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Court : Mumbai

Decided On : Jun-01-2001

Reported in : (2001)72TTJ(Mumbai)985

Appeal No. : ITA No. 27/Mum/2000 1 June 2001 A.Y. 1996-97

Appellant : Mrs. Uma Borkar

Respondent : ito

Advocate for Pet/Ap. : Rajeev Waglay, *for the Assessee Mrs. Lalita Menon, for the Revenue*

Judgement :

ORDER

G.D. Agarwal, A.M.

This appeal by the assessee is directed against the order of Commissioner (Appeals) XXII, Mumbai. In this appeal, the assessee has raised as many as 4 grounds. However, they are all against the addition of Rs. 91,519 made by the assessing officer by way of prima facie adjustment in respect of withdrawal of the balance of National Savings Scheme.

2. At the time of hearing, the learned representative for the assessee argued at length. He stated that the assessee made investment of Rs. 58,200 during the period March, 1990, to March, 1992, under National Savings Scheme (NSS). On

7-6-1995, the assessee withdrew a sum of Rs. 91,519 from the said account. The assessee offered the said receipt of Rs. 91,519 under the head 'capital gains'. That the assessing officer by way of prima facie adjustment taxed the entire sum of Rs. 91,519 as income from other sources under section 80CCA(2). It is contended by the learned representative that under section 80CCA(2), it is not specified under which head the amount withdrawn from NSS is to be taxed. Therefore, the assessee offered the income under the head 'capital gains'. That the amount invested in NSS is a capital asset under section 2(14) of the Income Tax Act because 'capital asset' means property of any kind held by an assessee. He further submitted that the withdrawal of the money from NSS account amounts to transfer of the capital asset. For this proposition he relied upon the following decisions :

1. H.H. Laxmibai v. CWT : [1994]206ITR688(SC)
2. Hindustan Welfare Trust v. ITO (1988) 26 ITD 1 (Cal);
3. CIT v. Surat Cotton Spg. & Wvg. Mills : [1993]202ITR932(Bom) ,
4. Seth Gwaldas Mathuradas Mohata Trust v. CIT : [1987]165ITR620(Bom) , and
5. Anarkali Sarabhai Ltd. v. CIT : [1997]224ITR422(SC) .

He further submitted that the provisions of section 80CCB are similar to section 80CCA and in section 80CCB the profit is taxable under the head 'capital gains'. Therefore, there was no justification for not accepting the assessee's claim that the amount withdrawn from NSS is to be taxed under the head 'capital gains' and not under the head 'income from other sources'. He further submitted that, in any case, the issue is of debatable nature and, therefore, no prima facie adjustment can be made under section 143(1)(a). In support of this contention, he relied upon the following decisions of Honble jurisdictional High Court :

1. Khatau Jhunkar Ltd. & Anr. v. K.S. Pathania, Dy. CIT & Anr. : [1992]196ITR55(Bom) ; and
2. Tanna Export v. Asstt. CIT : [1993]202ITR219(Bom) .

3. The learned Departmental Representative, on the other hand, relied upon the orders of the authorities below. He submitted that the scheme of section 80CCA was that when the assessee makes deposit in NSS account, the amount so deposited was allowed as a deduction from the income of the assessee as per section 80CCA(1), and when the money was withdrawn including interest, it was to be taxed in the year of withdrawal as per section 80CCA(2). The provisions of section 80CCA are very clear and there is no ambiguity therein. Therefore, the assessing officer had rightly added the money withdrawn by the assessee from NSS account in the year of withdrawal. There is no debit at all. The various decisions relied upon by the learned representative do not relate to the issue under dispute. Therefore, they are not relevant. He accordingly submitted that the order of the Commissioner (Appeals) is perfectly justified. The same should be sustained.

4. We have carefully considered the arguments of both the sides and perused the material placed before us. Section 80CCA as it stood at the relevant time reads as under :

'Section 80CCA. Deduction in respect of deposits under National Savings Scheme or payment to an annuity plan.(1) Where an assessee, being :

(a) an individual, or

(b)

x

x

x

x

(c)

x

x

x

x

has in the previous year :

(i) deposited any amount in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf (hereafter in this section referred to as the National Savings Scheme); or

(ii)

x

x

x

x

out of his income chargeable to tax, he shall, in accordance with, and subject to, the provisions of this section, be allowed a deduction in the computation of his total income of the whole of the amount deposited or paid (excluding interest or bonus accrued or credited to the assessee's account, if any) as does not exceed the amount of twenty thousand rupees in the previous year :

x

x

x

x

x

(a)

X

x

x

x

(b)

X

x

x

x

(2) Where any amount :

(a) standing to the credit of the assessee under the National Savings Scheme in respect of which a deduction has been allowed under sub-section (1) together with the interest accrued on such amount is withdrawn in whole or part in any previous year, or

(b)

X

x

x

x

an amount equal to the whole of the amount referred to in clause (a) or clause (b) shall be deemed to be the income of the assessee of that previous year in which such withdrawal is made or, as the case may be, amount is received, and shall, accordingly, be chargeable to tax as the income of that previous year :

X

X

X

X

X

(3)

X

X

X

X

Explanation I. For the removal of doubts it is hereby declared that interest on the deposits made under the National Savings Scheme shall not be chargeable to tax except in the manner and to the extent specified in sub-section (2).

Explanation II:

X

X

X

X'

From a plain reading of above section 80CCA, it is apparent that as per the scheme of section 80CCA, the assessee will be allowed deduction for deposit in the NSS account. When the amount will be withdrawn, it will be treated as income. Even the interest credited to the account of the assessee will not be treated as income in the year of credit but will be treated as income only when it is withdrawn.

In our opinion, the provisions of section 80CCA are very clear and there is no ambiguity about it. The assessee has claimed the deduction in the year in which she deposited the money. The assessee withdrew the money on 7-6-1995 (i.e. the accounting year relevant to assessment year under consideration). However, the assessee, instead of offering the money withdrawn from the bank as income as per section 80CC(2), has claimed that the income should be taxed under the head 'capital gains'. She has treated the deposit as cost of acquisition of capital asset and accordingly has worked out the capital gains at Rs. 4,007. In our opinion, when the money was deposited in NSS account, it does not amount to purchase of a capital asset. Similarly, when the money is withdrawn from the NSS account, it does not amount to consideration received from transfer of a capital asset. From National Savings Scheme Rules, 1987, it is evident that deposit in NSS account is as good as deposit in savings bank account. On deposit in NSS account, interest is to be paid at the rate to be notified by the Central Government. The interest is to be credited to the NSS account at the end of each year. As per Explanation 1 to section 80CCA, interest on deposit in NSS shall be charged to tax on withdrawal of the money from NSS account. From a combined reading of section 80CCA and the National Savings Rules 1987, it is abundantly clear that deposit in NSS account does not amount to purchase of capital asset and similarly withdrawal from NSS account is not money received on transfer of capital asset. The case laws relied upon by the learned representative for the assessee are not at all relevant. None of those decisions relate to the interpretation of section 80CCA. In the case of H.H. Laxmibai v. CWT (supra), National Defence Certificates and Defence Deposit Certificates were considered as asset for the purpose of wealth-tax. In wealth-tax, all bank deposits are considered as asset. However, that does not mean that depositing money in the bank account amounts to purchase of a capital asset. Therefore, the above decision would not at all be applicable to the present case. In the case of CIT v. Surat Cotton Spg. & Wvg. Mills (P) Ltd. (supra), the issue was whether the amount received on redemption of preference shares is dividend under section 2(22) of the Income Tax Act. It is obvious that the dispute before the Honble jurisdictional High Court in this case was altogether different than the issue in the present appeal before us. Similarly, the issue before the Honble jurisdictional High Court in the case of Seth Gwaldas Mathuradas Mohata

Trust v. CIT (supra) was whether the redemption of preference shares amounted to transfer as per section 2(47) of the Income Tax Act. Thus, this issue was also altogether different than the issue in the present appeal. In the case of Hindustan Welfare Trust v. Income Tax Officer (supra), the dispute before the Special Bench of the Tribunal was with regard to determination of income of charitable (sic) is to be computed and to what extent it is exempt. Section 11(1A) provides that where a capital asset being property held under trust is transferred and the net consideration is utilised for acquiring another capital asset to be so held, then the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes. In the case before the Tribunal, the assessee has transferred the shares and has invested the sale consideration in fixed deposits. While interpreting section 11(1A), the Tribunal held that no part of capital gains could be brought to tax in the relevant assessment year because the assessee made the investment in acquiring another capital asset. However, the above observation would not at all be applicable in interpreting the provisions of section 80CCA.

5. As we have already stated, section 80CCA is a specific provision and it has to be interpreted on its literal meaning. the language of section 80CCA is so clear and unambiguous that its literal meaning would convey the true import of the section. The assessee adopted the literal meaning for the purpose of claiming deduction under section 80CCA(2). However, in the year of withdrawal when the amount withdrawn is taxable as per section 80CCA(2), the assessee wants to interpret the above section with the aid of some decisions which were given either under the Wealth Tax Act or under provisions of Income Tax Act but in altogether different context.

6. It has been contended by the learned representative for the assessee that section 80CCA(2) does not provide under which head the money withdrawn is to be assessed. Therefore, the assessee rightly offered the income under the head capital gains'. To support this contention, he relied upon the (sic) head capital gains' under section 45(6). However, we are not impressed by this argument of the learned representative for the assessee. Deposit in NSS account cannot be equated with acquisition of units of mutual fund. This distinction is more clear from

the very fact that the legislature has provided for taxing the capital gains arising from the transfer of units of mutual fund as capital gains under section 45(6) but has not made any similar provision for taxing the money withdrawn from NSS account. When no specific section is provided under which the money withdrawn from NSS account is to be taxed, obviously, it has to be taxed as 'income from other sources' unless it falls under any other head. The assessee's representative was unable to satisfy us that it falls under any other head than the head 'income from other sources'.

7. It has also been contended by the learned representative for the assessee that the assessing officer made the addition by way of prima facie adjustment under section 143(1)(a). He stated that under section 143(1)(a), adjustment cannot be made in respect of items of debatable nature. To support this contention, he relied upon the decision of Honble jurisdictional High Court in the case of *Khatau Jhunkar Ltd. & Anr.* (supra). We fully agree with the contention of the learned representative of the assessee that under section 143(1)(a) adjustment cannot be made in respect of an item which is of a debatable nature. However, the question remains whether the adjustment made by the assessing officer was in respect of an item of debatable nature. As we have discussed earlier, section 80CCA(2) clearly provides that the money withdrawn from NSS account will be taxed in the year of receipt. The assessee has withdrawn a sum of Rs. 91,519 but has offered for tax only Rs. 4,007. The assessing officer treated the entire withdrawal made by the assessing officer as per the provisions of section 80CCA (2) and it was not a debatable issue. The issue will not become debatable merely because the learned representative for the assessee can argue a case for half an hour referring various decisions which are not at all relevant to the issue before us. In view of the above, we find no infirmity in the order of the Commissioner (Appeals). The same is sustained.

8. In the result, the assessee's appeal is dismissed.