

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH: HON. MR. DHIRENDRA MISHRA, &
HON. MR. R.N. CHANDRAKAR, JJ

TAX CASE NO.15 OF 2007

APPELLANT Income Tax Officer, Korba
Versus
RESPONDENT Dhan Sai Srivas, House No.329,
Ward No.20, Amayaiya Para, Korba

TAX CASE NO.17 OF 2007

APPELLANT Income Tax Officer, Korba
Versus
RESPONDENT Shri Ram Sevak Gupta, HIG-83, M.P.
Nagar, Korba

TAX CASE NO.19 OF 2007

APPELLANT Assistant Commissioner of Income
Tax, Circle Korba.
Versus
RESPONDENT Shri Shabbir Ahmed, D-120, Housing
Board Colony, Balco, Korba

TAX CASE NO.20 OF 2007

APPELLANT Assistant Commissioner of Income
Tax, Circle Korba.
Versus
RESPONDENT Shri Murari Lal Pandey, Purani
Basti, Korba.

TAX CASE NO.22 OF 2007

APPELLANT Assistant Commissioner of Income
Tax, Circle Korba.
Versus
RESPONDENT Shri Shiv Kumar Sahu, D-65, HB
Colony, Balco Nagar, Korba (CG)

TAX CASE NO.23 OF 2007

APPELLANT Income Tax Officer, Circle-1 Korba
(CG)
Versus
RESPONDENT Shri Paras Ram Anand, Main Road,
Urga, Korba (CG)

TAX CASE NO.24 OF 2007

APPELLANT Assistant Commissioner of Income
Tax, Circle: Korba (CG)

RESPONDENT Versus
Eqbal Ahmed Khan, Ward-31, Shanti
Nagar, Behind Karma Talkies, Balco
Nagar, Korba (CG)

TAX CASE NO.25 OF 2007

APPELLANT Assistant Commissioner of Income
Tax, Circle: Korba (CG)

RESPONDENT Versus
Shri Sita Ram Singh, Balco, Korba
(CG)

TAX CASE NO.26 OF 2007

APPELLANT Assistant Commissioner of Income
Tax, Circle: Korba (CG)

RESPONDENT Versus
Smt. Omana Krishnan, Wife of Late
Shri K.R. Krishnan, R.P. Nagar,
Korba (CG)

TAX CASE NO.27 OF 2007

APPELLANT Assistant Commissioner of Income
Tax, Circle: Korba (CG)

RESPONDENT Versus
Shri R.B. Singh, Jagraha, Risdi,
Korba (CG)

TAX CASE NO.28 OF 2007

APPELLANT Assistant Commissioner of Income
Tax, Circle: Korba (CG)

RESPONDENT Versus
Shri D.B. Rahtore, Near Old Primary
School, Barapara, Korba (CG)

&

TAX CASE NO.29 OF 2007

APPELLANT Assistant Commissioner of Income
Tax, Circle: Korba (CG)

RESPONDENT Versus
Shri Gajadhar Prasad Sahu, MIG-II,
119 M.P. Nagar, Korba (CG)

Present:

Mr. S. Rajeshwar Rao, Jr. Standing Counsel for appellants in all the
appeals.

Mr. Shashank Dubey, Sr. Advocate with Mr. Neelabh Dubey, Advocate for
the respondent in all the appeals.

69) X of

ORDER
(Passed on 16.6.2009)

Dhirendra Mishra, J

- 1) These appeals are being disposed of by this common order as common substantial question of law is involved in these appeals 'whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal (for brevity 'the tribunal') was justified in law in directing the Assessing Officer (for short 'A.O.') to allow the claim of the assessee for exemption under Section 10 (10C) of the Income Tax Act, 1961 (for short 'the Act') to the extent of Rs.5,00,000/- by applying the prospective amendment retrospectively?'
- 2) For the purpose of this order, reference is made to the facts of Tax Case No.17/2007 (Income Tax Officer, Korba Vs. Ram Sevak Gupta).
- 3) Briefly stated, facts of the case are that the respondent was an employee of Bharat Aluminum Company Ltd. (Balco), Korba. He filed return of income for the assessment year 2003-04 declaring taxable income of Rs.3,22,315/-. Subsequently, he revised the taxable income at Rs.98,800/-. The A.O. selected his case for scrutiny and issued notice under Section 143 (2) of the Act. During the assessment proceeding it was noticed that the employer of the respondent had determined the ex-gratia amount of voluntary retirement at Rs.7,13,513/- and out of this amount only 1/5th i.e. Rs.1,42,703/-, was actually paid to the respondent in the assessment year and the balance amount was to be paid in four installments in the next financial years. The assessee, however, claimed deduction for a total sum of Rs.5,00,000/-, maximum limit for exemption as per Section 10 (10C) of the Act. The A.O. allowed exemption of Rs.1,42,703/- as the amount which was actually received by the assessee and added back rest of the amount of ex-gratia payment claimed by the assessee.



- 4) The assessee preferred an appeal against the order dated 25.4.2005 of the A.O. The CIT Appeals following the decision of the ITAT, Nagpur in the matter of Firtu Ram Yadav Vs ACIT, partly allowed the appeal. The appeal preferred by the department was again dismissed by the tribunal by the impugned order.
- 5) Learned counsel for the appellant submits that the tribunal failed to appreciate that though the employer had determined the ex-gratia payment on the voluntary retirement of the respondent at Rs.7,13,513/-, which was rightly taken into account by the employer as salary income in the financial year under consideration on receivable basis, but paid the amount of Rs.1,42,703/-. The sum of ex-gratia which was actually received was to be taken into consideration for exemption under Section 10(10C) subject to maximum limit of Rs.5,00,000/-. The employee is qualified for exemption only for the amount received by him subject to maximum of Rs.5,00,000/-. Till the assessment year 2003-04 the employee was entitled for exemption only for the amount received by him. The amended provision whereby the words "or receivable" were added came into effect from 1.4.2004. Since the case of the respondent pertains to pre-amended period, he was entitled for exemption for the ex-gratia amount actually received during the assessment year i.e. Rs.1,42,703/-.
- 6) On the other hand, learned Senior Counsel for the respondent supported the impugned order.
- 7) We have heard learned counsel for the parties.
- 8) The only issue in these appeals is whether the sum paid on voluntary retirement scheme, subject to limit of Rs.5 Lac, is exempted from being charged for tax under Section 10 (10C)

of the Act, even if the payment is made in installments to be paid in subsequent years?

- 9) Before dealing with the above question, we propose to deal with the relevant statutory provisions. Section 10 (10C) of the Act, prior to amendment in the year 2003, reads as under:-

any amount received by an employee of—

- (i) a public sector company; or
- (ii) any other company; or
- (iii) an authority established under a Central, State or Provincial Act; or
- (iv) a local [authority; or]
- (v) a cooperative 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; or
- (vii) an Indian Institute of Technology within the meaning of clause (g) of Section 3 of the Institutes of Technology Act, 1961; or
 - [(vii-a) any State Government; or]
 - [(vii-b) the Central Government; or]
 - [(vii-c) 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,]
 - (on his) voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub-clause (i), 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:

Clause (10C) of Section 10 of the Act has been amended by the Finance Act, 2003 w.e.f. 1.4.2004 and the words "or receivable" were added after the words "received".

10) Section 15 of the Act defines 'salaries' and the same is quoted herein below:-

- "15. Salaries—The following income shall be chargeable to income tax under the head "Salaries"—
- (a) any salary due from an employer or a former employer to an assessee in the previous years, whether paid or not;
 - (b) any salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him;
 - (c) any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income tax for any earlier previous year."

Section 17 (3) (i) of the Acts reads as under:-

"Salary", "perquisite" and "profits in lieu of salary" defined.—

For the purposes of Sections 15 and 16 and of this section.—

(1) "Salary" includes—

- (i) wages;
- (ii) any annuity or pension;
- (iii) any gratuity;
- (iv) any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages;
- (v) any advance of salary;.....

(3) 'profits in lieu of salary' includes-

- (i) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto."

11) Section 10 (10C) of the Act was inserted in order to make voluntary retirement attractive so as to reduce human complements for securing economic viability of certain companies. It was intended to make voluntary retirement more attractive and beneficial to the employees opting for voluntary retirement. Therefore, this has to be interpreted in a manner beneficial to the optee for voluntary retirement, if there is any ambiguity.

12) Section 15 (a) of the Act provides for chargeability of salary to tax as soon it becomes due, though not paid. As soon the salary becomes due, the incurring of the liability is complete. As soon the liability is incurred, it becomes a deemed

payment in view of definition of 'pay' defined under Section 43 (2) of the Act. In the present case, though the amount of monthly benefit payable under the voluntary retirement scheme consists of salary or benefit in lieu of salary, as defined in Section 17 (1) or (3) read with Section 43 (2) of the Act. Prior to amendment in the Act, 2003, any amount "received" by an employee on his voluntary retirement in accordance with any scheme of voluntary retirement, was not to be included in computing his total income for the previous year. Exemption is available to the extent of Rs.5,00,000/-. Under the scheme liability to pay was incurred and the amount became payable at the time when the employee was released having opted for the voluntary retirement under the scheme. Therefore, this is an amount, which is receivable by the employee at the time of voluntary retirement according to the scheme and became chargeable to tax under clause (a) of Section 15 of the Act, even though not paid.

- 13) Section 10 (10C) of the Act specifies that in computing total income received by any category of employee described in the section at the time of his voluntary retirement or termination of his service, along with a scheme or schemes of voluntary retirement, is not to be included to the extent of such amount does not exceed Rs.5 Lac. The second proviso to the section further lays that where exemption has been allowed to an employee under that clause for any assessment year, no exemption thereunder shall be allowed to him in relation to another assessment year. Section 15 of the Act is couched in the widest possible terms to include within its ambit every kind of remuneration of every kind of servant, however highly or lowly placed he may be. It brings to charge (1) any salary due, in the previous years, whether paid or not; (2) advance salary; and (3) arrears of salary. Thus, the amount payable under the voluntary retirement scheme is

salary within the meaning of Section 17 (1) or (3) read with Section 43 (2) of the Act.

14) In the matter of **SAIL DSP VR Employees Association 1998 Vs. Union of India & others** reported in (2003) 181 CTR 367 the aforementioned question of law came for consideration before the Division Bench of High Court of Calcutta. Relying upon the judgments of the Hon'ble Supreme Court in the matters of **CBDT Vs Aditya Birla** reported in (1988) 67 CTR (SC) 165 : (1988) 170 ITR 137 (SC) and **K.P. Varghese Vs. ITO** reported in (1981) 24 CTR (SC) 358: (1981) 131 ITR 597 (SC), it was held that the amount receivable towards monthly benefits provided under the scheme of voluntary retirement only qualifies for exemption under Section 10 (10C) to the extent of Rs.5 Lac. Other amounts payable under different heads, such as encashment of leave pay, medical benefit, gratuity etc. would not qualify for exemption under Section 10 (10C). It is further held that the amount which is receivable at the time of voluntary retirement according to the scheme and became chargeable to tax under clause (a) of Section 15, even though not paid, is exempted from being charged to tax by reasons of Section 10 (10C) to the extent of Rs.5 Lac. Even if the payment is stretched over a period of years, the same would not become chargeable to tax in any subsequent assessment year.

15) Now, we propose to examine whether it would be hit by the second proviso to Section 10 (10C) of the Act. Second proviso provides that exemption under Section 10 (10C) to the extent that the benefit of exemption is available only in one assessment year and would not be available for any other assessment year, once availed of.

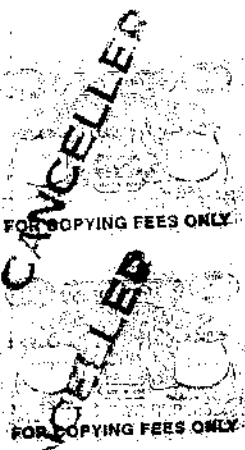
Amendment by Finance Act, 2003, clause (10C) of Section 10 was amended and the words 'or receivable' were

the
same is

added after the words 'received'. The above amendment came into force w.e.f. 1.4.2004. In certain cases some of the employees availing of voluntary retirement scheme were facing problem in case the amount was given to them in installments over a number of years. Keeping in view the above fact a departmental Circular No.7/2003 dated 5.9.2003 was issued which reads as under:-

9.1. Under the existing provision contained in clause (10C) of section 10, any amount received by an employee of a public sector company or any other company or an authority established under a Central, State or Provincial Act or a local authority or a cooperative society, or a University, or Indian Institute of Technology, or State or Central Government, or an institution having national/State level importance, or a institute of management notified by the Central Government, etc., at the time of voluntary retirement, or in the case of public sector company, a scheme of voluntary separation, to the extent such amount does not exceed five lakh rupees, is not included in computing the total income of such employee. However, some of the employees availing of VRS were facing problems in case the amount was given to them in installments, over a number of years.

9.2. To solve this problem, clause (10C) of section 10 has been amended by the Finance Act, 2003, to provide that any amount not exceeding five lakh rupees received or receivable (i.e. even if received in installments) by an employee on his voluntary retirement or termination of his service will not be included in computing the total income of such



employee. Other conditions, as well as the overall limit shall however, remain unchanged.

9.3. This amendment will take effect from 1st April, 2004, and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years."

- 17) The core question for our consideration in these appeals is the interpretation of expression "amount received" in Section 10 (10C) of the Act prior to Amendment, 2003.
- 18) Expression used in the statute is not always to be interpreted literally or grammatically. Sometimes it has to be interpreted having regard to context in which expression is used and having regard to the object and purpose for which the same is enacted. Tax laws have to be interpreted reasonably and in consonance with justice adopting pervasive approach. Contextual meaning has to be ascertained and given effect to. A provision for deduction, exemption or relief should be construed reasonably and in favour of the assessee.
- 19) It is well recognized principle that subsequent legislation may be looked at in order to see what is the proper interpretation to be put upon the earlier Act where the earlier Act is obscure or ambiguous or readily capable of more than one interpretation. (*State of Bihar Vs. S.K. Roy, AIR 1966 SC 1995*). While interpreting the words "refunded" as used in clause (b) of Section 15 of the Central Sales Tax Act, 1956 the Hon'ble Apex Court in the matter of *Thiru Manickam and Co. Versus The State of Tamil Nadu* reported in (1977) 1 SCC 199 held that ambiguity in the language of clause (b) of Section 15, as it existed at the relevant time, the matter is made clear by the amendment made in the Central Act by the Sales Tax (Amendment) Act, 1972. It has been held that the fact that the amendment of clause (b) of Section 15 was not like some other provisions given

retrospective effect, would not materially affect the position. As already mentioned above, the legislature as a result of the amendment, clarified what was implicit in the provisions as they existed earlier. An amendment which is by way of clarification of an earlier ambiguous provision can be useful aid in construing the earlier provision, even though such amendment is not given retrospective effect.

20) It could not be the intention of the legislature to extend benefit under Section 10 (10C) of the Act to the employees, who retired before 1.4.2004, to restrict the sum to the extent the amount actually received by them at the time of voluntary retirement for that particular assessment year and to other employees of the same organization who opted for voluntary retirement after 1.4.2004 to extend that benefit for the amount received by them as well as the amount receivable by them in the subsequent financial years. Therefore, we are of the considered opinion that amendment was clarificatory and curative in nature.

21) Therefore, to the extent of Rs.5 Lac, the said amount is exempted from being charged to tax by reason of Section 10 (10C) of the Act. Even if the payment is stretched over a period of years, the same would not become chargeable to tax in any subsequent assessment year. An amount becomes chargeable once it is earned whether it is received or not. Since the employee was not in service, therefore, the deferred payment will not continue and it would not be a salary from service, neither a deferred payment of salary nor arrear payment of salary, since the scheme postulates an one time payment in consideration of voluntary retirement though the payment is deferred in five installments. Therefore, it would not be a payment of salary outside the scope of Section 10 (10C) of the Act. The characteristic cannot be

changed because of stretching over of the period of payment of dues under the scheme.

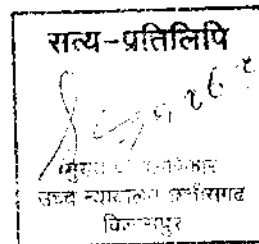
22) On the basis of aforesaid discussions, we hold that salary or benefit in lieu of salary payable to an employee opting for voluntary retirement is chargeable to tax under Section 15 (a) as soon as it became due, though not paid. The amount so received is exempted from being charged to tax to the extent of Rs.5,00,000/- by the reason of Section 10 (10C) of the Act. Even if the payment is stretched over a period of years, the same would not become chargeable to tax in any subsequent assessment year.

23) In the result, the appeals have no substance, the same deserve to be dismissed and are hereby dismissed. No order as to costs.

Sd/-
Dhirendra Mishra
Judge

Sd/-
R.N. Chandrakar
Judge

Roshan/-



Car. No.	(1) Application received on	(2) Notice issued to	(3) Date of hearing	(4) Date of judgment	(5) Date of receipt of award/ order/ decree/ judgment	(6) Date of deposit of award/ order/ decree/ judgment	(7) Applicant given notice for further funds on	(8) Notice given to applicant for further funds on	(9) Notice given to applicant for further funds on	(10) Copy ready on	(11) Copy delivered or filed on	(12) Court-fee realised
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