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Court : Allahabad

Decided On : Apr-04-2005

Reported in : [2005]147TAXMAN423(All)

Appeal No. : IT Reference No. 187 of 1988 4 April 2005

Appellant : Gurbux Singh

Respondent : Cit

Advocate for Pet/Ap. : Suyash Agarwal, *for the Assessee*. Shambhu Chopra, *for the Revenue*.

Judgement :
ORDER

P. Krishna, J.

The present reference under Income Tax Act (hereinafter referred to as 'the Act') is at the instance of the assessee. The Income Tax Appellate Tribunal, Allahabad, has referred the following question of law under section 256(1) of the Act for opinion to this Court :

'Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was legally correct in holding that the assessee was not 'totally blind' in keeping in view the clear finding of the Doctor that the assessee is a blind person.'

2. The reference relates to the assessment year 1982-83. The assessee is a partner in M/s. Bombay Motor Stores and enjoyed share income from the aforesaid firm. The deduction of a sum of Rs. 10,000 was claimed by the assessee under section 80U of the Act which was refused by the Income Tax Officer on the ground that the assessee was not 'totally blind'. It may be stated here that the assessee in support of his claim for deduction under section 80U of the Act filed a Medical Certificate of the Institute of Medical Sciences, B.H.U., Varanasi. The Income Tax Officer on perusal of the certificate came to the conclusion that the assessee cannot be regarded as being totally blind and the applicant was held not be entitled to get deduction under section 80U of the Act. The assessee remained unsuccessful before the first appellate authority as well as before the Tribunal.

3. Heard Sri Suyash Agarwal learned counsel for the assessee and Sri Shambhu Chopra, learned standing counsel for the department. Learned counsel for the assessee submitted that the authorities below committed an error of law in holding that the assessee is not totally blind within meaning of section 80U of the Act. He placed strong reliance upon medical certificate issued by the Institute of Medical Sciences, B.H.U., Varanasi. He also placed reliance upon the medical book titled as in 'Ophthalmology' written by Shri A.K. Khurana, Edition Associate Professor, department of Ophthalmology Part B.D. Sharma, Post Graduate Institute of Medical Sciences, Rohtak. Second strong reliance was placed by him on the definition of blindness as given by W.H.O. (World Health Organization) in the year 1972.

4. In contra learned Standing counsel submitted that the words totally blind used in section 80U means only one thing that it is a case of stone blindness or complete blindness. He also referred in extenso the medical certificate filed by the assessee and submitted that since in the medical certificate it is mentioned that 'vision of the assessee' is limited, to hands movement only means that the assessee is not totally blind and, therefore, the authorities below were justified to deny deduction under section 80U of the Act.

5. We have considered the respective submissions of the learned counsel for the parties. We find that section 80U was introduced in the Statute Book for the first time by the Finance Act, 1968. The original section 80U reads as follows :

'80U. Deduction in the case of blind persons.In computing the total income of an individual being a resident, who is totally blind as at the end of the previous year, there shall be allowed a deduction of a sum of two thousand rupees :

Provided that such individual produces before the Income Tax Officer, in respect of the first assessment year for which deduction is claimed under this section, a certificate as to his total blindness from a registered medical practitioner, being an oculist.'

It was amended subsequently by the Taxation Laws (Amendment) Act, 1970. By this amendment the requirement that to claim deduction under section 80U remained the same. The original section 80U was sub-divided in sub-sections (1) and (2). In the original section the benefit was available only to the total blind person, but by the amendment in the year 1972 with effect from 1-4-1971 the benefit has also been extended to such assessee who suffers from permanent physical disability (other than blindness).

The Finance Minister in his Budget speech for the year 1968-69 has stated as follows :

'As a measure of relief to totally blind individuals I proposed to provide for deduction of Rs. two thousand in computation of their taxable income.'

While introducing the Bill with regard to insertion of section 80U of the Act. Since the controversy in the present case centers round to the medical certificate issued by the doctor, the same is reproduced below :

'This is to certify that Gurbux Singh whose signature is attested below has sympathetic opthalmia of the right eye with every severe chrioretinal reaction. His vision is limited to hand movement only. His left eye has already been excised. He is a blind person.'

In the said medical certificate two relevant things have been stated. Firstly the vision of the applicant is limited to hand movement only and secondly, he is a blind person. Learned counsel for the applicant has placed reliance upon the sentence certified by the doctor that the applicant is a blind person. On the other hand learned Standing counsel has submitted that vision of the applicant, as per medical report is limited to hand movement only and, as such, he cannot be classified as totally blind person.

6. In the above book 'Ophthalmology' blindness has been defined in the following manner :

'Definition of blindnessDifferent definitions and terms for blindness such as total blindness, economic blindness, legal blindness and social blindness are in vogue in different countries. So much so that 65 definitions of blindness are listed in a WHO publication (1966). In ophthalmology, the term blindness strictly refers to the inability to perceive light (PL Absent).'

7. The World Health Organization (WHO) in the year 1972 proposed a uniform criterion and defined blindness as follows :

'WHO in 1972 proposed a uniform criterion and defined blindness as 'Visual acuity of less than 3/60 (Snellen) or its equivalent'. In order to facilitate the screening of visual acuity by non-specialized persons, in the absence of appropriate vision charts, the WHO in 1979 added the inability to count fingers in day-light at a distance of 3 metres to indicate vision less than 3/60 or its equivalent.'

In the new Shorter Oxford English Dictionary, Third Edition, 1993, various meaning of the word 'blind' have been given. With reference to a blind person it means 'without sense of sight, make unable to see permanently or temporarily'. Different definitions and terms for blindness such as total blindness, economic blindness, legal and social blindness are in vogue in different countries. So much so 65 definitions of blindness are listed in WHO publication, 1966. In Ophthalmology the term 'blindness' strictly refers to perceive the light. Scientifically speaking a person can see only object when light is reflected from the object and reaches to the eyes of the person. Taking into account the pious aim and object of the introduction of section 80U in the Act by the Finance Act, 1968, we are of the opinion that total blindness under section 80U means an individual who is unable to perceive the light. The total blindness does not mean that the person is totally unaffected by the happening around his surrounding. Judicial notice of this notorious fact can be taken into account when one of the senses out of five senses of an individual is impaired or totally lost the other senses by nature, become stronger. A person who is blind, his other senses becomes more active or sensitive and they can spell out more accurately from the remaining four senses than from an ordinary person. The experience shows that blind person is able to recognize an individual more accurately from the individual's voice, sound or footstep. Therefore, if the applicant is able to perceive from the hand movement it cannot be said that the said person is not totally blind. The word 'totally blind' has been used in the sense that blindness is of permanent nature and is not curable.

8. In a different context, under Workman's Compensation Act, a learned Single Judge in Raghuraj Singh v. Northern Railways 1967 LJ 68 has observed as follows :

'An eye is used for sight or vision so if the vision of an eye is completely and permanently lost, it will amount to the 'loss of an eye'.

9. There is another aspect of the matter that the doctor who has issued certificate is a Reader in 'Ophthalmology' of a reputed institution known as 'Institute of Medical Sciences, B.H.U., Varanasi'. The said Medical College is one of the premier Medical Institute and its funds are provided by the Central Government. The doctor who has issued the certificate is specialized in Ophthalmology subject and he having certified that the applicant is a blind person, it is not open to the department to say otherwise. It is not the case of the department that the said medical certificate is either a fictitious document or was not issued by a competent authority. Neither the court nor income-tax department has any speciality in the subject of 'Ophthalmology' and it is settled beyond doubt that the opinion given by the expert body is always accepted as final except in a very rare cases. In this view of the matter, we are of the opinion that the Tribunal was not right in not giving due weight and value of the medical certificate and holding it that the

applicant is not a blind person. The said finding of the Tribunal being not in consonance of the medical certificate is liable to be set aside.

10. In the totality of the facts and circumstances of the case we are of the opinion that the assessee is a totally blind person and the Tribunal was not right in holding it otherwise. We, therefore, answer the question in negative, i.e., in favour of the assessee and against the department. There will be, however, no order as to costs.