

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7434 of 2019**=====

GOPALBHAI BABUBHAI PARIKH

Versus

PRINCIPAL COMMISSIONER OF INCOME TAX 4

=====

Appearance:

DARSHAN R PATEL(8486) for the Petitioner(s) No. 1

MR.VARUN K.PATEL(3802) for the Respondent(s) No. 1

=====**CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA**

and

HONOURABLE MR. JUSTICE ILESH J. VORA**Date : 20/01/2021****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

"(A) Your Lordships may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction for quashing and setting aside the impugned order dated 07.12.2017 passed by the respondent at Annexure-E and order dated 01.06.2018 passed by the respondent at Annexure-G.

(B) The Hon'ble Court may issue directions to respondents to direct the concerned assessing officer to allow the said exemption u/s. 10 (10 C) of the Income Tax Act, 1961 for an amount of Rs.5 lakh along with statutory interest.

(C) Award the cost of this petition."

2. The writ applicant was serving with the ICICI Bank Ltd. The writ applicant opted for the scheme of early retirement as declared by the ICICI Bank Ltd. He received a sum of

Rs.15,69,701/- in accordance with the Early Retirement Option (ERO), 2003 Scheme framed by the Bank. He filed his return of income for the year under consideration without claiming benefit of the exemption under Section 10 (10 C) of the Income Tax Act, 1961 (for short "the Act, 1961").

3. It is his case that, at the relevant point of time, he was under the impression that he was not entitled to claim any deduction under Section 10 (10 C) of the Act, 1961 for the return of income. The case was selected for scrutiny and ultimately, the order under Section 143 (3) of the Act came to be passed on 01.12.2006. In the meantime, one litigation came up before the Supreme Court in the case of **S. Palaniappan Vs. Income Tax Officer, Chennai** (Civil Appeal No.4411/2010, decided on 28.09.2015. The said order reads thus:

"The appellant /assessee was an employee of ICICI Bank He sought voluntary retirement under the Early Retirement Option (ERO), 2003 Scheme. Accepting his request his employer viz. ICICI Bank retired him from service and paid a sum of Rs.9,37,490/- as compensation under the aforesaid scheme. From this amount, a sum of Rs.3,00,051/- was deducted as income tax from salary and ERO components for the Assessment Year 2004-05. The assessee filed his income tax return for the said Assessment Year and claimed exemption to the tune of Rs.5 lakhs under Section 10 (10 C) of the Income Tax Act for terminal benefits alongwith relief under section 89 (1) of the Income Tax Act for the ERO components and gratuity. On that basis the refund amount claimed was Rs.1,95,602/-. This was not granted by the Assessing Officer

and the appellant also failed in his attempt up to the High Court as vide impugned judgment dated 27.04..2009 dismissed the appeal of the appellant holding that since the Scheme in question Reason : ERO was not statutory Scheme or in accordance with the requirement of Rule 2BA of the Income Tax Rules, provisions of Section 10 (10 C) of the Act would not apply.

Learned counsel for the appellant has produced copies of various orders passed by this Court in certain appeals arising in identical circumstances and holding that in such cases deduction under Section 10 (10 C) of the Act would be available to the assessee. The learned counsel appearing for the respondent could not dispute the aforesaid position granting relief to similarly situated persons. We, accordingly, set aside the order of the High Court and allow the present appeal holding that the appellant shall be entitled to exemption under Section 10 (10 C) of the Income Tax Act and as a result, he will also be entitled to the refund of the aforesaid amount."

4. Thus, a similarly situated employee of the ICICI Bank Ltd. succeeded before the Supreme Court in seeking a declaration that he was entitled to the exemption under Section 10 (10 C) of the Act, 1961. It appears that, relying on the dictum as laid by the Supreme Court, the writ applicant preferred an application dated 02.12.2017 addressed to the Principal Commissioner of Income Tax-4, Vadodara, seeking to the claim exemption under Section 10 (10 C) of the Act, 1961 for the A.Y. 2004-05. The said application came to be rejected by the Principal Commissioner vide communication dated 07.12.2017.

5. The writ applicant, thereafter, preferred one

another application dated 01.06.2018 with a request to re-consider the claim for the purpose of seeking exemption. The said application also came to be rejected.

6. Being dissatisfied with the decision of the Principal Commissioner not to grant the benefit of exemption under Section 10 (10 C) of the Act, 1961, the writ applicant is here before this Court with the present writ application.
7. We have heard Mr. Darshan R. Patel, the learned counsel appearing for the writ applicant and Mr. Varun K. Patel, the learned Sr. Standing Counsel appearing for the respondent - Revenue.
8. Prima facie, it appears that two things weighed with the Principal Commissioner while declining to the grant of exemption, as prayed for, by the writ applicant. First, distinguishing the feature in the case of the appellant before the Supreme Court and the writ applicant (hereinafter referred to as "the Act" for short), the Principal Commissioner took the view that the appellant before the Supreme Court had, in fact, claimed the exemption in his return of income under Section 10 (10 C) of the Act, 1961, whereas, in the case of the writ applicant, he had not claimed such deduction and secondly, the writ applicant was expected to prefer a revision application under Section 264 of the Act and not file a representation in that regard. Thus, on

these two grounds, the claim came to be declined.

9. We are of the view that, even if, the writ applicant had not claimed the exemption in his return of income for the year under consideration, he can always claim later in point of time. So far as the second ground on which the claim came to be rejected, Mr. Darshan Patel, invited the attention of this Court to the certain averments made in the Affidavit-in-Rejoinder, more particularly, the averments made in paras 4 and 5 thereof. The same reads thus:

"4. In para 6 and 7 of the affidavit in reply filed by the respondent, it is stated by the respondent that the assessee has not filed any revision petition and it is simply a letter dated 12.07..2017. In this connection, the petitioner respectfully submits that the petitioner had filed the revision petition on 13.07.2017 vide petition dated 12.07.2017, but due to an inadvertently error made by the typist, the typist had written 'writ petition' instead of revision petition, which does not change the fact that a revision application u/s.264 was filed by the petitioner, the petitioner has also paid revision petition filing fees of Rs.500/- on 12.07.2017 and accordingly, it is respectfully submitted not to disqualify the petition and grant the benefit to the petitioner u/s. 10 (10 C).

5. In reply to para 8 of the Affidavit-in-Reply filed by the respondent, it is again reiterated that the petitioner has no other recourse but to approach Hon'ble High Court by way of this writ petition for the abovenoted claim of exemption u/s. 10 (10 C) of the Income Tax Act, 1961 and the same being genuine and it being in accordance with the four corners of law, it is respectfully submitted that the claim of exemption u/s. 10 (10 C) of the Income Tax Act may be allowed to the petitioner.

The petitioner further submits that the genuineness of the claim is not even disputed by the respondent. That being the case, the petitioner's claim cannot be rejected merely on technical grounds and the legitimate claim made under section 10 (10 C) shall be allowed.

The petitioner respectfully submits that petition be allowed as prayed for with cost."

10. Thus, the writ applicant has tried to explain as above that it was an inadvertent mistake in labeling the application as a writ petition rather than a revision petition. We need not go into any further debate in this regard as the law has now been well settled by the Supreme Court in the order referred to above.

11. In such circumstances, this writ application succeeds. The impugned orders dated 07.12.2017 (at Annexure-E) and 01.06.2018 (at Annexure-G) respectively are hereby quashed. It is declared that the writ applicant is entitled to claim exemption under Section 10 (10 C) of the Act, 1961 for the amount of Rs.5,00,000/- received from the ICICI Bank Ltd. at the time of his voluntary retirement under the scheme, in accordance with law. It is clarified that this order has been passed in the peculiar facts of the case and shall not be cited as a precedent.

(J. B. PARDIWALA, J)

(ILESH J. VORA, J)

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