

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26TH DAY OF SEPTEMBER 2005

PRESENT

THE HON'BLE MR.JUSTICE H.L. DATTU

AND

THE HON'BLE MR.JUSTICE H.N. NAGAMOHAN DAS

INCOME TAX APPEAL NO.838/2005

Between :

- 1 The Commissioner of Income Tax,
C.R. Building,
Attavara,
Mangalore.
- 2 The Asst. Commissioner of
Income Tax,
Circle 1,
Hassan.

.... Appellants.

(By Sri. M.V. Seshachala, & Aravind, Advs.)

And :

Vaman Kini H
Chikmagalur.

.... Respondent.

This Income Tax Appeal is filed under Sec.260A of the Income Tax Act, 1961, arising out of the order dated 12.8.2004 passed in ITA No.1049/Bang/2003 for the assessment year 2001-2002, praying to set aside the orders passed by the Income Tax Appellate Tribunal, etc.

This Income Tax Appeal coming on Further Orders this day, *H.L.DATTU, J.*, delivered the following:

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JUDGMENT

The revenue aggrieved by the orders passed by the Income Tax Appellate Tribunal in ITA No.1049/2003 dated 12.8.2004 is before this Court in this appeal filed under Sec.260-A of the Income Tax Act, 1961.

2. The questions of law raised for our determination are as under:

I. Whether, the assessee is entitled to claim relief under Section 89(1) of the Act in respect of the amount received by the assessee from its employer over and above a sum of Rs.5,00,000/- under the voluntary retirement scheme which had been framed as per the provisions of Section 10(10-C) of the Act read with Rule 2-BA of the Income Tax Rules?

II. Whether, the assessee having availed of the benefits under Section 10(10-C) of the Act in respect of a sum of Rs.5,00,000/- under the voluntary retirement scheme is restrained from claiming any other benefit for any other assessment year in view of the prohibition contained under second proviso to Section 10(10-C) of the Act?

III. Whether, the assessee is entitled to claim relief under section 89(1) of the Act in respect of a sum received under the voluntary retirement scheme over and above a sum of Rs.5,00,000/- which is not prescribed under Section 89(1) of the Act nor under any of the prescribed categories as per Rule 21-A of the Income Tax Rules?

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IV. Whether, the Appellate Authorities being the last finding authority was bound to record a finding on facts after considering the controversy before it in the case of the assessee?"

3. Similar legal issues were considered by us in the case of Commissioner of Income Tax Vs. P. Surendra Prabhu - ITA No.189/2005 and in the case of Commissioner of Income Tax Vs. The Manager, Canara Bank - ITA No.75/2005 disposed off on 21.9.2005. In those cases, we have concluded as under:

"39. In conclusion, in view of our discussion made in the earlier paragraphs, we are of the opinion that the assessee employee of the respondent Bank is not only entitled to benefit of exemption under Section 10(10-C) of the Act to the extent prescribed in the provisions itself and any amount over and above the prescribed limit under the aforesaid provision, the assessee is also entitled to relief under Section 89(1) of the Act read with Rule 21-A of the Rules. To put it in the simple language possible, the amount received by the assessee under the Voluntary Retirement Scheme after the exempted income under Section 10(10-C) of the Act is compensation received in connection with the termination of his employment within the meaning of Section 17(3)(i) of the Act. Accordingly, the questions of

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law framed by us in ITA No.189/2005 is answered in favour of the assessee and against the revenue.

40. Lastly, in view of our answer to the questions of law raised in ITA No.189/2005, the only conclusion that we can arrive at in ITA No.75/2005 is, that there is no default or failure on the part of the respondent Bank when the relief under Section 89(1) of the Act, was granted to the assessee on his production of Form.10-E. Accordingly, the questions of law raised by the revenue is answered against them and in favour of the assessee."

4. Following the findings and the conclusions reached by us in the aforesaid appeals, this appeal is also rejected. Ordered accordingly.

Sd/-
Judge

BMM/-

Sd/-
Judge