

Cit Vs. H.C. Verma

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Court : Allahabad

Decided On : Apr-26-2005

Reported in : [2005]149TAXMAN285(All)

Appeal No. : IT Reference No. 98 of 1990 26 April 2005

Appellant : Cit

Respondent : H.C. Verma

Judgement :

ORDER

By the Court

1. The Income Tax Appellate Tribunal, Allahabad has referred the following question of law under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for opinion to this court :

'Whether on the facts and in the circumstances of the case the Tribunal was correct in law in holding that the assessee is eligible for deduction under section 80C in respect of NSCs of the value of Rs. 25,000 purchased by him on 24-6-1984?'

However, the Tribunal has also referred the following two questions of law at the instance of the assessee :

'1. Whether in the facts and circumstances of the case, the Income Tax Officer was justified in law in reopening under section 143(2)(b) the assessment for the year 1985-86 of the assessee, already made under section 143(1) of the Income Tax Act, 1961 ?

2. Whether in the facts and circumstances of the case, the Tribunal was correct in law in interpreting the words 'income chargeable to tax' used in section 80(2)(h)(i) as 'income chargeable to tax' in the previous year?'

The present reference relates to the assessment year 1985-86.

2. Briefly stated the facts giving rise of the present reference are as follows :

The assessee is an individual. His accounting period for the assessment year 1985-86 commenced on 1-4-1984 and ended on 31-3-1985. His income is from salary from Laxmi Ratan Cotton Mills, Kanpur. The assessee filed his return of income for the assessment year 1985-86 on 26-8-1985 showing an income of Rs. 23,655. As per the aforesaid statement of income, gross salary stood at Rs. 49,947 and interest from bank was shown at Rs. 2,250. With regard to the interest from bank, exemption under section 80L was claimed. From the gross salary income of Rs. 49,947 the assessee sought standard deduction of Rs. 6,000. Gross total income was, thus determined at Rs. 43,944. From the aforesaid gross total income, the assessee sought deduction under section 80C in respect of the following :

Provident Fund

Rs. 7,348

LIC

Rs. 30,000

3. From the aforesaid amount, the qualifying amount was Rs. 20,192. Deducting this from the gross total income, total income was showing by the assessee at Rs. 23,670. The aforesaid return of income filed by the assessee was accepted by the

Income Tax Officer under section 143(i) of the Income Tax Act, 1961, on 6-3-1986. Subsequently, the Income Tax Officer obtained the approval of the Inspecting Assistant Commissioner D-Range, Kanpur, to reopen the assessment under section 143(2)(b). The Inspecting Assistant Commissioner granted permission vide his letter dated 17-3-1986. In the reassessment proceeding, the Income Tax Officer asked the assessee to explain as to why deduction under section 80C be granted in respect of NSCs of the value of Rs. 30,000. The assessee stated in his reply to the Income Tax Officer that he had purchased NSCs of the value of Rs. 5,000 on 27-3-1985 partly by cheque Rs. 3,000 and partly by cash and Rs. 25,000 by cheque. The assessee enclosed a copy of the Pass Book with Punjab National Bank, Juhi, Kanpur to prove the sources of payment for the purchases of NSCS. After examining the said Pass Book the Income Tax Officer gave the finding that there was a debit entry of Rs. 25,000 as 27-6-1986 which represented the purchase of NSCS. On that amount on that date. The aforesaid amount of Rs. 25,000 was as per the assessee's explanation from the receipts of Provident Fund, receipt from the previous employer. According to the Income Tax Officer, NSC is purchased from such funds could not be eligible for deduction under section 80C. He made the following observation in this regard.

'Thus, in view of section 80C, the NSCs should have been purchased out of income chargeable to tax in the assessment year 1985-86. The provident fund which was received from his employer is not chargeable to tax in the previous year ended 31-3-1985. Hence, the claim for NSCs of Rs. 30,000 is disallowed.'

4. The assessee appealed against the aforesaid order to the learned Appellate Assistant Commissioner who concurred with the Income Tax Officer and dismissed the appeal.

The assessee thereupon appealed to the Tribunal and raised before us the following points :

'(1) That it was not the requirement of section 80C that the payment in question must be made out of the current year's taxable income. The section refers to taxable income and not to current year's taxable income. Reference was made by him in this connection to the wordings of clause (b) of sub-section (2) of section

80C of the Income Tax Act, 1961 wherein the words 'income chargeable to tax.' According to the learned counsel, there was no justification to add to the aforesaid words further phraseology suggesting as if the phraseology used was 'income chargeable to tax in the previous year.'

(2) On facts, it was submitted that he purchased NSC of Rs. 25,000 on 27-6-1984 out of his earlier year's savings from taxable incomes, which were to the extent of Rs. 46,232 as on 1-4-1974. According to him, his total salary during the accounting period under consideration exclusive of perquisites Rs. 47,745. The purchase of NSCs was much less than the aforesaid figure. So, according to him, even if the narrower view was taken, it could not be said that the NSCs were not out of current year's taxable income.

(3) That the reopening of the assessment under section 143(2)(h) was wrong become according to the learned counsel, reopening could be done only to verify the correctness and completeness of the return and not to check up whether the claim of the assessee was rightly made or not.'

5. Feeling aggrieved, the respondent-assessee preferred appeal before the Tribunal. The Tribunal has rejected the assessee's objection with regard to the reopening of the assessment under section 143(2)(b) of the Act on the following grounds :

'All that is required in terms of section 143(2)(b) is that the Income Tax Officer should consider it necessary or expedient to verify the correctness and completeness of the return by requiring the presence of the assessee, and in case, assessment under section 143(1) has already been made, to take the advance permission of the learned Appellate Assistant Commissioner before issuing the notice under section 143(2)(b). Both these requirements have been met in the present case.'

6. It had also rejected the assessee's contention that the phrase income chargeable to tax does not refer to current year's income by holding as follows :

'The entire context is of ascertaining the income of the previous year and giving relief out of the income of the said previous year and it is in this setting that the phrase 'income chargeable to tax' occurs in section 80C(h)(i) of the Income Tax Act, 1961. Therefore, we are unable to accept the assessee's contention that there is no nexus between the sums paid in the previous year by the assessee and the income chargeable to tax for that previous year.'

7. However, third contention of the respondent-assessee was, however accepted by the Tribunal. It had held that the NSCs were purchased by the assessee out of his current year's income by holding as follows :

'It made a distinction between the NSC purchased on 27-6-1984 and those purchased towards the end of the accounting period on 27-3-1985. With regard to the NSCs purchased on 27-3-1985, the Tribunal accepted the assessee's contention that the same were purchased out of his salary income and interest income. With regard to the purchase of NSC of Rs. 25,000 as on 24-6-1987, the Tribunal pointed out that they were out of existing savings of the assessee as on 1-4-1984. But then in the accounting period as a whole the assessee had more income than the value of the various payments made by it towards NSCS, provident fund and LIC.

'The assessee is, however, on solid ground with regard to merits of case, because, on facts, it is clear that whereas the assessee's income chargeable to tax this year is Rs. 52,197, the NSCs purchased by the assessee are only to the extent of Rs. 30,000 and even if payment of provident fund and LIC to the extent of Rs. 9,981 are taken into account, the total payment would be Rs. 39,981. Even this sum is less than Rs. 52,197. (The same would be the position, if we exclude Rs. 2,202 being perquisites which are apparently not in the cash form). The assessee's income would still be about Rs. 50,000 and the payment of Rs. 39,981 would still be less than the income chargeable to tax as above. There is no requirement of law that the immediate source of payment cannot be savings or any other funds available with the assessee. After all, all the funds, including the flow of the income during the accounting period are at the disposal of the assessee (and then may get mingled as they flow in and out) and it is open to him to arrange his affairs in

whatever manner he likes. He may meet his household expenses out of his savings or out of his capital funds and may deposit this current year's income in various schemes provided for under section 80C. If he does that, benefit of section 80C cannot be refused to him in the present case, the assessee drew down his savings to the extent of Rs. 25,000 to purchase the National Saving Certificate on 27-6-1984, but, then the corresponding amount, he, may utilize income for meeting his household expenses. How he arranges his finances and various investments and expenses is not germane to the determination of the assessee's claim under section 80C. All that is to be examined for the purpose of section 80C is whether the amount which he has invested, is out of his income chargeable to tax. It should not be more than such income. If it is more than such income, the difficulty may arise. But so long as investments visualized under section 80C are less than the gross total income of the assessee, the benefit of section 80C would be available to him. That is also the ratio of the judgment of the Hon'ble Punjab and Haryana High Court in Ravi Kumar Mehra v. CIT . There too, the assessee had gross total income of Rs. 1,67,488. He paid life insurance premium to the extent of Rs. 10,512 part of which was withdrawn by him not from his income, but from his deposits in another firm from which there was no income. The Income Tax Officer denied the claim of the assessee with regard to the payment made from the funds with the firm, because, according to him, the said payment was not out of his taxable income. This stand was not approved by their Lordships of the Hon'ble Punjab and Haryana High Court, for, according to them, the immediate source of payment was not material. Respectfully following the above view, we hold that in the present case, the assessee is eligible for deduction under section 80C in respect of National Savings Certificate purchased by him for Rs. 30,000.'

8. We find that the question which has been referred at the instance of the revenue is squarely covered by the decision in (IT Reference No. 14 of 1989) CIT v. Ramesh Chandra Khandelwal decided 17-12-2004 and, therefore, the question referred is to be answered in affirmative, i.e., in favour of the assessee and against the revenue.

9. So far as questions which have been referred at the instance of the assessee are returned unanswered. However, there shall be no order as to costs.

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