

Assistant Commissioner of Vs. Jagdish Chand and Sons

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Oct-25-1990

Reported in : (1991)36ITD358(Delhi)

Judge : M Agarwal

Appellant : Assistant Commissioner of

Respondent : Jagdish Chand and Sons

Judgement :

1. These appeals relate to a connected group of assesseees and raise identical points regarding the grant of relief under Section 80C in respect of payment of Life Insurance Premium and purchase of National Savings Certificates. They were heard together and are disposed of by this common order. I have heard the learned Departmental Representative and the learned counsel for the assessee and have perused the material placed before me.

2. I will first take up the case of M/s. Raj Kumar Dewan & Sons. The assessee is a Hindu Undivided Family and the relevant accounting period ended on 31-3-1985. The assessee purchased National Savings Certificates for Rs. 10,000 on 28-3-1985. According to the assessing officer they were purchased by procuring the amount on loan from Master Sanjiv. The assessee also paid Life Insurance Premium amounting to Rs. 17,915. According to the assessing officer this amount was procured by loans from Shri Raj Kumar & Sons and since the investments aforesaid were not made out of the assessee's income chargeable to tax relief

under Section 80C was denied. On appeal the learned CIT(A), Meerut directed the grant of deduction under Section 80C by following a judgment of the Hon'ble Punjab & Haryana High Court in Ravi Kumar Mehra v. CIT [1988] 172 ITR 108 and an order of this Tribunal in ITO v. Sunil Krishna Ganguly.

3. The learned Departmental Representative contended that Section 80C(2) clearly specifies that the investment should be made by the assessee out of its income chargeable to tax and since the payments in question were made by raising loans the assessee was not entitled to any relief. The learned counsel for the assessee, on the other hand, contended that so far as the payment of Life Insurance Premium amounting to Rs. 17,915 is concerned, no loan was raised and that Raj Kumar Dewan was actually a debtor of the assessee and the insurance premia were paid out of repayments of loan by the said Raj Kumar. The assessee has placed a copy of the account of Raj Kumar aforesaid in the assessee's books, which contains the following entries:-

Date	Particulars	Debit	Credit
01-4-1984	To opening balance	995.60	18-9-1984 By Cheque No. 601 4,825.00
06-11-1984	To Cheque No. 185817	63,283.83	31-3-1985 By cheque 5,340.00
			By cheque 7,750.00

The aforesaid account would show that the payments of Rs. 5,340 and Rs. 7,750 cannot be said to be out of any loan raised from Raj Kumar and they were clearly repayments of loan by him. As regards the payment of Rs. 4,825 the assessee merely had a credit balance of Rs. 995 with the said Raj Kumar and, therefore, only to that extent it can be said that no loan was raised. Thus, out of the total premium of Rs. 17,915 a sum of Rs. 3,830 was paid by raising a loan which stood paid off within the accounting period itself, i.e., on 6-11-1984 and the rest of the premium of Rs. 14,485 was paid by the assessee out of its own funds. As regards the purchase of National Savings Certificates of Rs. 10,000 the finding of the assessing officer that the amount was paid out of a loan taken from Sanjiv Kumar is not entirely correct. Sanjiv Kumar is the son of the assessee's karta. A copy of his account has been placed by the assessee at page 4 of the paper book, which shows that Sanjiv Kumar was a debtor to the extent of Rs. 5,000 and on 29-3-1985 he issued a cheque for Rs. 11,700 in favour of the assessee. Admittedly it was out of this amount that the purchase of NSCs was financed. Thus to the extent of Rs. 5,000 the National Savings Certificates were purchased by the assessee out of his own funds and it was only the balance of Rs. 5,000 which was

purchased out of loan. The assessee relied upon the case of Ravi Kumar Mehra (supra), in which the assessee had paid a part of the Life Insurance Premium out of a withdrawal from a limited company, from which the assessee did not derive any income in the relevant year. On that portion relief under Section 80C too was denied and the Hon'ble Punjab & Haryana High Court held that an assessee may make payment towards Life Insurance Premium out of funds in his savings bank account where the balance to his credit is available before the commencement of the accounting period. The Hon'ble High Court also observed that there is no rule that the amount of Life Insurance Premium must come out of income chargeable to tax. Reliance was also placed on the Tribunal's judgment in Sunil Krishna's case (supra) in which it was held that it was not necessary that the payment should be made out of the taxable income of the relevant previous year. The deduction would be available even if the payments are made out of post-tax accumulated savings of earlier years.

Looking at the matter in the light of the authorities mentioned above, I am of the opinion that so far as the payment of Life Insurance Premia amounting to Rs. 17,915 is concerned, the assessee was entitled to relief under Section 80C(2) on the whole amount. The reason is that the assessee admittedly had sufficient income for the year under consideration, out of which such amounts could have been paid. The loan of Rs. 3,830 that was raised for the first payment of Rs. 4,825 stood paid off within the accounting period itself on 6-11-1984 when the assessee advanced Rs. 63,383.83P to Raj Kumar. In a case like this, where the assessee temporarily raises a loan for the payment of Life Insurance Premium or the purchase of National Savings Certificates and repays the loan within the accounting period itself, I am of the opinion the investment should be deemed to have been made out of income chargeable to tax. As regards the purchase of National Savings Certificates patently a loan of Rs. 5,000 was raised and it was not repaid during the accounting period. Therefore, out of the purchase of NSCs for Rs. 10,000 the assessee would be entitled to relief under Section 80C(2) only on the sum of Rs. 5,000.

4. For the reasons discussed above the Revenue's appeal is partly allowed and it is ordered that the assessee would be entitled to relief under Section 80C(2) only

with reference to the sums of Rs. 17,915 in respect of LIP and Rs. 5,000 in respect of purchase of NSCs.

5. Now I come to IT Appeal No. 151 (Delhi) of 1989 in the matter of Jagdish Chand & Sons, a Hindu Undivided Family. This assessee paid Life Insurance Premium amounting to Rs. 10,245 on 29-3-1985 by raising a loan from its karta Shri Jagdish Chand Dewan. Although in the written submissions before the CIT(A) it was contended that the assessee was having a current account with the said Jagdish Chand Dewan, no material appears to have been produced before the CIT(A) nor has been produced before me to show that the assessee did not pay the aforesaid amount out of a loan raised from the assessee's karta. The rulings, referred to above, were relied upon by the assessee in this case as well and in view of the law as discussed above, I am of the opinion that deduction under Section 80C(2) cannot be allowed if the payments have been made out of amounts raised as loan and not repaid during the previous year itself. The learned CIT(A) was, therefore, not right in accepting the assessee's claim. The Revenue's appeal, therefore, is allowed and setting aside the order under appeal, I restore the order as passed by the assessing officer.

6. Now I come to ITA No. 159 in the matter of M/s Kasturi Lal & Sons, a Hindu Undivided Family. In this case the assessee purchased National Savings Certificates worth Rs. 15,000. According to the assessee the amount for the purchase of the NSCs was paid from a loan of Rs. 15,900 from M/s Vidya Sagar Parag Kumar on 28-3-1985. The assessee also paid Life Insurance Premium amounting to Rs. 7,565. According to the assessing officer this was paid by taking a loan from Kasturi Lal Dewan. The assessing officer, therefore, denied the benefit of Section 80C(2) and on appeal the learned CIT(A) has, without reversing the finding that the payments were made by raising loans allowed the assessee's claim.

7. The learned counsel for the assessee pointed out that M/s Vidya Sagar Parag Kumar was as HUF of the younger brother of assessee's karta Kasturi Lal Dewan and Kasturi Lal Dewan, from whom the loan of Rs. 7,565 was taken for the payment of Life Insurance Premium was the assessee's own karta. According to

the learned counsel for the assessee the assessee had advanced a sum of Rs. 10,000 to Vidya Sagar Parag Kumar on 7-12-1984 and had taken Rs. 15,900 from it on 28-3-1985 and, thus, the whole amount was not taken as a loan. The assessee has placed before me at page 4 of the paper book, a copy purporting to be a copy of the Savings Account No. 9329 with the Bank of India, in which there is an entry of Rs. 10,000 as having been paid to Vidya Sagar Parag Kumar on 7-12-1984. This account, however, cannot give a clear picture of the assessee's dealings with Vidya Sagar Parag Kumar because it is a copy of the bank account as prepared by the assessee probably with the help of the bank pass book. It is not a copy of the bank pass book nor does it appear to be a copy of any regularly maintained account book.

Whether the sum paid to M/s Vidya Sagar Parag Kumar on 7-12-1984 was an advance and whether the receipt of Rs. 15,900 on 28-3-1985 included a repayment of the aforesaid amount could have been shown by a copy of the account of M/s Vidya Sagar Parag Kumar in the books of the assessee or the copy of the assessee's account in the account books of M/s Vidya Sagar Parag Kumar. None of the two accounts has been filed before me and the finding of the assessing officer that the payment was out of a loan raised from Vidya Sagar Parag Kumar does not appear to have been challenged before the first appellate authority. In view of the law as discussed in the earlier part of this order, relief under Section 80C(2) cannot be allowed if the payments have been made out of loan taken and not repaid during the accounting year itself out of income chargeable to tax. The assessing officer was, therefore, right in denying the benefit of deduction under Section 80C(2) to the assessee.

The Revenue's appeal is, therefore, allowed and setting aside the order passed by the CIT(Appcals) the order of the assessing officer is restored.

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