IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

Before Shri Shailendra Kumar Yadav, Judicial Member,
and Shri R.K.Panda, Accountant Member.

ITA.No.781/PN/2013
(Asstt. Year : 2008-09)

Shri Sudhir Gajanan Vaidya,
1/6, Shivnagari, S.No.70/1-17B,
Near Mahatma Society, Kothrud,
Pune - 411029. .. Appellant
PAN: AAMPV3970C

Vs.

ITO, Ward-7(2),
Pune. .. Respondent

Assessee by	:	Shri P.S.Kulkarni
Department by	:	Ms.Ann Kapthuama
Date of Hearing	:	18.04.2013
Date of Pronouncement	:	25.04.2013

ORDER

PER SHAILENDRA KUMAR YADAV, JM:

This appeal filed by the assessee is directed against the order of the CIT(A) relating to Assessment Year 2008-09.

2. Facts of the case, in brief, are that the assessee is an employee of State Bank of India who filed return of income disclosing total income of Rs.3,78,870/-. The AO in the assessment completed u/s.143(3) r.w.s. 147 disallowed the claim of exemption u/s.10(10C) of the Act amounting to Rs. 5 lakhs received by the assessee in respect of Ex-gratia payment on VRS under the 'Exit Option Scheme' floated by State Bank of India. While doing so, the

AO relied on the guidelines of Rule 2BA according to which benefits received under the 'Exit Option Scheme' floated by the State Bank of India and Associate banks under reference were not eligible for exemption u/s.10(10C).

3. In appeal the learned CIT(A) upheld the disallowances made by the AO. Aggrieved with such order of the CIT(A) the assessee is in appeal before us with the following grounds :

> 1. The learned Commissioner of Income Tax erred in not following the decisions of Bombay High Court and Mumbai & Pune Tribunal upholding the eligibility to exemption u/s.10(10C) of the ex gratia amount of the SBI ex employees.
>
> 2. The learned Commissioner of Income Tax erred in upholding the decision denying the exemption under section 10(10C) to the assessee.
>
> 3. The learned CIT appeals erred not giving the appellant an opportunity to prove that the scheme resulted in reduction in staff and hence was eligible to exemption under section 10(10C).

4. After hearing both the sides, we find the issue stands covered in favour of the assessee and against the revenue by the decision of the Tribunal in the case of ITO Vs. Durukkar V. Vishvanath vide ITA No. 1229/PN/2011 order dated 16-10-2012 wherein the Tribunal has held as under :

> *"4. After hearing the learned DR and on perusal of orders of the AO and CIT(A) we find identical issue had come up before the Tribunal in the case of ITO Ward-2, Ratnagiri Vs. Dattatraya Dhundira Marathe vide ITA No.1095/PN/2011 order dated 05-09-2012. We find the Tribunal dismissed the appeal filed by the revenue by holding as under:*
>
> > *"6. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the various decisions cited before us. Admittedly the tax effect in the instant case is less than Rs.3 lakhs. Therefore, in view of the various decisions of*

the Coordinate Benches of the Tribunal the appeal filed by the revenue is not maintainable and has to be dismissed as unadmitted. Even otherwise on merit also the issue stands decided against the revenue and in favour of the assessee by various decisions of the Coordinate Benches of the Tribunal. We find in the case of ITO Vs. Ganpatrao Patil (Where both of us are parties) we have dismissed the appeal filed by the revenue by holding as under :

> *"2. Briefly stated facts are as under. The assessee was employee of the State Bank of India and opted for Voluntary Retirement as per Exit Option Scheme (EOS) declared by the Bank. In the return of income for the A.Y.2007-08. The assessee claimed exemption u/s.10(10C) of the Act in respect of the Ex-gratia amount received from the Bank on his Voluntary Retirement. The said claim of exemption u/s.10(10C) was rejected by the AO following the CBDT Circular F.No.200/34/2009-ITa.I, dated 08-10-2009. The AO denied the claim of the assessee u/s.10(10C) of the Act. The assessee challenged the assessment order before the Ld. CIT(A). The Ld. CIT(A) following the decision in the case of CIT Vs. Koodathil Kallyatan Ambujakshan, 219 CTR 80 (Bom.) allowed the claim of the assessee. We further find that the assessee's case is also squarely covered by the decisions of the Coordinate Benches of the ITAT in the following cases :*

1. *ITO vs. Shri Javerilal Dalichand Chhajed, ITA No. 326/PN/2010, dated 08-11-2011.*
2. *Shri Venugopal Vs. Katti, ITA No. 4090/Bangalore/2011 dated 15-02-2012.*
3. *ITO Vs. Rohit Kumar, ITA No. 969/Ahd/2010, dated 05-05-2011, ITA 'A' Bench, Ahmedabad.*

We find no reason to interfere with the order of the CIT(A). Accordingly, the same is confirmed.

3. In the result, Revenue's appeal is dismissed."

7. Since the learned CIT(A) has followed his decision in the case of Vijay Ganpatrao Patil which has been upheld by us, therefore, we find no infirmity in the order of the CIT(A) allowing the claim of the assessee. Accordingly, the same is upheld and the grounds raised by the revenue are dismissed.

8. In the result, the appeal filed by the Revenue is dismissed".

> *5. Since the facts in the instant case are identical to the facts decided by the Tribunal cited (Supra), therefore, we find no infirmity in the order of the CIT(A) allowing the claim of exemption u/s.10(10C) of the Income Tax Act. Accordingly the same is upheld. Grounds raised by the revenue are dismissed."*

Respectfully following the decision of the Tribunal cited above and in absence of any contrary material brought to our notice, we set-aside the order of the CIT(A) and direct the AO to allow the claim of exemption u/s.10(10C) of the Income Tax Act.

5. In the result, the appeal filed by the assessee is allowed.

Pronounced in the open court on this the 25th day of April, 2013.

Sd/-	Sd/-
(R.K.PANDA)	(SHAILENDRA KUMAR YADAV)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

gsps

Pune, dated the 25th April, 2013

Copy of the order is forwarded to:

1. The Assessee
2. The ITO, Ward-7(2), Pune.
3. The CIT(A)-III, Pune.
4. The CIT-IV, Pune.
5. The DR "A" Bench, Pune.
6. Guard File.

By Order

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Private Secretary,
Income Tax Appellate Tribunal,
Pune.