

**AVAILABILITY OF BENEFITS UNDER SECTION 10(10C)  
AND 89 OF IT ACT IN RESPECT OF AMOUNT RECEIVED BY  
AN ASSESSEE-EMPLOYEE OF RBI UNDER ITS SCHEME OF  
VOLUNTARY RETIREMENT (OERS)**

*Merely because the scheme in question may not expressly set out that the posts will not be filled in cannot result in the scheme not being a scheme falling under section 10(10C) read with rule 2BA of the IT Rules*

**HIGH COURT OF BOMBAY**

**CIT**

**v.**

**Koodathil Kallyatan Ambujakshan**

**ITA NO. 53 of 2008**

**July 4, 2008**

**RELEVANT EXTRACTS:**

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10. The scheme of the Section, therefore, becomes apparent considering the object for which the amendment was introduced by Parliament. The object being to make the public sector undertakings to play their role in national economy by improvement in their functioning in all possible ways. The provision as explained by the Apex Court is an incentive for unwanted personnel to seek voluntary retirement. The Applicant is an employee of an authority established under the Central Act. The Scheme for voluntary was framed by R.B.I. Considering the provisions of the Act itself such a benefit is available to the extent of Rs.5.00 lakhs.

. The Section, therefore, speaks of a scheme for voluntary retirement or termination of service. The section does not provide for any predicates. Normally, therefore, the scheme ought to read as a scheme framed by the company or authority set out under Section 10(10C) of the Act. Rules, however, have been made which are known as guidelines for the.(-17-) purpose of Section 10(10C). The guidelines are not under challenge before us. We, therefore, proceed on the basis that these guidelines also will have to be fulfilled. The Rule, however, will have to be read bearing in mind the object of Section 10(10C) itself. Under the Rules a scheme framed must be in accordance with the requirements as set out therein. The scheme, therefore, must either expressly or impliedly

comply with the requirements. Merely because the scheme may not expressly set out that the posts will not be filled in cannot result in the scheme not being a scheme falling under Section 10(10C) read with Rule 2BA of the Rules, bearing in mind the procedural nature of the Rules. It will have to be read in harmonious construction with the substantive provisions of the Act so as not to render it ultra vires the provisions of the substantive provisions of the Act.

. Applying the tests we find firstly that it satisfies the first test namely 10 years of service and 40 years of age. In the instant case it is 25 years of service and 50 years of age. Secondly it applies to all employees. This meets the second requirement. The third requirement is that the Scheme has been drawn to result in over all reduction in the existing strength of the employees. This has not been expressly stated in the scheme. However, we have noted the object behind the Section.(-18-) 10(10C) and the note put up before the Governor at the time when the scheme was framed. The material on record would indicate that the employees had been rendered surplus on account of various steps taken by the employer. The scheme, therefore, was meant for an over all reduction in the existing strength of the employees. The third requirement is also, therefore, satisfied. The fourth requirement was the vacancy caused by the voluntary retirement or voluntary separation is not to be filled up. We may firstly note that a finding of fact has been recorded by the Tribunal on that count which is not challenged before us in terms of the questions of law as framed by the revenue. Secondly there was material on record which shows that the scheme basically was to reduce the employee strength as posts had become surplus on account of reorganisation. One cannot fill in the posts which have become surplus as the posts have become redundant. Also additional evidence taken on record under Section 260A(7) would show that none of these posts from the day the scheme came into force till 2008 have been filled in. In other words the fourth requirement has also been satisfied. In so far as the fifth requirement is concerned, the Tribunal has already answered the issue and that finding of fact is not in issue before us. Even otherwise considering that the R.B.I. is a statutory body created under an Act there is no other company or.(-19-) concern belonging to the same management. The fifth requirement has also been satisfied. The sixth requirement has also been satisfied as in the instant case what is offered is two months salary for each completed year of service. Thus the scheme expressly or impliedly satisfied all the requirements of the Section as well as the guidelines framed for the purpose of Section 10(10C) namely Rule 2BA.

11. The only other question which is left for our consideration is whether the circular issued by CBDT was binding on the authorities discharging quasi judicial functions or for that matter the assessee or is this Court precluded from answering the issue contrary to the C.B.D.T. Circular.

. The C.B.D.T. Circular took note of the letter written by the R.B.I. In our opinion that letter by itself would not be of much consequences as the O.E.R.S. itself notes that income tax if any would be payable by the employee. Even in the note put up by the Department for introduction of the scheme for consideration of the Governor it was made clear that if any income tax is payable that will be paid by the employee and it was further made clear that the payment is subject to provisions of Section 10(10C) of the Income Tax Act. The letter, therefore, by R.B.I. by itself would not be.(-20-) determinative as to whether the income is liable to tax. One has to see the scheme framed in terms of Section 10(10C) and whether it satisfies the guidelines in terms of Rule 2BA

of the Rules. In Commissioner of Income-tax vs. Hero Cycles Pvt. Commissioner of Income-tax vs. Hero Cycles Pvt. Commissioner of Income-tax vs. Hero Cycles Pvt. Ltd. and Ors., 228 ITR 463 Ltd. and Ors., 228 ITR 463 Ltd. and Ors., 228 ITR 463 the Supreme Court has observed as under:-

"Moreover, it is well-settled that circulars can bind the Income-tax Officer but will not bind the appellate Authority or the Tribunal or the Court or even the assessee."

This view has been reiterated by the Apex Court in UCO Bank vs. Commissioner of Income-tax, 237 ITR UCO Bank vs. Commissioner of Income-tax, 237 ITR UCO Bank vs. Commissioner of Income-tax, 237 ITR 889 889 889 as also in Commissioner of Sales Tax vs. Indra Commissioner of Sales Tax vs. Indra Commissioner of Sales Tax vs. Indra Industries, 248 ITR 338 Industries, 248 ITR 338 Industries, 248 ITR 338. The Court, therefore, is not precluded to consider the issue irrespective of the C.B.D.T. Circular. On examination of the issue it would be clear that the guidelines have to be read in conformity with the statutory provisions. On the facts in the instant case, the Tribunal has recorded a finding that the predicates of the Rule have been satisfied. The Supreme Court in Commissioner of Income Tax vs. Gwalior Rayon Silk Commissioner of Income Tax vs. Gwalior Rayon Silk Commissioner of Income Tax vs. Gwalior Rayon Silk Mill Manufacturing Co. Ltd. 196 ITR 149 Mill Manufacturing Co. Ltd. 196 ITR 149 Mill Manufacturing Co. Ltd. 196 ITR 149 has observed as follows:-

"Logic alone will not be determinative of a (-21-) controversy arising from a taxing statute. Equally, common sense is a stranger and an incompatible partner to the Income-tax Act. It does not concern itself with the principles of morality or ethics. It is concerned with the very limited question as to whether the amount brought to tax constitutes the income of the assessee. It is equally settled law that if the language is plain and unambiguous, one can only look fairly at the language used and interpret it to give effect to the legislative intention. Nevertheless, tax laws have to be interpreted reasonably and in consonance with justice adopting a purposive approach. The contextual meaning has to be ascertained and gives effect to. A provision for deduction, exemption or relief should be construed reasonably and in favour of the assessee. The object being that, in computation of the net income, the statute provides deductions, exemptions or depreciation on the value of the capital assets from the taxable income....."

Applying these principles we are clearly of the opinion on a proper construction of the Rules that the scheme itself may not expressly state all the terms as it is possible for the Court to read the (-22-) implied terms of the scheme. In the instant case we have so read. The question Nos. 1 and 2, therefore, as framed will have to be answered against the Appellant.

12. That bring us to the questions 3 and 4. As rightly pointed out by the learned Counsel for the assessee the question has been answered in favour of the assessee by the judgment of a Co-ordinate Bench of this Court in the case of Commissioner of Income Commissioner of Income Commissioner of Income Tax vs. Nagesh vs. Nagesh Devidas Kulkarni, 291 Tax vs. Nagesh vs. Nagesh Devidas Kulkarni, 291 Tax vs. Nagesh vs. Nagesh Devidas Kulkarni, 291 ITR 407. ITR 407. ITR 407. This judgment was considered by the Central Board of Direct Taxes. The Central Board for Direct Taxes by their communication dated 16th January, 2008 have informed the Chief Commissioner of Income Tax, Mumbai, that they have accepted the said judgment. In other words the judgment of this Court would not be appealed against. In other words for the amount in

excess of Rs.5.00 lakhs received under the O.E.R.S. the assessee would be entitled to the benefits under Section 89 in addition to the benefits available under Section 10(10C) of the Income Tax Act.

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