

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / **ITA No. 10/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2018-19)

Gudipati Srinivasa Ratna, Vs. Income Tax Officer,
Hyderabad Ward-4(1),
[PAN No. ACBPR0391L] Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Shri Kali Kiran Kumar Kovvada, AR
राजस्व द्वारा / Revenue by: Ms. Sheetal Sarin, DR

सुनवाई की तारीख/Date of hearing: 10/04/2024
घोषणा की तारीख/Pronouncement on: 10/04/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 08/11/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Gudipati Srinivasa Ratna ("the assessee") for the assessment year 2018-19, assessee preferred this appeal.

2. Brief facts of the case are that assessee is an individual and he was employed with Instrumentation Ltd., Kota ILK. Ministry or Union Cabinet decided-to windup ILK on 30-11-2016. Assessee is ceased to be employee

of ILK with effect from 18/04/2017, on closure of ILK, and assessee was forcibly given VRS as there was no other option and received an amount of Rs. 44,88,453/- as onetime settlement payment (ex-gratia), which is a capital receipt against the loss of 10 serviceable future years, after serving 27 years. Case was selected for scrutiny. Learned Assessing Officer, on the basis of the provisions of section 10(10C) of the Income tax Act, 1961 ("the Act"), came to the conclusion that the assessee is entitled for exemption of Rs. 5 lakhs and accordingly brought the balance of 39,88,453/- to the income of the assessee and finalized the assessment by dated 23/04/2021, computing total income at Rs. 54,85,473/-.

3. Aggrieved by such an order, assessee preferred appeal before the learned CIT(A). Before the learned CIT(A) assessee reiterated the stand taken before the learned Assessing Officer and submitted that the entire amount of Rs. 44,88,453/- is exempted from levy of Income Tax as it is claimed as capital receipt, by relying on the case laws, enclosed the copies of the Lok Sabha Starred Question No.258 dated 13/08/2018, Unstarred Question No.52 dated 11/02/2018, Unstarred Question No.1480 dated 25/07/2017, Notice issued by the Chairman and Mng. Director, scheme of voluntary retirement, scheme of voluntary separation along with the packages announced for its permanent employees who were on the rolls of the company dated 19/12/2016, details of ex-gratia payments announced under the various schemes depending upon the years of service.

4. Learned CIT(A), however, was of the opinion that as per the provisions of Section 10(10C) with effect from 01/04/1993 clearly indicates any amount received or receivable by an employee of a Public Sector Company or any other company, on his voluntary retirement or his termination of service in accordance with any scheme or schemes of voluntary retirement referred to in sub clause (1), is exempted to the extent of Rs.5 Lakhs.

5. He further observed that Rule 2BA of Income Tax Rules provides for the guidelines for the purpose of determining the ex-gratia under section 10(10C); that according to the rule, the amount received or receivable by an employee of a Public Sector Company is in accordance with the requirements given therein; that the sub clause (vi) states that the amount receivable on account of voluntary retirement (or voluntary separation) of the employee does not exceed the amount equivalent to (3 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; and that even going by the argument of the assessee, the amount received is against the balance left over service, and, therefore, the compensation received is partially exempt and the maximum exemption available is RS.5 Lakhs, if the voluntary retirement scheme is framed in accordance with the guidance given under Rule 2BA of the Income Tax Rules. learned CIT(A) accordingly held that the amount received from the employer falls within sub section (a) of section 15, and is taxable. On this premise, learned CIT(A) upheld the addition made by the learned Assessing Officer.

6. Hence, this appeal by the assessee. Learned AR submitted that this issue is no longer res integra and in the case of a co-employee of the M/s. Instrumentation Ltd., Kota, under identical circumstances, the Jaipur Bench of the Tribunal in the case of Sh. Surendra Laad vs. ITO, in ITA No. 128/JP/2022, dated 16/08/2022, dealt with the issue of claim for compensation received by the assessee within the definition of compensation as per explanation to section 10(10B) of the Act and in the light of decision of the Hon'ble Madras High Court in the case of CIT vs. Hindustan Photo Film Workers Welfare Centre (CITU) vs. Government of India (2017) 151 DTR 185 held the issue in favour of the assessee. He also placed reliance on the decision of the Mumbai Bench of the Tribunal in the case of Ajay B. Ghosh vs. DCIT in ITA No. 1720/Mum/2021, dated 15/11/2021.

7. Learned DR submitted that the impugned order is a well reasoned order and the assessee did not produce any material to the contrary to rebut the findings of the learned CIT(A) and, therefore, there are no grounds to interfere with such well considered order.

8. We have gone through the record in the light of the submissions made on either side. On a perusal of the decision in the case of Sh. Surendra Laad and Ajay B. Ghosh (supra), we find that the facts in such cases are identical to the facts involved in this case and the view taken by the Co-ordinate Benches of the Tribunal is squarely applicable to the facts of this case.

9. In the case of Shri Surendra Laad (supra), assessee was an employee of M/s. Instrumentation Ltd., Kota, and on the closure of the said company, he received an amount of Rs. 31,90,740/- from the employer and claimed exemption under section 10(10B) of the Act in respect of such ex gratia received, by treating as compensation at the time of his retrenchment. Learned Assessing Officer declaimed the claim holding that it was an ex gratia payment and not a compensation and the status of the employee was of a VRS employee and not a retrenched. Learned CIT(A) upheld such a finding of the learned Assessing Officer. When the assessee preferred appeal, the Jaipur Bench of the Tribunal closely scrutinized the explanation of the meaning of retrenchment in the light of sections 10(10B) and 10(10C) of the Act and while applying the law laid down by the Hon'ble Madras High Court in the case of Hindustan Photo Film Workers Welfare Centre (CITU) (supra) to hold that the assessee had genuine claim for compensation received within the definition of 'compensation' as per explanation to section 10(10B) of the Act and allowed the claim of the assessee.

10. In the case of Mr. Ajay B. Ghosh (supra), assessee was an employee of M/s. AREVA India Pvt. Limited and on the shutting down the business and closure of the unit, the assessee received some amount towards

'severance pay' due to loss of employment from the employer. The claim of the assessee was denied, learned CIT(A) held that such amount received by the assessee forms part of income under section 17(3)(i) of the Act. In appeal, the Tribunal considered the case of the assessee in the light of the decision of the Hon'ble Calcutta High Court in the case of CIT vs. Ajit Kumar Bose 165 ITR 90 and held that the amount received by the assessee on account of loss of his employment, at the instance of the employer closing down its business operations, is severance pay, whatever may be the nomenclature that is used and partakes the character of capital receipt and not taxable in the hands of the assessee.

11. These two decisions are squarely applicable to the facts of the present case and the amount received by the assessee from the employer for loss of his employment on the closing down of the company partakes the character of capital receipt and not taxable in the hands of the assessee. We, therefore, respectfully following the said decisions cited supra, allow the grounds raised by the assessee.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this the 10th day of April, 2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 10/04/2024

TNMM

Copy forwarded to:

1. Gudipati Srinivasa Ratna, Flat No. 403, Meghna Homes,
H.No. 30-1602/2, C.G. Colony, Tirumalagiri, Telangana.
2. ITO, Ward-4(1), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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