Industrial Disputes Act, 1947 (14 of 1947), or under any other act or rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, at the time of retrenchment. The first proviso to section 10(10B) provides certain restrictions and limits the amount of exemption under this section. However the second proviso to section 10(10B) reads as under:

"provided further that the preceding proviso shall not apply in respect of any compensation received by a work man in accordance with any scheme which the central government, may, having regard to the need for extending special protection to the workmen in the undertaking which such a scheme applies and other relevant circumstances, up to in this behalf."

From the above reading of the section, it can be clearly seen that the appellant's case clearly falls within the provisions of section 10(10B) of the Act.

4.7 The Assessing Officer observed that no material was brought on record by the appellant that such a scheme was notified by the Central Government in the official Gazette for the purpose of granting exemption from taxation under the said proviso. The Observation of the Assessing Officer is not in accordance with the law. There is no such condition laid in the said proviso that the scheme should be notified in the official Gazette. The Assessing Officer is not correct in forcibly including a condition, which is not mentioned in the Act. The proviso says that "in accordance with any scheme which the Central government may approve". In the appellant's case, the Central Government has approved the scheme, as observed in the press release dated 06/01/2016. Thus, the appellant becomes

eligible for the exemption provided under section 10(10B) of the Act. Reliance is placed on the decision in the case of [2017] 79 taxmann.com 298 (Madras) HIGH COURT OF MADRAS, Hindustan Photo Film Workers' Welfare Centre (CITU) v. Government of India, New Delhi.

4.8 The Hon'ble High Court, observed as under:

"30. Admittedly, the instant case, is not a case of a single assessee, but a large section of employees of HPF Ltd., a Government of India company. If it is clear from the plain language adopted in the scheme as regards the nature of benefit which is extended to the employees, then the employees need not be driven to approach the Assessing Officers to establish that the receipts are not taxable in their hands. Therefore, the nature of the benefit which flows to the employees under the package has to be tested on its plain language without adding any interpretation.

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-section (108) of Section 10 of the Income Tax 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 Section 10(108) of the IT Act. In terms of clause (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 Section 10(10B).

32. In such circumstances, this Court has no hesitation to hold that the package having been received by the workmen as compensation pursuant to the decision taken by the Central Government to offer special protection to the employees of HPF, the same stands exempted from deduction to income tax."

4.9 In view of the above, the appellant's plea that the compensation received subsequent to the closure of the employer company, based on the decision of the Cabinet Committee on Economic Affairs, Government of India, is eligible for exemption under section 10(10 B) of the Act, is accepted. The addition made by the Assessing Officer of Rs. 23,13,096/- is deleted. Appeal on this ground is allowed."

23. We are therefore intrigued by the fact that where the Id CIT(A) in other cases under identical fact pattern are consistently holding that the employees who have received similar compensation from HMT are eligible for exemption u/s 10(10B) of the Act and these cases are brought to the notice of the Id CIT(A) in the instant case, the Id CIT(A) has failed to take

cognizance of these decisions. It is not even a case where the aforesaid decisions so rendered in other cases have been challenged by the Revenue or any distinguishing facts and circumstances are available on record and/or pointed out by the Id CIT(A). Therefore, under the identical set of facts and circumstances of the case, where the matters have been decided and the Revenue is not in appeal, following the principle of consistency as well, the matter deserve to be decided in favour of the assessee at the first appellate level itself which unfortunately has not happened in the instant case.

24. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, the assessee is held eligible for exemption u/s 10(10B) on whole of the amount received of voluntary retirement compensation amounting to Rs 36,07,576/- and the AO is directed to allow necessary relief to the assessee. In the result, the ground no. 3 of the assessee's appeal is allowed.

25. In ground no. 2, the limited submission of the Id AR was that the assessee be allowed relief u/s 89 in respect of net gratuity (after excluding exemption claimed u/s 10(10)) of the Act. On perusal of section 89, it talks about an assessee who is in receipt of a sum of money in the nature of salary and as per section 17(1)(iii), salary includes gratuity. In view of the same, the AO is directed to provide appropriate relief as per section 89 in respect of net gratuity amount which is being brought to tax. The ground of appeal is accordingly allowed.

26. Ground no. 1 is general in nature and doesn't require any separate adjudication.

27. In the result, the appeal of the assessee is allowed. "

5. Since the issue is squarely covered by the above referred to decisions of the Tribunal, therefore, the issue is decided in favour of the assessee and it is, accordingly, held that the assessee is eligible for exemption u/s 10(10B) of the Act, on whole of the amount received of Rs.23,72,554/- and the Assessing Officer is further directed to provide appropriate relief as per Section 89 in respect of net gratuity amount which is being brought to tax in terms as indicated in the

order dated 20.09.2023 (supra) of the Tribunal. The findings and directions as contained in ITA No.83/CHD/2023 shall apply mutatis-mutandis to this appeal also.

7. The appeal of the assessee stands allowed.

Order pronounced on 27<sup>th</sup> March, 2024.

Sd/-

( संजय गर्ग )

(SANJAY GARG )

न्यायिक सदस्य/ Judicial Member

“Poonam”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File