

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF DECEMBER 2006

PRESENT

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

AND

THE HON'BLE MR.JUSTICE ANAND BYRAREDDY

INCOME TAX APPEAL NO. 659/2006

Between:

- 1 The Commissioner of Income Tax,
C.R. Building,
Queens Road,
Bangalore.
- 2 The Assistant Commissioner of Income Tax,
Circle-15(1),
C.R. Building,
Queens Road,
Bangalore. ... Appellants

(by Sri. M.V. Seshachala, Adv)

And:

Lusia T. D'Souza,
Flat No.1, Lewis Noor Corner,
Cooke Town, Lewis Road,
Bangalore. ... Respondent

(By Sri S. Parthasarathy, Adv.)

This Income Tax Appeal is filed under Sec.260A of the Income Tax Act, 1961, praying to set aside the order passed by the Income Tax Appellate Tribunal, Bangalore, in ITA No.1368/Bang/2005 dated 27.10.2005 confirming the order of the Appellate Commissioner and

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confirm the order passed by the Assistant Commissioner of Income Tax, Circle 15(1), Bangalore, etc.

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

JUDGMENT

Sri.S. Parthasarathy, learned Counsel is directed to take notice for the respondent. He is permitted to file memo of appearance within four weeks from today.

2. The revenue has raised the following questions of law for our consideration and decision. They read as under:

1. 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(10C) of the Act read with Rule 2BA of the Income Tax Rules.
2. Whether, the assessee having availed of the benefit under Section 10(10C) 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 the prohibition contained under second proviso to section 10(10C) of the Act.
3. Whether, the assessee is entitled to claim relief under Section 89(1) of the Act in respect of a sum received

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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 21A of the Income Tax Rules.

4. 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. The questions of law raised in this appeal are no more res-integra in view of the order passed by a Division Bench of this Court in the case of Commissioner of Income Tax and another Vs. P.Surendra Prabhu - 279 ITR 402 (Karn).

4. Following the observations made in the aforesaid decision, the questions of law raised in this appeal are answered in the negative i.e. against the revenue and in favour of the assessee. Accordingly, the appeal is rejected. Ordered accordingly.

Sd/-
Judge

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Sd/-
Judge