

Virendra D. Pathak Vs. Ito

Virendra D. Pathak Vs. Ito

SooperKanoon Citation : sooperkanoon.com/710039

Court : Delhi

Decided On : Apr-23-2001

Reported in : (2001)72TTJ(Del)934

Appeal No. : ITA No. 1414/Pune/1994 23 April 2001 A.Y. 1993-94

Appellant : Virendra D. Pathak

Respondent : ito

Advocate for Pet/Ap. : Nilesh Khandelwal; & R.G. Nahar, for the assessed; P.V Kulkarni, for the Revenue

Judgement :

ORDER

K.C. Singhal, J.M.

The only issue arising out of this appeal relates to rebate under section 88 of the Income Tax Act, 1961.

2. The assessed had claimed rebate under section 88 in respect of investments in Master Equity Plan at Rs. 10,000 and Public Provident Fund at Rs. 40,000. On verification of bank pass-book, it was found that the aforesaid investments of Rs. 50,000 was made on 23-3-1993, out of the loan taken by the assessed from his brother. The claim of the assessed was rejected by the assessing officer on the ground that the investment made by him was not out of chargeable income. The

action of the assessing officer has been confirmed by the Commissioner (Appeals) vide order, dated 29-9-1994. Aggrieved by the same, the assessed is in appeal before the Tribunal.

3. The learned counsel for the assessed Mr. Khandelwal has submitted before us that assessed had taxable income of Rs. 1,80,260 out of which loan of Rs. 1,35,000 had been given to Pathak Trust. Since the assessed could not get the money back from the said trust, he took loan of Rs. 50,000 from his brother Shri N.D. Pathak for making aforesaid investments. In this connection, he drew our attention to the letter of the assessed dated 15-3-1993, written to the trustee of the Pathak Trust requesting to refund the sum of Rs. 50,000. This letter appears at p. 5 of the paper book. At p. 6 of the paper book, there is a letter from Shri N.D. Pathak who is the brother of the assessed as well as trustees of the trust, wherein it has been stated that the required funds were not readily available with the trust. However, it was stated by him that he was enclosing a personal cheque of Rs. 50,000 which he will arrange to adjust against the loan to the trust. In the light of this factual aspect, it was argued by him that the assessed was forced to borrow the amounts even though he had sufficient funds out of the income chargeable to tax. Proceeding further, it was argued by him that provisions of section 88 being incentive provision, should be construed liberally. Reliance was placed on the decision of the Supreme Court in the case of Chandulal Harjiwandas v. CIT : [1967]63ITR627(SC) . He further relied on the decision of the Punjab & Haryana High Court in the case of Ravi Kumar Mehra v. CIT and the decision of the Tribunal viz. Assistant Commissioner v. Dr. Smt. Ujjawala Sharma (1997) 57 TTJ (Ind) 532 and in the case of S.P. Banerjee v. Dy. CIT (1990) 32 ITD 514 (Bom). On the other hand, the learned Departmental Representative has strongly relied on the orders of the lower authorities and submitted that if the case of the assessed is accepted then the words 'out of his income chargeable to tax' used by the legislature in sub-section (2) of section 88 would become redundant.

4. Rival submissions of the parties have been considered carefully. We have also gone through the provisions of section 88. Sub-section (2) provides in clear terms that deduction under section 88(1) shall be allowed only if the investment is made by the assessed out of his income chargeable to tax. It is a well settled rule of

interpretation that plain language of the section is to be given effect to and nothing can be added or subtracted if the language of the provision is plain, clear and unambiguous. It is only where the provisions are ambiguous, the aid of the rules of interpretation is resorted to. It is also well settled legal position that any interpretation which makes the provision redundant should be avoided. Reference can be made to the judgment of the Supreme Court in the case of *Shri Keshavji Ravji & Co. v. CIT* : [1990]183ITR1(SC) wherein it has been held, 'As long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible.' Reference can also be made to the Supreme Court judgment in the case of *Rao Shiv Bahadur Singh v. State of U.P.* : 1954 CriLJ1480 wherein it has been held 'It is incumbent on the court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning of application'. Similarly, the Supreme Court in the case of *J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of UP.* : (1961)ILLJ540SC , it was held, 'the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect'. In the case of *Ghanshyamdas v. Regional Asstt. CST* : [1964]51ITR557(SC) , it was held that the construction which attributes redundancy to the legislature will not be accepted except for compelling reasons.' In the present case, the provisions of section 88(2) are clear and unambiguous inasmuch as it provides that rebate is to be allowed only when the payment is made out of income chargeable to tax.

Therefore, rule of liberal interpretation as canvassed by the learned counsel for the assessed cannot be applied. thereforee, where the investment has been made out of the money borrowed by the assessed, no rebate under section 88 can be allowed. This view is fortified by the judgment of the Orissa High Court in the case of *CIT v. Dr. Usharani Panda* (1995) 212 ITR 119 , the decision of the Kerala High Court in the case of *CIT v. Abraham George* : [2000]242ITR171(Ker) and the decision of the jurisdictional High Court in the case of *S. Inder Singh Gill v. CIT* : [1963]47ITR284(Bom) . In the case before the Bombay High Court, the assessed had claimed exemption from tax under section 15(1) of the Indian Income Tax Act, 1922, against the sum paid for LIC out of his foreign income which was not assessable to income-tax in India. The claim was rejected by the assessing officer

and finally the Bombay High Court approved the view taken by the revenue . Such view was taken by the Bombay High Court even though the words 'out of his income chargeable to tax' were not there in the provisions of section 15(1) of the 1922 Act. The present case is on a better footing which specifically mentions that the investment must be out of income chargeable to tax. thereforee, in the light of the aforesaid decision and the language used by the legislature the claim of the assessed cannot be accepted.

5. In the decision of the Supreme Court in the case of Chandulal Harjivan (supra) relied upon by the learned counsel for the assessed, the issue was different from the issue before us. Admittedly, in that case, the premium was paid out of the taxable income of the assessed. thereforee, that judgment cannot be applied to the present case. That judgment is relevant only for the proposition that incentive provisions should be interpreted in a manner as not to nullify the object of thrift. We have already mentioned that any interpretation which makes the provision redundant has to be avoided and the liberal interpretation can be applied only where there is vagueness in the provisions of the Act, which is not the case before us. The decision of the Bombay Tribunal in the case of S.P. Banerjee (supra) does not help the assessed, inasmuch as in that case, the National Saving Certificates were purchased out of the amount deposited in the Provident Fund account. That amount had been deposited out of the income chargeable to tax. The claim was merely rejected on the ground that investment was not made out of accumulated salary income. The facts of that case are entirely different. In the case before the Punjab & Haryana High Court, the amount of LIC was paid after withdrawing the amount from his account with a private limited company. Since the deposit with the private limited company was out of income chargeable to tax, though of previous years, the claim was held to be allowable. That case also does not help the assessed because the amount was paid out of the income chargeable to tax. No doubt, the decision of the Tribunal helps the assessed. But in our opinion, the same is contrary to the legal position mentioned by us above. In view of the above discussion, it is held that the assessed was not entitled to rebate under section 88 of the Act. Accordingly, the order of the Commissioner (Appeals) is upheld.

6. In the result, the appeal of the assessed stands dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com