

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 05TH DAY OF JANUARY 2021 / 15TH POUSHA, 1942

WA.No.1713 OF 2020

AGAINST THE JUDGMENT DATED 23-11-2020 IN WP(C) 16955/2013(T) OF
HIGH COURT OF KERALA

APPELLANT/PETITIONER:

V.GOPALAN
AGED 73 YEARS
S/O.V.PAIDAL NAIR, SUBU NIVAS,
PANNIYANNUR P.O., THALASSERY 670 679

BY ADV. SRI.LEEJOY MATHEW.V.

RESPONDENTS/RESPONDENTS:

- 1 CHIEF COMMISSIONER OF INCOME TAX
KERALA, ERNAKULAM 680 018
- 2 COMMISSIONER OF INCOME TAX
MELE CHOVA, KANNUR 670 006
- 3 INCOME TAX OFFICER
WARD -3, MELE CHOVA, KANNUR 670 006

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05.01.2021,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R.'

J U D G M E N T

DATED THIS THE 5th DAY OF JANUARY, 2021

Gopinath, J:

This writ appeal has been filed challenging the judgment dated 23-11-2020 in W.P (C) No.16955/2013. The appellant was the Writ Petitioner. The brief facts are that the appellant had received certain amounts from his employer (the erstwhile State Bank of Travancore) under a Voluntary Retirement Scheme (VRS). The appellant filed his return of income for the assessment year 2001-2002 claiming deduction under Section 10 (10C) (viii) of the Income Tax Act as well as under the provisions of Section 89 (1) of the Income Tax Act (as it stood then) r/w Section 17 (3) of that Act.

2. The assessing officer appears to have initiated proceedings on the premise that the appellant was not entitled to claim deduction under Section 10 (10 C) (viii) and also under Section 89 (1) of the Act in respect of amounts received as part of VRS. Though it is stated that intimations under Sections 143(1)/154 were issued to the appellant, they are not on record in this Court. The appellant approached the 2nd respondent under Section 264 of the Income Tax Act seeking revision of the orders/intimations through

which relief under Section 89(1) was denied to him. This application under Section 264 was rejected by Ext.P1 order dated 31-01-2005. While matter stood thus, on 08-12-2005, a Division Bench of this court in the decision reported as ***State Bank of India v. Central Board of Direct Taxes; 2006 (1) KLT 258*** held that amounts received by employees under a Voluntary Retirement Scheme are entitled to relief under Section 89 (1) in addition to the exemption granted under Section 10 (10C) (viii) and quashed letter/circular No.E.174/5/2001-ITA-I dated 23-04-2001 issued by the Central Boards of Direct Taxes, which held to the contrary. On coming to know of the judgment of the Division Bench the appellant filed an application before the 2nd respondent seeking to rectify Ext.P1 order. Facing recovery proceedings the appellant also paid certain amounts to the Department to satisfy the demand arising out of the denial of relief under Section 89 (1). This court through judgment dated 01-10-2009 in WP(C) No. 26055/2009 directed the 2nd respondent to hear and dispose of the petition filed seeking rectification of Ext.P1 order within a time frame.

3. The 2nd respondent thereafter issued an order rejecting the petition for rectification of Ext.P.1 order finding that though a similar issue arose for adjudication in ***State Bank of India (supra)*** the same was not a ground for rectification and also on the ground that the Voluntary

Retirement Scheme of the State Bank of India which was considered by this court in ***State Bank of India (supra)*** may be different from the voluntary retirement scheme of the State Bank of Travancore from whose service the appellant took voluntary retirement. On being served with Ext.P6 raising a further demand (issued on 22-03-2013) the appellant preferred W.P (C) No.16955/2013. The learned Single Judge after considering the facts and circumstances of the case held that the remedy open to the appellant was to prefer an appeal before the Commissioner of Income Tax (Appeals) under Section 246A of the Income Tax Act and disposed of the writ petition permitting the appellant to file such an appeal and further ordered that if the appeal is filed within a period of 3 weeks from the date of the judgment, the same shall be treated as an appeal filed in time. The appeal, if filed, was directed to be heard and disposed of on merits. Aggrieved by the judgment of the learned Single Judge the appellant has filed the present appeal.

4. We have heard Sri. Leejoy Mathew, the learned counsel appearing for the appellant and Sri. Jose Joseph, learned Standing Counsel appearing for the Income Tax Department.

5. The learned counsel for the appellant would contend that this is a case where the issue stands decided in favour of the appellant by the

judgment of a Division Bench of this Court in ***State Bank of India (supra)***. He would therefore contend that this Court should exercise jurisdiction under Article 226 of the Constitution of India to quash the proceedings initiated against him on the premise that he was not entitled to claim deduction under Section 10 (10C) (viii) and relief under Section 89 of the Income Tax Act simultaneously. He submitted that the appellant should not have been relegated to avail the remedy of statutory appeal especially considering the fact that the appellant is a senior citizen aged 73 years and since the issue was anyhow covered in his favour by the judgment of the Division Bench of this Court in ***State Bank of India (supra)***.

6. Sri. Jose Joseph learned Standing Counsel appearing for the Department would, however, contend that Ext.P4 order issued by the Commissioner of Income Tax is perfectly justified as it is settled law that the officer cannot exercise his power of rectification only on the ground that the assessee was entitled to relief in terms of a decision rendered subsequent to the issuance of the original order. He would submit that the appellant had an efficacious alternate remedy of filing an appeal under Section 246A of the Income Tax Act. He would urge that we should not exercise our jurisdiction under Article 226 of the Constitution of India to quash the impugned proceedings when the appellant had an effective

alternative remedy. He would however fairly concede that the legal position following the judgment of this Court in **State Bank of India** is that the for the relevant year, the appellant was entitled to claim deduction under Section 10 (10C) (viii) and relief under Section 89 (1) of the Income Tax Act in respect of amounts received in terms of a Voluntary Retirement Scheme.

7. Having considered the rival contentions, we are of the opinion that in the totality of the facts and circumstances of the case the appellant need not have been relegated to an alternative remedy of filing an appeal under Section 246A of the Income Tax Act. The appellant admittedly took voluntary retirement in the year 2001. He had also claimed deduction under Section 10 (10C) (viii) and relief under Section 89 (1) of the Income Tax Act while filing his return of income for the relevant assessment year. The claim came to be rejected on the basis of the instructions/letter issued by the Central Board of Direct Taxes on 23-04-2001. It is not disputed before us that the said instructions/letter of the Central Board of Direct Taxes has been quashed by this Court in **State Bank of India (supra)**. Still further this Court has, in the said decision, categorically declared that amounts received by an employee under a VRS Scheme were entitled to deduction under Section 10 (10C) (viii) and relief under Section 89 (1) of the Income Tax Act, simultaneously. That being the position the entire

proceedings initiated against the petitioner becomes one without jurisdiction.

8. In ***Calcutta Discount Company Ltd. v. Income Tax officer; (1961) 41 ITR 191*** it has been held: -

“27. Mr Sastri mentioned more than once the fact that the Company would have sufficient opportunity to raise this question viz. whether the Income Tax Officer had reason to believe that underassessment had resulted from non-disclosure of material facts, before the Income Tax Officer himself in the assessment proceedings and if unsuccessful there before the appellate officer or the Appellate Tribunal or in the High Court under Section 66(2) of the Indian Income Tax Act. The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.

28. In the present case the Company contends that the conditions precedent for the assumption of jurisdiction under Section 34 were not satisfied and come to the court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under Article 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without

adequate reasons. In the present case we can find no reason for which relief should be refused.

29. We have therefore come to the conclusion that the Company was entitled to an order directing the Income Tax Officer not to take any action on the basis of the three impugned notices.”

9. Therefore, when the proceedings are found to be without jurisdiction the existence of an alternative remedy is not a bar for granting relief under Article 226 of the Constitution of India. It becomes our duty to grant relief when we are convinced that the proceedings are without jurisdiction. We accordingly set aside the judgment of the learned Single Judge. Applying the principle in ***Calcutta Discount Company (supra)***, we quash Exts.P1, P4 & P6 and hold that the appellant was entitled to claim deduction under Section 10 (10C) (viii) of the Income Tax Act and relief under Section 89 (1) (as the provision stood at the relevant point of time) in respect of amounts received by him under the voluntary retirement scheme. We direct that if any amounts have been paid by the appellant pursuant to demands which arose on account of denial of deduction under Section 10 (10C) (viii) and relief under Section 89 (1) of the Income Tax Act, such amounts shall be refunded to the appellant within a period of 2 months from the date of receipt of a copy of this judgment.

Before parting with this case, we place on record our sincere appreciation for the extremely fair submissions of the Learned Counsel for the Income Tax Department. The writ appeal is allowed in the manner indicated above.

No costs.

(Sd/-)

A.M. SHAFFIQUE, JUDGE.

(Sd/-)

GOPINATH P., JUDGE.

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