Karnataka High Court Commissioner Of Income Tax And ... vs P. Surendra Prabhu on 21 September, 2005 Equivalent citations: (2005) 198 CTR Kar 209, ILR 2005 KAR 5906, 2005 279 ITR 402 KAR, 2005 279 ITR 402 Karn Author: H Dattu Bench: H Dattu, H N Das JUDGMENT H.L. Dattu, J. 1. Since the issues involved in these two appeals are inter-related, they are heard together and disposed of by this common judgment. 2. The facts in IT Appeal No. 189/2005 are as under: The assessee was an employee of Canara Bank, which is a nationalised bank. The bank had floated a scheme called Canara Bank Employees Special Voluntary Retirement Scheme ("Voluntary Retirement Scheme" for short). The objective of the scheme is to have an ideal manpower for the bank and to have optimum human resources in keeping with the business strategies, skill profile towards achieving a balanced age profile and meeting the latest requirements of the bank. The scheme, apart from others, provides eligibility criteria, benefits available under the scheme, and other general conditions. The scheme is available to all permanent workmen/officer employees of the bank, provided they have completed fifteen (15) years of actual service or forty (40) years of age and the eligibility to be reckoned as on 1st Jan., 2001. The employees who seek voluntary retirement under the scheme require to make appropriate application and it is the prerogative of the bank's management either to accept the request for voluntary retirement under the scheme or to reject the same depending upon the requirement of the bank. Clause (6) of Annex. I to the circular issued by the bank, dt. 11th Dec., 2000, provides for benefits available under the scheme for those employees seeking voluntary retirement under the scheme. Apart from payment of gratuity, provident fund/pension, encashment of privilege leave, the scheme also provides for payment of "ex gratia amount" as specified in Clause 6.1 of the Annexure to the circular. A scheme similar to the one floated by the respondent-bank came up for consideration before the Supreme Court in the case of Bank of India v. O.P. Swaranakar . The question before the Court was, whether an employee, who opts for voluntary retirement pursuant to or in furtherance of a scheme floated by the nationalised banks and the State Bank of India would be precluded from withdrawing the said offer? While answering the question in negative and in favour of the employees of the bank, the Supreme Court has elaborately dealt with the status of employees in nationalised banks, the true intendment of the schemes floated by the banks, and whether the principles of Contract Act would be applicable in a case where an offer is made under a scheme to a group of persons and accepted individually by the employees of the bank. While answering the last issue, the Court has specifically observed : "It is difficult to accept the contention raised in the Bar that a contract of employment would not be governed by the Indian Contract Act. A contract of employment is also subject-matter of contract unless governed by a statute or statutory rules. The provisions of Indian Contract Act would be only applicable at the formulation of the contract as also the determination thereof. Subject to certain just exceptions, even specific performance of contract by way of a direction for reinstatement of a dismissed employee is also permissible in law." The Court has further stated : "Once it is held that the provisions of the Indian Contract Act, 1872, would be applicable, the scheme admittedly being

contractual in nature, the provisions of the Act shall apply. The scheme having regard to its provisions as noticed hereinbefore would merely constitute invitation to treat and not an offer." Proceeding further, the Court has observed : "We, therefore, have no hesitation in coming to the conclusion that the voluntary scheme was not a proposal or an offer but merely an invitation to treat and the applications filed by the employees constituted 'offer'." The Court has concluded : "The scheme is contractual in nature. The contractual right derived by the concerned employees, therefore, could be waived. The employees concerned having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand." 3. Now having noticed the scheme floated by the bank and its limited operation insofar as contractual relationship between the employer and the employee, we proceed to narrate the facts in brief for the disposal of these appeals. 4. The assessee had offered for voluntary retirement from service under the scheme floated by the bank. On acceptance of the offer, the assessee had received the full and final settlement of ex gratia payment and other benefits as per the scheme from his employer. In the return of income filed for the asst. yr. 2001-02, the assessee had claimed exemption to the extent of Rs. 5.00 lakhs received under the voluntary retirement scheme from his employer under Section 10(10C) of the Act and also relief under Section 89(1) of the Act in respect of the amount received in excess of Rs. 5.00 lakhs from his employer. The assessee's claim was rejected by the AO. The reasons assigned by the AO to deny the relief under Section 89(1) of the Act is, that once the assessee had availed the benefit under Section 10(10C) of the Act in respect of the amount of Rs. 5.00 lakhs, he is not entitled to the benefit of spread over in respect of the amount received in excess of Rs. 5.00 lakhs under Section 89(1) of the Act. According to the AO, the amount received by the assessee under voluntary retirement scheme is not an arrears or advance of salary, not a gratuity, pension or compensation in connection with the termination of service envisaged under Rule 21A of the Rules. The amount so received comes under "profit in lieu of salary" under the inclusive provisions of Clause (3) of Section 17 of the Act and assessable under the head "Income from salaries". If the special voluntary retirement scheme amount received has been advance or arrears of salary, the entire such amount would have become taxable on due or receipt basis without having any scope for exemption of income under Section 10(10C) of the Act. The AO has further observed, that, since the amount received under voluntary retirement scheme has been a total composite package under a scheme of voluntary separation, the assessee on having availed the exemption under Section 10(10C) of the Act, acknowledges the fact that it was voluntary separation from the employer and not termination by the employer unilaterally. The assessee has claimed relief under Section 89(1) of the Act on the ground that the amount received under voluntary retirement scheme exceeds Rs. 5.00 lakhs by terming it as ex gratia or compensation. The total package made available to the employee under the voluntary retirement scheme was only termed as 'amount' in Section 10(10C) of the Act for bringing it within the ambit of exemption, under Section 10(10C) of the Act, subject to prescribed limits and not as 'ex gratia' or 'compensation'. Having availed the

exemption under Section 10(10C) of the Act on the said amount, the action of the assessee in naming the balance portion of the amount after exemption under Section 10(10C) of the Act out of the total amount received as 'ex gratia' or 'compensation' is nothing but unilateral action of the assessee, which has no sanction under the provisions of the Act. The intent of the legislature also appears to be that providing assessee with a deduction from the tax liability arising out of voluntary retirement scheme amount for one assessment year only as is evident from the second proviso to Section 10(10C) of the Act and giving relief under Section 89(1) of the Act involves spreading over of the income from voluntary retirement scheme amount to the earlier three assessment years with a consequential tax relief and this is besides what has been given under Section 10(10C) of the Act and the claim goes against the spirit of the tax relief granted under the aforesaid provision. The assessing authority has also observed in his order, that the computation of relief under Section 89(1) of the Act is governed by Rule 21A of the Rules and there is no provision under Rule 21A of the Rules for providing relief under Section 89(1) of the Act under the name ex gratia payment. As regards the compensation, the amount received under the voluntary retirement scheme would not come under the purview of the compensation found in Rule 21A(1)(c) of the Rules and under Clause (3) of Section 17 of the Act. These provisions are found in the Act and in the rules much before the voluntary retirement scheme came into existence and the so-called compensation out of voluntary retirement scheme amount do not find a place in Rule 21A of the Rules for granting relief under Section 89(1) of the Act. Lastly, relying on the Board's letter dt. 23rd April, 2001 addressed to the Chief CIT (Karnataka and Goa), the assessing authority has rejected the claim of the assessee for relief under Section 89(1) of the Act by concluding that the amount received over and above Rs. 5.00 lakhs under voluntary retirement scheme is not eligible for relief under Section 89(1) of the Act. 5. Aggrieved by the aforesaid order, the assessee had preferred an appeal to the CIT(A), Bangalore, who by his order dt. 14th Jan., 2004, following the decision rendered in another assessee's case on similar set of facts, has allowed the appeal and has granted the reliefs to the assessee under Section 89(1) of the Act. 6. The Revenue, being aggrieved by the order passed by the first appellate authority, had preferred second appeal before the Tribunal, Bangalore. The Tribunal, relying on the judgments rendered in similar cases by the Panaji Bench of the Tribunal in the case of ITO v. Dilip Shirodkar and the judgment of the Madras High Court in the case of CIT v. J. Visalakshi and G.N. Badami v. CIT , has rejected the Revenue's appeal. Aggrieved by the same, the Revenue is before this Court in this appeal filed under Section 260A of the Act. In the appeal, the following questions of law are raised for determination. They are : "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(10C) of the Act read with Rule 2BA of the IT Rules ? II. Whether the assessee having availed of the benefits 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 of the prohibition contained under second proviso to Section 10(10C) 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 21A of the IT Rules ? IV. Whether the appellate authorities being the last fact finding authority was bound to record a finding on facts after considering the controversy before it in the case of the assessee ?" 7. Facts in IT Appeal No. 75/2005 are as under : This appeal is filed by the IT Department under Section 260A of the IT Act, 1961 (hereinafter for the sake of brevity referred to as "Act, 1961"), against the order passed by the Tribunal, Bangalore Bench, Bangalore, in the case of CIT and Anr. v. Manager, Canara Bank, in ITA No. 1657/Bang/2002, dt. 20th Aug., 2004. 8. The four questions of law raised for our consideration and determination are : "I. Whether the Tribunal was correct in holding that the respondent was exercising powers under Section 192(2A) of the Act and once Form No. 10E is filed by the employees he has merely to compute the tax and grant relief under Section 89(1) of the Act and, therefore, the respondent cannot be treated as an assessee in default under Section 201(1) in respect of that tax and levy interest under Section 201(1A) of the Act ? II. Whether the respondent when discharging the jurisdiction conferred under Section 192(2A) of the Act is bound to follow the Instructions/Circulars F. No. 174/5/2001-ITA.I, dt. 23rd April, 2001 issued by the CBDT under Section 119 of the Act where it has been clarified that if relief under Section 10(10C) of the Act is granted no relief under Section 89(1) can be allowed ? III. Whether the respondent has correctly exercised jurisdiction under Section 192(2A) of the Act when the ex gratia payment received cannot form part of any of the annexures to Form 10E and the employees will not be entitled to relief under Section 89(1) of the Act in respect of this payment ? IV. Whether the Tribunal should have recorded a finding that the employees who have availed of the relief under Section 10(10C) of the Act cannot avail of the benefit under Section 89(1) of the Act and, therefore, the provisions of Section 201(1) and 201(1A) of the Act was correctly availed and applied by the AO to the respondent which order (is) confirmed by the CIT(A) ?" 9. The respondent is a nationalised bank and is a responsible person for paying any income chargeable under the head 'Salaries' in accordance with Section 192 of the Act, 1961. The respondent-bank had filed its annual return of TDS in Form No. 24 as prescribed under the IT Rules. On an examination of the returns filed, the AO (TDS) found that there was short deduction of tax, as the respondent-bank had allowed relief under Section 89(1) of the Act, in respect of the amount over and above Rs. 5.00 lakhs received by the employees of the bank on the voluntary retirement benefits received by such employees. Since there was a short deduction of tax at source and since the relief under Section 89(1) of the Act was wrongly allowed, the AO had initiated proceedings under Section 201(1) read with Section 201(1A) of the Act against the respondent-bank for violating the provisions of Sections 192, 192(2A) read with Section 194 of the Act. The Asstt. CIT (TDS), after

considering the reply filed by the respondent-bank to the show-cause notice - issued, has confirmed the proposal made in the show-cause notice and in that has observed, that there was short deduction of tax at source, since the relief under Section 89(1) of the Act has been wrongly allowed and secondly, that the second proviso to Section 10(10C) of the Act allows exemption upto Rs. 5.00 lakhs and, therefore, no other exemption thereunder can be allowed to an employee of the bank, who has taken voluntary retirement from service under voluntary retirement scheme in relation to any other assessment year, relying on the letter of the Board in No. 174/5/2001-ITA.I, dt. 23rd April, 2001 in this regard. Accordingly, he has passed an order under Section 201(1) of the Act, holding that the respondent-bank is an assessee-in-default to the extent of short deduction of tax at source and has levied interest under Section 201(1A) of the Act. The view of the Asstt. CIT (TDS) appears to be, once the exemption under Section 10(10C) of the Act is allowed to the extent of Rs. 5.00 lakhs, the recipients under voluntary retirement scheme are not entitled to relief under Section 89(1) of the Act. 10. The respondent-bank being aggrieved by the order passed by Asstt. CIT (TDS), had approached CIT(A), who in turn, by his order dt. 31st Oct., 2002 has rejected the appeal on the ground, that in accordance with Section 192(2A) of the Act, the employee is entitled to relief only if he is eligible under Section 89(1) of the Act and the respondent-bank being a tax deductor was bound to follow the circulars issued by the Board and deduct tax at source by not giving relief under Section 89(1) of the Act, as exemption under Section 10(10C) of the Act was already granted, and further has noted that once exemption is allowed under Section 10(100) of the Act to the extent of Rs. 5.00 lakhs to the employees of the bank, the employees are not entitled to relief under Section 89(1) of the Act, in view of second proviso to Section 10(10C) of the Act. 11. The respondent-bank being aggrieved by the order passed by the CIT(A), has preferred an appeal to the Tribunal, Bangalore. The Tribunal, on consideration of the rival contentions of the parties to the is, has come to the conclusion, that, under Section 192(2A) of the Act, the respondent-bank is entitled to give relief under Section 89(1) of the Act, once Form No. 10E is submitted by the employee. Therefore, provisions of Sections 201(1) and 201(1A) of the Act are not attracted. The Revenue being aggrieved by the findings and the conclusion reached by the Tribunal is before this Court in this appeal. 12. Sri Seshachala, learned Counsel for the Department, in the written submission filed, has stated that the assessees were working with the respective public sector banks in accordance with the terms and conditions as stipulated in the regulations framed by the bank and the salary, perquisites and the terminal benefits receivable by the employees from the employers is governed by the statutory rules. The voluntary retirement scheme was formulated by the respective banks with a specific objective and under the scheme, the employees receiving benefit under the voluntary retirement scheme enter into specific agreement with respective employer, i.e., the employee sheds all his rights under the statutory regulations and enters into a new contract as per the provisions of Indian Contract Act. Under the scheme, what was agreed to be paid by the employer was an incentive and the same is received by the employee. Therefore,

the amount is received as per the agreed terms of contract/scheme and not as per the terms and conditions of employment. Therefore, the amount received by the assessee is a lawful consideration as per the terms of the contract. It is further submitted, that once the voluntary retirement scheme is considered as a contract, the benefit derived by the employee under the said scheme is only lawful consideration, therefore, the consideration received by the employees requires to be termed as 'profits in lieu of salary' and, brought to tax under Section. 17(1)(iv) of the Act. In support of this submission, reference is made to the observations made by the Supreme Court in the case of Karamchari Union, Agra v. Union of India and Ors. , Shriyans Prasad Jain v. ITO and Ors. and also the decision of the Calcutta High Court in the case of IEL Ltd. v. CIT . Therefore, the ex gratia amount received by the assessee as per the voluntary retirement scheme should be treated as "salary" in accordance with Section 17(1)(iv) of the Act and brought to tax. The learned Counsel would further submit that the ex gratia payment received by the assessee would squarely fall under Section 17(1)(iv) of the Act, for the reason, once the employee of a public sector opts for voluntary retirement under the scheme, he gives up all the terms and conditions of statutory employment and, therefore, the amount received under voluntary retirement scheme is a lawful consideration and cannot be termed as compensation for loss of employment; compensation is paid for breach of contract and in the present case, since the amount is received under voluntary retirement scheme, the same cannot be construed as compensation received for breach of agreement; and lastly, the consideration received under voluntary retirement scheme is only incentive and not a welfare measure to the employee and, therefore, cannot be treated as compensation. Therefore, it is submitted that since the assessee did not receive any amount by way of compensation as per Section 17(3) of the Act for voluntarily retiring from service under the scheme, but has received ex gratia payment, the same requires to be construed as 'profit in lieu of salary' as envisaged under Section 17(1)(iv) of the Act. Therefore, the assessing authority was justified in rejecting the claim of the assessee for spreading over the ex gratia amount received over and above Rs. 5.00 lakhs which is exempt from income-tax under Section 10(10C) of the Act and since the bank has allowed the claim while computing the tax deductible to the employees, who have opted to retire from service voluntarily, the assessing authority was justified in treating the assessee-bank as an assessee-in-default for the purpose of Section 201(1) read with Section 201(1A) of the Act. In conclusion, it is stated that the only benefit that is available to the assessee, who opts for voluntary retirement from service under the scheme floated by the assessee's employer is total exemption from income-tax of the compensation received upto Rs. 5.00 lakhs as prescribed under Section 10(100) of the Act and the balance amount, if any, over and above Rs. 5.00 lakhs was liable to be taxed, especially in view of the proviso to Section 10(10C) of the Act, which contemplates that such a benefit cannot be extended to any other assessment year once it is availed. Reliance is also placed on the observations made by the apex Court in the case of CIT v. E.D. Sheppard , V.D. Talwar v. CIT in aid of his submissions. 13. Sri Sarangan, learned senior counsel for the assessee,

would, contend, that Section 89 of the Act expressly provides for tax relief in respect of a sum which falls within 'profits in lieu of salary' as defined in Section 17(3) of the Act. The crucial words in Section 17(3) of the Act are "the amount of any compensation at or in connection with termination of employment". The expression 'compensation' is judicially interpreted in the context of Expln. 2 of Section 7 of 1922 Act. The said Explanation had come up for interpretation by Supreme Court in the case of CIT v. E.D. Sheppard (supra) wherein the Supreme Court has observed, that the expression "compensation for loss of employment" used in Expln. 2 to Section 7 of the Act refers to any payment made, whether under a legal liability or voluntarily to compensate, or act as a solatium for the loss of employment suffered by the employee. Since Expln. 2(1) of Section 7 of 1922 Act is replaced by Section 17(3) of 1961 Act, the meaning assigned by the Supreme Court to the phrase 'compensation due to or received by an assessee from his employer or former employer at or in connection with termination of his employment' should be adopted for interpretation of Section 17(3) of the Act. 14. It is further contended, that the word 'termination' is not confined to the termination by the employer or a termination at the instance of the employer. No specific qualification in this regard has been made in the provisions of Section 17(3) of the Act when using the expression 'termination'. The word 'termination' according to dictionaries is 'cessation of employment'. It includes termination by the employer, the retirement or resignation of an employee, which includes the voluntary retirement. The Hon'ble Supreme Court in the case of Bank of India v. O.P. Swaranakar (supra), had an occasion to consider the voluntary retirement scheme floated by some of the nationalised banks and the Court has held that the scheme is only an invitation and once the management accepts the option exercised by the employee and communicates its acceptance, a concluded contract is forged and the benefit is obtained by the employee thereupon. 15. It is further contended that the expression 'termination of service' for any reason whatsoever that occurs in Section 2(oo) and Section 25F of the Industrial Disputes Act is explained by the Supreme Court in the case of Santhosh Gupta v. State Bank of Patiala and in the case of Mohanlal v. Management, Bharat Electronics Ltd., includes every kind of termination except those expressly not included. The Industrial Disputes Act is confined to only such termination by the employer, whereas the word 'termination of employment' under Section 17(3) of the Act is not qualified by addition of the words 'by the employer'. Thus, the termination of employment on account of the act of employee would also come within the purview of Section 17(3) of the Act. The termination is in pursuance of a scheme, whereby the invitation to the employee to opt for termination has been provided for and such termination is ultimately occasioned on account of acceptance of the employee's option by the employer, who has agreed to give compensation at or in connection with such termination according to the terms of the scheme. The scheme is thus intended to bring about cessation of employment as the employer terminates the services with the consent of the employee, giving a go-by to the service contract earlier entered into between the employer and employee. Thus, the termination squarely falls within the provisions of Section 17(3) of the Act and once the com-

pensation received is in accordance with Section 17(3) of the Act, it is profits in lieu of salary to which the provisions of Section 89 of the Act are applicable. In view of the above, the termination contemplated in Section 17(3) of the Act includes even a termination on account of voluntary retirement scheme provided by the nationalised banks. Further, as stated earlier, though the voluntary retirement scheme provides an option to the employees to seek or to volunteer for the termination of employment, it is the employer, who terminates the services by accepting the offer of the employee. In fact, the final say is with the employer, who can even reject the offer of the employer. Thus, in effect, it is termination of the services of the employee by the employer and so the provisions of Section 17(3)(i) are applicable and consequently, the provisions of Section 89 are also applicable. 16. Nextly, it is contended that, it is an undisputed fact that the compensation received by the retired employee of the bank is exempted under Section 10(10C) of the Act to the extent of Rs. 5.00 lakhs. It is also undisputed fact that the amount of compensation in excess of Rs. 5.00 lakhs is includable as income under the head 'Salary' and such compensation is to be treated as profits in lieu of salary under Section 17(1)(iv) of the Act read with Section 17(3) of the Act. It cannot be held to be profits in addition to salary. The employee after he receives a communication to the effect that his application for voluntary retirement from service has been accepted and relieved on the date specified in that letter, at that point of time, there is cessation of relationship of employer and the employee is no more entitled to the salary. 17. It is further submitted by the learned senior counsel that the amount receivable on termination cannot also be held as 'consideration' as defined under the Contract Act. It is not the amount paid for the services rendered or to be rendered by the employee. The payment is for termination of employment and thereafter, there is cessation of employer and employee relationship. This payment is not for the performance of duty and accordingly, it cannot be held to be consideration. It is for the loss of office on account of the scheme and thus it is compensation for termination. 18. In conclusion, it is contended that there is no quarrel or issue as to the applicability of Section 10(10C) of the Act. The bank has taken into account the exemption under Section 10(10C) of the Act, without any demur from the Revenue, for the purposes of determination of tax to be deducted at source. Further, what is being taxed as 'profits in lieu of salary' is the compensation received in accordance with the scheme which is in excess of Rs. 5.00 lakhs. It is undisputed fact, that even the Revenue has assessed the same as 'profits in lieu of salary' in the cases of employees. The only dispute raised by the Revenue is, that in accordance, with the second proviso to Section 10(10C) of the Act, the amount that is not exempted under Section 10(10C) is not to be considered for giving relief under Section 89(1) of the Act. On a plain reading of the proviso, it is clear, that what the proviso bars an allowance under this section, viz., 10(10C) of the Act for any other assessment year when the assessee makes such claim in the event of getting further compensation from the same or any other employer. Nowhere in the section the relief to be granted under any of the provisions of the Act is barred. In fact, what is contemplated under Section 10(10C) of the Act is an exemption under Section 89(1) of the Act, what the assessee gets the

relief. There is no exemption with regard to the income, which is required to be assessed as 'profits in lieu of salary'. In fact, where the legislature is intended to bar a specific relief in other provisions of the Act once some relief is obtained under any provision, it is made specific in the section itself. 19. Insofar as the levy of penalty for not making deduction at source or at the time when the amounts were paid to the employees, the learned senior counsel would contend that under Section 192 of the Act, the employer was obliged to deduct tax at source out of the payment of income chargeable under the head salary. Section 192(2A) of the Act provides for the employer giving relief under Section 89(1) of the Act, when the employee furnishes to the person obliged to deduct tax at source such particulars in such form and verified in such manner as may be prescribed. The form prescribed is Form 10E under Rule 21AA of the Rules. The person responsible to deduct tax at source has no right to deny the appropriate relief. Thus, no default or failure to deduct tax at source is attributable to the employer or the employee when the relief under Section 89(1) of the Act is granted on the basis of the application made by the employee. When there is no default attributable, the provisions of Section 201(1) and Section 201(1A) of the Act are not applicable. In aid of his submissions, the learned senior counsel has placed reliance on several decisions of the apex Court as well as other High Courts. We will make reference to those decisions, while considering the submissions made by the learned senior counsel. 20. The one and the only issue that requires to be considered by us in these appeals, even though the Department has asked us to consider and decide more than one issue, is whether on the facts and in the circumstances of the case, the assessee, who has opted for voluntary retirement from service under the scheme floated by the bank is entitled to exemption under Section 10(10C) of the Act and also relief under Section 89(1) of the Act ? 21. Income-tax is a tax on a person in relation to his income. No income can be taxed unless and until there is authority of law to tax that income. Section 2(24) of the Act defines the meaning of the expression 'income'. It is an inclusive definition. Apart from others, the expression 'income' includes the value of any perquisites or profit in lieu of salary taxable under Clause (2) and (3) of Section 17 of the Act. Chapter III of the Act provides for income, which do not form part of the total income. Section 10 of the Act finds a place in Chapter III of the Act. The section deals with "income not included in the total income". It provides that, in computing the total income of a previous year of any person, any income falling within any of the clauses therein shall not be included. The several clauses in Section 10 of the Act specify different incomes, which would ordinarily be included in the total income of the assessee for the purpose of taxation but for such provision. Section 10(10C) of the Act is inserted by Finance Act, 1987, w.e.f. 1st April, 1987. The reason for introducing this provision is contained in the circular of the CBDT explaining the Finance Act, (1987) 168 ITR (St) 94]. This clause provides that any amount received by an employee of a public sector; or any other company; or a local authority; or a co-operative society; or a university established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a university under Section 3 of the University Grants Commission Act, 1956; or

an Indian Institute of Technology within the meaning of Clause (4) of Section 3 of the Institutes of Technology Act, 1961; or any State Government; or the Central Government; or an institution having importance throughout India or in any State or States, as the Central Government may, by notification in the Official Gazette specify in this behalf; or such Institute of Management as the Central Government may by notification in the Official Gazette specify in this behalf; exempt from income-tax, at the time of his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in the case of public sector company referred to in Sub-clause (1), a scheme of voluntary separation, to the extent that such amount does not exceed five lakh rupees. The second proviso to this sub-clause provides that where exemption has been allowed to an employee under this clause for any assessment year, no exemption thereunder shall be allowed to him in relation to any other assessment year. Chapter IV of the Act provides for computation of total income. Section 14 of the Act classifies the chargeable income into various heads of income, such as salaries, income from house property, income from business or profession, capital gains and income from other sources. Section 15 of the Act deals with income chargeable to income-tax under the head 'Salaries'. Section 16 of the Act provides for permissible or standard deductions allowable under the head 'Salary'. Section 17 of the Act provides for definition of salary, perquisites and profits in lieu of salary for the purposes of Sections 15 and 16 of the Act. Sub-section (1) of Section 17 of the Act defines the meaning of the expression "salary". It is an inclusive definition. The word 'includes' is explained by the apex Court in the case of P. Kasilingam and Ors. v. P.S.G. College of Technology and Ors. In that, it is stated that the word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The legislature by using the expression 'includes' immediately after the expression 'salary', certain payments made by an employer to the employee as salary though in the normal connotation those payments could not have been considered as 'salary'. One such payment, which is brought within the meaning of the expression 'salary', is any fees, commissions, perquisites, or profits in lieu of or in addition to any salary or wages. The meaning of the expression "salary" came up for consideration before the apex Court in the case of Karmachari Union, Agra v. Union of India (supra). In that decision, the Court has observed : "A reading of Clause (1) of Section 17 of the Act makes it abundantly clear that the word"salary" is given an exhaustive meaning as stated in Sub-clauses (i) to (vii). The inclusive definition of the word "salary" given in Section 17 provides that apart from salary received by the employee, it includes wages, any advance of salary, any payment received by an employee in respect of any period of leave not availed of by him and other payments mentioned in Sub-clauses (va), (vi) and (vii). These Sub-clauses (i) to (vii) of Clause (1) indicate that the legislature intended to include in salary the specified or named amount paid to the employee in respect of the services rendered by him. Sub-clause (iv) of Clause (1) provides for inclusion of four types of payments in the word "salary" (i) fees, (ii) commissions,

(iii) perquisites, and (iv) profits in lieu of or in addition to salary. In common parlance, fees, commissions, perquisites or payments of profits in lieu of salary may not be considered to be salary, but by this inclusive definition of the word "salary", a further inclusive definition is given to the word "perquisite", with which we are not concerned in these appeals. Thereafter Clause (3) provides for an inclusive definition of the phrase "profits in lieu of salary". Sub-clause (i) of Clause (3), inter alia, includes the amount of any compensation received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto. The inclusion of this amount of compensation has a direct connection with the employment or the terms and conditions relating thereto." (emphasis, italicised in print, supplied by us) 22. Having noticed the meaning assigned by the apex Court of the term 'salary', in our view, it would be appropriate to notice the provisions of Section 17(3) of the Act, which in our view, is the section which would assist us to answer the issue, which we have framed for our determination in these appeals. Therefore, the said section not only requires to be extracted and reference also requires to be made to the case laws of the apex Court and other High Courts, which have considered the said provision. The provision reads as under: "Section 17(3) : 'Profits in lieu of salary' includes : (i) The amount of compensation due to or received by an assesses from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto. (ii) xxxxxx (iii) Any amount due to or received, whether in lump sum or otherwise by an assessee from any person– (a) before his joining any employment with that person, or (b) after cessation of his employment with that person." 23. Sub-section (3) of Section 17 of the Act provides an inclusive definition of "profits in lieu of salary". The word 'profit' is explained by the apex Court in the case of Karamchari Union (supra). The word 'profits' in the context is required to be understood as a gain or advantage to the assessee. The Blacks Law Dictionary has defined the meaning of the expression "in lieu of" to mean "instead of or in place of; in exchange or return for". Therefore, 'profits in lieu of salary' would mean a gain or advantage that the assessee would receive instead of or in place of salary. The legislature again uses the expression 'includes' immediately after the expression 'profits in lieu of salary' to include any amount of compensation due or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto. Sub-clause (ii) refers to any other payment other than payments which are excluded under the clause itself, due to or received by an assessee from his employer or former employer or from the provident fund to the extent of which such payment does not consist of contributions of the assessee or interest on such contributions. 24. Under Sub-clause (i) of Section 17(3) of the Act, the amount of compensation due to or received by an assessee from his employer at or in connection with the termination of his employment is regarded as "profits in lieu of salary". The key words are, "any compensation due to or received by an assessee from his employer or former employer at or modification of the terms and conditions re-

lating thereto". The expression "compensation" is explained by the apex Court in the case of CIT v. E.D. Sheppard (supra). Though the decision was rendered prior to the amendment of Section 7 of 1922 Act w.e.f. 1955, still the meaning assigned to the word can be usefully applied to understand the meaning of the expression 'compensation'. By a majority view, the Court has observed, "that 'compensation' in Expln. 2 to Section 7(1) of the IT Act does not mean compensation which is payable or compellable at law. Compensation for loss of employment is a well-known term. It means a payment to the holder of an office as compensation for being deprived of profits to which as between himself and his employer he would, but for an act of deprivation by his employer or some third party such as the legislature, have been entitled". Proceeding further, the Court has observed : "That if the object of the payment was not related to the relation between the employer and the employee, it would not fall within the expression"profits received in lieu of salary" in Expln. 2 to Section 7(1)." Even the dissenting note expressed by Justice Raghubir Dayal has also some relevance for the purpose of the case. The dissenting note expressed by the learned Judge is as under: "The expression 'compensation' itself connotes some payment to make up certain loss suffered by the person getting the compensation. Any sum paid by an employer or former employer to an employee upon termination of his services will be a"payment made solely as compensation for loss of employment" only when it is made in consideration of what the employee can claim as such compensation under the law or the terms of the contract of service. If he cannot claim such compensation, the sum paid to the employee will not be by way of compensation for loss of employment. It is immaterial that the employer pays it or the employee receives it as compensation for loss of employment." 25. What can be deduced from the aforesaid view expressed by the apex Court is, 'compensation' is an amount received by an employee from his employer or former employer upon termination of his service. The legislature has not made any distinction whether the amount received by the employee as compensation from his employer at the instance of employer terminating the services of any employee for any reason whatsoever or at the instance of an employee, who wants to curtail his service with the employer by exercising his right to leave the services of his employer. 26. The next prerequisite under Section 17(3) of the Act is that the compensation that is due or received by the assessee from his employer or former employer must be in connection with the termination of his employment or modification of the terms and conditions of the employment. At this stage, we are required to focus on the expressions "at or in connection with the termination of employment or the modification of the terms and conditions of employment". The word "termination from employment" has different shades of meaning. In Service Law Jurisprudence, the word "termination from service" is understood as cessation of jural relationship of employer and employee based on the provisions of terms of service or the rules or regulations. When a termination is made in accordance with the contractual terms or the rules, it is known as "termination simpliciter". Termination from service could be by way of compulsory retirement, voluntary retirement, resignation and superannuation. 27. "Salary" as defined by Section 17(1) of the Act covers any kind of remuneration

received by or due to the employee irrespective of the fact that the payment is received during the period of employment or at the termination of employment. Terminal payments are not actually remuneration for services rendered but are in the nature of compensation for the, termination of employment. Such payments, in order to bring them within the tax net, have been given the character of "profits in lieu of salary" and are included in the salary income of the employee by virtue of Section 17(1)(iv) of the Act. The expression "profits in lieu of salary" has to be understood as comprehending not only such things as they signify to their nature and import but also those things which the interpretation clause declares that they shall include. This expression cannot be understood to mean only such things, which the definition or interpretation clause declares that they shall include. 28. Section 17(3)(i) of the Act treats the amount of any compensation due to or received by an employee from his employer or former employer at or in connection with the termination of his employment as "profits in lieu of salary" and brings it within the scope of the tax. The word 'any' in the phrase 'any compensation' indicates both the quantum and the kind of compensation. It may be paid under a termination clause in the contract of service or it may be paid at the time of an unexpected break of employment. Further, the motive of the payment of compensation is immaterial. It may be paid in respect of loss of future remuneration or deprival of future promotion, etc., thereby affecting the employee adversely. The payment of compensation may be voluntary or contractual. It will be taxable irrespective of the question whether the employer is liable to pay compensation in law or not. In sum and substance, the payment of compensation may be made by the employer or former employer at or in connection with the termination of employment. Even if such payment has no connection with the termination of employment, if it is received by the employee at the time of termination of employment, it would fall to be taxed as 'profits in lieu of salary'. The meaning of the phrase 'termination of employment' would cover a termination in the natural course of events, the terms of employment having been completed and period of retirement having been arrived. It would also apply to premature termination of employment and termination by death or voluntary resignation. The termination of employment need not be at the instance of the employer only. It would cover the cases of voluntary retirement of an employee under a scheme framed by the employer. The apex Court in the case of CIT v. E.D. Sheppard (supra), has observed that even the cases of 'voluntary separation' are covered by the scope and connotations of the expression 'termination from service'. The Supreme Court in the case of Santhosh Gupta v. State Bank of Patiala (supra), has noticed that the term 'termination' embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. The Madras High Court in the case of CIT v. J. Visalakshi (supra) has observed that the termination of service can take place either by resignation or by dismissal or by compulsory retirement or on attaining superannuation. There is no justification to confine the meaning of the word "termination" only to cases of either voluntary retirement or on superannuation. A Division Bench of the Karnataka High Court in the case of Management of M.S. Ramaiah Medical College & Hospital v. Dr. M.

Somashekar, has noticed the meaning of the expression 'termination' and in that, has observed that "termination of service" is broadly classified into those imposed by way of punishment and those which are not dismissal and removal are terminations. 'Termination' simpliciter refers to a termination in terms of the contract, otherwise than by way of punishment/penalty/retrenchment. Another situation which is envisaged in the sub-section is, that, though the employee may continue with his employer, the terms and conditions of service may be rearranged or modified and under the modified terms and conditions, the employee may be paid a lump sum in consideration of the remuneration payable to him during the subsequent years of service being reduced. The lump sum so received by way of compensation would be regarded as profits in lieu of salary and would be taxable. In order to constitute the receipt of compensation as 'profits in lieu of salary' it must come from the employer or former employer. If the receipt or receipts happen to come from an outsider, it would not be covered by the term profits in lieu of salary. At this stage, it may be useful to refer some of the case laws referred to by the learned Counsel for the parties to the lis in regard to the meaning of the expression 'profits in lieu of salary'. The Madras High Court in the case of G.N. Badami v. CIT (supra) has stated : "The provision of Sub-clause (i) of Clause (3) of Section 17 of the Act, in our opinion, includes within its ambit, any compensation due to or received by the assessee from his employer at or in connection with the termination of his employment. In our view, the said provision makes it clear that any compensation received at or in connection with the termination of the employment will be treated as a profit in lieu of salary and, therefore, taxable under the head 'Salary'." It is also relevant to notice the legislative history behind the provision of Clause (3) of Section 17 of the Act. Under the Indian IT Act, 1922, the expression "salary" was defined under Section 7 of the said Act and Expln. 2 to Section 7 of the 1922 Act provided a definition of the term, "profits in lieu of salary". The said Expln. 2 to Section 7 of the 1922 Act postulates that a profit in lieu of salary must be an amount of any compensation due to or received by the assessee from the employer or former employer at or in connection with the termination of his employment whether solely as compensation for loss of employment or for any other consideration. When the IT Act, 1961, was introduced in the year 1962, there is a significant omission of the words, compensation for loss of employment or for any other consideration as found in Expln. 2 to Section 7 of the Indian IT Act, 1922, in Sub-clause (i) of Clause (3) of Section 17 of the Act." In P. Arunachalam v. CIT , the Madras High Court has stated : "The provisions of Section 17(3)(i) of the Act are clear that any compensation received at or in connection with the termination of the employment by its employer, is liable to be treated as profit in lieu of salary. It is not disputed that the amount received is compensation and it was received by the assessee from his employer in connection with the termination of his employment. The conditions prescribed under Section 17(3)(i) of the Act are fully satisfied in this case and the amount of compensation received by the assessee is liable to be treated as salary and, therefore, we are of the view that there is no error in the order of the Tribunal in holding that the amount received by the assessee is taxable as salary." In CIT

v. G.V. Venugopal , the Madras High Court has stated : “The word”salary" as defined in Section 17 of the Act includes any profit in lieu of salary, which has been defined in Section 17(3) of the Act to include any amount of compensation due or received by the assessee from his employer or former employer in connection with the termination of his employment. Hence, payment under the voluntary retirement scheme is covered by the word “salary”, which has been given a very wide definition in Section 17. Since the assessee is covered by Section 89, he will get both the benefits, which he has claimed for." 29. Now coming to Section 89 of the Act, it provides for relief when salary, etc., is paid in arrears or in advance. The said section is as under: “Section 89 : Relief when salary, etc., is paid in arrears or in advance–(1) Where an assessee is in receipt of a sum in the nature of salary, being paid in arrears or in advance or is in receipt, in any one financial year, of salary for more than twelve months or a payment which under the provisions of Clause (3) of Section 17 is a profit in lieu of salary, or is in receipt of a sum in the nature of family pension as defined in the Explanation to Clause (iia) of Section 57 being paid in arrears, due to which his total income is assessed at a rate higher than that at which it would otherwise have been assessed, the AO shall, on an application made to him in this behalf, grant such relief as may be prescribed.” 30. Under Section 15 of the Act, salaries are charged to tax in the year in which they are due or paid. A salaried person in case he receives more than twelve months salary in any one financial year, as a result of salary is paid in arrears or in advance or payment received which under the provisions of Clause (3) of Section 17 of the Act is a profit in lieu of salary or is in receipt of an amount in the nature of family pension as defined in the Explanation to Clause (iia) of Section 57 of the Act being paid in arrears, the income for that year may be liable to assessment at a higher rate than at which it would otherwise have been assessed. Under such circumstances, Section 89(1) of the Act authorises the AO to grant appropriate relief on receipt of an application in this behalf from the assessee. The relief available to an assessee is computed by the AO in the manner prescribed under Rule 21A of the Rules. The relief to be granted under Section 89(1) of the Act shall be, where any portion of the assessee’s salary is received in arrears or in advance in accordance with the provisions of Sub-rule (2); where the payment is in the nature of gratuity in respect of past services of the assessee extending over a period of not less than five years, in accordance with the provisions of Sub-rule (3); where the payment is in the nature of compensation received by the assessee from his employer or former employer at or in connection with the termination of his employment after continuous service for not less than three years and where the unexpired portion of his term of employment is also not less than three years, in accordance with the provisions of Sub-rule (4); where the payment is in commutation of pension, in accordance with the provisions of Sub-rule (5); and where the payment is not in the nature of salary paid in arrears or in advance or gratuity in respect of past services or compensation received at or in connection with the termination of employment or in commutation of pension, in accordance with the provisions of Sub-rule (6); where an employee receives compensation on termination of his employment. 31. Having

noticed the provisions of Section 89(1) of the Act and the corresponding rule, the question as to whether the assessee is entitled to the relief under Section 89(1) of the Act would depend on the interpretation to be placed on the words "termination of employment" that finds a place in Section 17(3)(i) of the Act. According to the learned Counsel for Revenue, the termination of employment should be confined only to cases of voluntary retirement from service and termination of employment on attaining the age of superannuation. It is his further submission that what is paid under the voluntary retirement scheme by the employer is an incentive and the payment received as per the terms of the scheme and not as per the terms of the conditions of employment and, therefore, the amount received by the assessee is only lawful consideration and it cannot be construed as compensation received for termination of employment. There are various modes by which the relationship between the employer and the public servant can come to an end. Voluntary retirement from service is also one of the conditions of service. This gives an option to an employee to retire voluntarily from service after giving requisite notice and after he has reached the qualifying service or age. When such a request is made, there is no question of acceptance of the request by the employer once the condition for making the request is satisfied, but a voluntary retirement scheme which is in conformity with the statutory rules or regulations which governs both the employer and employee, may authorise the employer not to grant the request of an employee for voluntary retirement from service on reasonable grounds, but that by itself cannot be said that the scheme for voluntary retirement would bring an end to the jural relationship of employer and employee and a fresh contract is entered into by the employer and the employee and the amount received under the scheme of voluntary retirement cannot be termed as compensation received after cessation of service. Therefore, the contention of the learned Counsel for the Revenue that the amount received on termination of employment under the voluntary retirement scheme is in the nature of consideration, has no merit and, therefore, cannot be accepted. The submission of the learned Counsel that once the employee receives benefit under voluntary retirement scheme, he enters into separate agreement with the respective employer and sheds all his rights under statutory regulations, in our view, has neither any legal foundation nor is envisaged under Service Law Jurisprudence. The voluntary retirement scheme that is floated by the bank is an option given to an employee during the tenure of his service. If the offer to permit to retire from service is made and is accepted by the employer, apart from other terminal benefits, an ex gratia amount is paid and it has all the characteristics of compensation amount paid at the time of termination of employment. May be at the most by introducing voluntary retirement scheme, a new service condition might be brought into effect by an executive order or by issuing a circular and would remain in force as long as it is not repealed or till the time stipulated in the instruction or the circular. The assessee in the instant case, has received ex gratia payment from his employer under the voluntary retirement scheme. The amount so received to the extent prescribed under Section 10(10C) of the Act is exempt from payment of tax. The amount over and above the prescribed limit is taxable under Section 17(3)

of the Act as 'profits in lieu of salary'. The amount so received cannot be termed as salary or advance salary, but an amount of compensation received by the assessee from his employer or former employer in connection with the termination of his employment. Once it is not in dispute that the amount is taxable not as arrears of salary or advance salary, but profits in lieu of salary, as provided under Section 17(3) of the Act, it is eligible for relief under Section 89(1) of the Act whether the said amount is received under the voluntary retirement scheme or it has been granted exemption under Section 10(10C) of the Act to the extent prescribed. 32. The amount of compensation received by the employee from his former employer at or in connection with the termination of his employment is received in any one financial year, the income is liable for assessment at a higher rate, but by virtue of Section 89(1) of the Act, the income could be spread over for three previous years immediately preceding the relevant previous year so that the assessee would get some relief while computing average rate of tax applicable. The compensation amount received definitely would come within the net of income-tax, but the rate of tax that is applicable only varies. 33. The undisputed facts in the present case are that the assessee is an employee of Canara Bank. Pursuant to introduction of Canara Bank Employees Special Voluntary Retirement Scheme by the bank, the assessee had opted for voluntary retirement from the services of the bank. After accepting the offer so made, the bank has retired the assessee from the services of the bank and has paid, apart from gratuity, pension, the ex gratia amount offered under the voluntary retirement scheme. In the return of income filed, the assessee had claimed exemption of income of Rs. 5.00 lakhs from the voluntary retirement scheme under Section 10(10C) of the Act and had offered the balance amount over and above Rs. 5.00 lakhs to tax as "income from salaries" and had claimed relief under Section 89(1) of the Act read with Rules 21A and 21AA of the Rules. This claim was rejected by the AO primarily on two grounds, firstly, that the amount received by the assessee under voluntary retirement scheme is not an arrears or advance of salary, not a gratuity, pension or compensation in connection with the termination of service envisaged under Rule 21A of the Rules, but comes under 'profits in lieu of salary' under the inclusive provisions of Sub-clause (iv) of Clause (1) of Section 17 of the Act and assessable under the head "income from salaries" and, therefore, the assessee is not entitled for the relief under Section 89(1) of the Act. According to the assessing authority, Section 10(10C) of the Act read with Rule 2BA of the Rules speaks of voluntary retirement or voluntary separation and not 'termination' from service. The assessing authority, in our view, was wholly unjustified in arriving at this conclusion. Section 10(10C) was inserted by Finance Act, 1987, w.e.f. 1st April, 1987 to exempt from income-tax any payment received at the time of his voluntary retirement by an employee in accordance with any scheme which the Central Government may, having regard to the economic viability of the public sector company and also considering other relevant circumstances (sic-may notify). This exemption is available both to the workmen and the officers of the company. The scope of this section was extended w.e.f. 1st April, 1993 even to workmen and employees of 'any other company', a statutory authority, a local authority, a co-operative society, an

university, an Indian Institute of Technology and such Institute of Management as may be specified by the Central Government. The exemption provided under this sub-section would cover payments made at the time of voluntary retirement or termination of an employee in accordance with any scheme or schemes of voluntary retirement. The exemption allowed under this sub-section is only to an extent of rupees five lakhs only. Rule 2BA of the Rules prescribes requirements for a scheme of voluntary retirement. It is rule framed for the purpose of working out the provisions of Section 10(10C) of the Act and it cannot override the provisions of the Act and it is the section which prevails over the rules. The section specifically speaks of voluntary retirement/termination of an employee in accordance with the scheme to be entitled for benefit of exemption under the section and merely because Rule 2BA of the Rules does not speak of 'termination', the assessing authority could not have concluded that the assessee is not entitled to claim relief under Section 89(1) of the Act. Further, fallacy in the reasoning and conclusion of the assessing authority is, if the rule does not speak of 'termination' but only speaks of 'voluntary retirement and separation', then the assessing authority could not have granted exemption under Section 10(10C) of the Act on the amounts received by the assessee from his employer. Thirdly, there is no essential difference between the expressions 'voluntary retirement/separation and termination'. Therefore, in our view, the approach of the assessing authority appears to be too hyper-technical and, therefore, cannot be accepted. 34. The second reason assigned by the assessing authority for rejecting the claim of the assessee is that, under Section 10(10C) of the Act, what is paid by the employer to the employee under the scheme is an 'amount' and that expression cannot be construed as ex gratia or compensation for claiming the relief under Section 89(1) of the Act. Even this reasoning of the assessing authority, for us, appears to be very strange, if not, absurd. The intention of the legislature under Section 10(10C) of the Act, is to exempt from income-tax any payment received by an employee from the employer specified in the section at the time of his voluntary retirement from service in accordance with any scheme approved by the Central Government. The scheme itself provides that the amount so paid is 'ex gratia' amount for seeking voluntary retirement from service and its acceptance by the employee. Therefore, this reasoning of the assessing authority also cannot be accepted by us. 35. Thirdly, the assessing authority observes in his order that the exemption for payment of income-tax can be claimed by the assessee under Section 10(10C) of the Act only once in view of the second proviso appended to the section. In our view, the second proviso prohibits an employee receiving the exemption under Section 10(10C) of the Act more than once. The reason being simple, under Rule 2BA of the Rules, which prescribes certain conditions for a scheme of voluntary retirement, prohibits an employer from filling up the vacancies caused after accepting the option exercised by the employee seeking voluntary retirement from service and also employing the retired employee in another company or concern belonging to the same management. However, this does not prevent an employee, who has taken voluntary retirement from service with one employer, joining other employer and again opting for voluntary retirement from service under the scheme

floated by another employer. In order to prevent such misuse of the provision by an employee opting for voluntary retirement from service, the proviso makes it clear that once a employee has taken the benefit of exemption from tax provided under Section 10(10C) of the Act, he will not be allowed to make exemption in any other assessment year. This is only to prevent the misuse of the provisions of Section 10(10C) of the Act by employees, who could jump from employer to another employer and take the benefit under the provision of Section 10(10C) of the Act. Secondly, the proviso appended to the section speaks of 'exemption' and not the 'relief as envisaged under Section 89(1) of the Act. If an exemption under the Act is claimed and granted by the AO for any assessment year, the assessee will not be eligible to claim exemption in relation to any other assessment year. The second proviso will not bar the assessee to claim relief under Section 89(1) of the Act on the amount received by way of compensation on voluntary retirement from service. 36. Sri Seshachala, the learned Counsel for the Revenue, has placed reliance on the observations made by the apex Court in the case of V.D. Talwar v. CIT (supra). The facts in the said case were, the assessee, V.D. Talwar, was an employee of M/s J.K. Iron and Steel Company Ltd., Kanpur. According to service agreement, the pay of the assessee was fixed at Rs. 2,000 per month with an increment of Rs. 100 subject to certain deductions from income-tax. According to the agreement, the period of service was five years and termination of service if within five years, can be done only on notice of twelve months on either side or salary in lieu thereof. Though the assessee joined the service to the post of general manager on 1st May, 1946, his services were terminated w.e.f. 31st Aug., 1947, but without issuing twelve months notice as required under the contract. In lieu of notice, the company paid to its employee a sum of Rs. 18,096, which was the amount computed as salary for twelve months after deduction of income-tax at source. In the return of income filed for the asst. yr. 1948-49, the assessee claimed that the sum of Rs. 25,000 is the salary calculated for twelve months notice period as per the terms of contract and the said sum was compensation for loss of employment and the tax amounting to Rs. 7,103.15 should be refunded to him. This claim was rejected by the ITO and in the order of assessment passed, had held that the sum of Rs. 25,000 is a revenue receipt and the same is liable to be taxed under the provisions of IT Act. The assessee was successful in convincing the first appellate authority, who held that though a sum of Rs. 25,000 calculated on the basis of twelve times his monthly salary, the same is nothing but compensation for loss of service and, therefore, not taxable as income in the shape of salaries. This view was reversed by the Tribunal by holding that the amount paid to the assessee is a salary in lieu of twelve months notice and, therefore, the amount was liable to be taxed under the provisions of the IT Act. Before the apex Court, the question of law raised was whether the sum of Rs. 25,000 received by the assessee in the facts and circumstances was revenue receipt liable to tax under the IT Act or a capital receipt and liable to tax under the Act? The apex Court, in the facts and circumstances of the case, was pleased to observe that the expression "any salary" must be construed in the context of the appointment letter which said that if Mr. V.D. Talwar's service was to be

terminated within five years, he would be entitled to a notice of twelve months or salary in lieu thereof. No notice for the termination of service was given to him in the present case, but he was given twelve months salary. He, therefore, got exactly what he was entitled to under the terms of his employment and he was not deprived of any rights under the contract of service. There being no deprivation of his rights under the contract, the payment cannot be said to be "compensation for loss of service.". In our view, the case law on which reliance was placed would not assist the Revenue in any manner whatsoever, the reason being, the facts noticed by us in detail would clearly demonstrate that the contract that was entered into by the employer with the assessee provided that the appointment of the assessee is for a period of five years and if for any reason, the parties intend to go out of service within the prescribed period, they are required to give twelve months notice. The employer without giving twelve months notice, terminated the service of the assessee by paying twelve months salary. The assessee has received what is due to him by way of salary under the contract and, therefore, the amount so received could not have been construed as "compensation for loss of service". The facts in the present case are totally different. As observed by the Supreme Court, in the case of Bank of India v. Swaranakar (supra), the employees of nationalised banks do not enjoy status as in the case of Government employees. Their employment is governed by the provisions of Indian Contract Act. The schemes floated by the bank is in the realm of contract. Under the scheme, the benefit that the employee receives if his request for voluntary retirement from service is accepted by the bank, sixty days of salary for each completed year of service or salary for the number of months of service left, whichever is less. It is not the case of the assessing authority that the assessee has received salary by way of ex gratia payment for the number of months of service left before the assessee retires from service on attaining the age of superannuation. If that were to be his conclusion, possibility could have been that the assessee by offering to retire from service voluntarily under the scheme, there was no loss of service, since he was fully compensated with the salary he would have earned during the remaining years of service. Even that also may not be possible because during the remaining years of service, there could be possibility of enhancement of salary and he would be deprived of all that, since he has opted out of service prematurely. Therefore, in the present case, the employee of the bank by offering to take the benefit under the scheme and its acceptance by the employer, there is loss of service of the employee and the amount paid in this regard can be characterised only as "compensation for loss of service". 37. The learned Counsel for the Revenue has also placed reliance on the observations made by the apex Court in the case of CIT v. E.D. Sheppard (supra). The ratio of this decision is, once it is held that the payment in the present case was a payment made solely as compensation for loss of employment, there is an end of the appeal, because Expln. 2 in clear terms excepts such payment from being treated as a profit in lieu of salary. The Tribunal held on evidence before it, that the payment was made solely as compensation for loss of employment. The High Court, rightly, took the view that no distinction could be made between compensation for loss of employment

and compensation for loss of prospects rooted in that employment. The High Court also rightly pointed out that if the object of payment was unrelated to the relation between the employer and the employee, it would not fall within the expression "profit received in lieu of salary" in Expln. 2. In our view, the observations made by the apex Court in the decision would assist that assessee rather than the Revenue. 38. Sri Seshachala, learned Counsel for the Revenue has also invited our attention to the observations made by the apex Court in the case of Shriyans Prasad Jain v. ITO and Ors. (supra). In our view, certain observations made by the apex Court was entirely based on the findings of facts by the Settlement Commission under Section 245-C of the Act and the Court has not enunciated any law as such, which has binding effect on this Court. 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(10C) 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 21A 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(10C) 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 law framed by us in IT Appeal 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 IT Appeal No. 189/2005, the only conclusion that we can arrive at in IT Appeal 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 10E. Accordingly, the questions of law raised by the Revenue is answered against them and in favour of the assessee. 41. Accordingly, the appeals filed by the Revenue requires to be rejected and they are rejected. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.