

Cit Vs. Capt. K.C. Saigal

Cit Vs. Capt. K.C. Saigal

SooperKanoon Citation : sooperkanoon.com/710849

Court : Delhi

Decided On : Oct-10-2002

Reported in : [2002]258ITR427(Delhi)

Appeal No. : I.T.R. Nos. 230 and 231 of 1983 10 October 2002

Appellant : Cit

Respondent : Capt. K.C. Saigal

Advocate for Pet/Ap. : R.C. Pandey (Senior Standing Counsel) and; Ajay Jha, Advocate, for the Revenue;

Judgement :

D.K. Jain J.

In these two references, at the instance of the revenue, the Income Tax Appellate Tribunal, Delhi Bench-C (hereinafter referred to as 'the Tribunal'), has referred under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), the following question for the opinion of this court .

'Whether, on the facts and in the circumstances of the case, the expenditure incurred by the assessed in connection with the writ petition under article 226 of the Constitution for quashing proceedings under section 147 of the Income Tax Act, 1961, and obtaining advice from tax experts in regard thereto fell within the purview of section 80VV of the Income Tax Act, 1961 ?'

Since in both the references, pertaining to the assessment years 1976-77 and 1977-78, a common question of law has been referred, these are being disposed of by this common order.

Briefly stated the facts leading to the references are :

The assessed, an individual, carried on the business of arranging charters for ship owners and earned commission/fees there from. While making the assessment for the assessment year 1976-77, the assessing officer disallowed a sum of Rs. 8,233 out of the expenses claimed by the assessed under the head 'Legal expenses'. The said amount comprised payments made to J.B. Dadachanji and Company, Shri N. A. Palkhiwala and Shri H.P. Ranina. Besides the said amount, the assessed had also paid Rs. 5,000 as income-tax representation fees to its legal consultant. According to the assessing officer, the expenses claimed under the said head were to be restricted to Rs. 5,000 in terms of section 80VV of the Act. The assessed's appeal to the Commissioner (Appeals), was partly successful, inasmuch as the Commissioner (Appeals) held that legal fees of Rs. 1,950 paid to Shri Ranina, not being in any way connected with the income-tax proceedings could not be disallowed under section 80VV. However, in respect of the balance amount, he affirmed the view taken by the assessing officer.

Similarly, in respect of the assessment year 1977-78, the assessed had claimed an expenditure of Rs. 14,166 under the head 'Legal expenses'. Like in the earlier year, the said expenses also related to the writ petition filed by the assessed challenging the action of the assessing officer under section 147 of the Act. While completing the assessment for the said assessment year, the Income Tax Officer again disallowed Rs. 10,516 on account of payments made to J. B. Dadachanji and Company, for the services rendered by them and out of pocket expenses incurred by them in connection with the writ petition. The assessed's appeal to the Commissioner (Appeals) was unsuccessful.

The assessed took the matter for both the assessment years in further appeal to the Tribunal. The Tribunal upheld the assessed's stand that the legal fees paid in each of the years under consideration for filing and prosecuting writ petitions under article 226 of the Constitution, challenging the order of the Income Tax Officer to

reopen the assessment for the relevant assessment years, was not hit by the provisions of section 80VV of the Act. While holding so, the Tribunal observed as under :

'Keeping in mind the said conditions, can it be said that any legal fees paid by an assessed to a solicitor or lawyer in prosecuting a writ petition challenging the order of an income-tax authority the initiation of the reassessment proceedings under section 147 of the Act (by way of a writ petition) under article 226 of the Constitution fall within the four corners of section 80VV of the Act. Our answer after hearing both the sides is in the negative because the writ proceedings before the High Court under article 226 of the Constitution challenging the order of an assessment of an assessed under section 147 cannot be said to be a proceeding relating to the determination of any liability under the Act by way of tax or penalty or interest. By the said writ petition what is sought for is annulment which is not equivalent to determination of any tax liability under the Act.'

The Tribunal having reversed the order of the Commissioner (Appeals), the aforementioned question has been referred to us for opinion :

We have heard learned counsel for the parties.

Section 80VV of the Act reads as under :

'80VV. In computing the total income of an assessed, there shall be allowed by way of deduction any expenditure incurred by him in the previous year in respect of any proceedings before any income-tax authority or the Appellate Tribunal or any court relating to the determination of any liability under this Act, by way of tax, penalty or interest :

Provided that no deduction under this section shall, in any case, exceed in the aggregate five thousand rupees.'

It is clear from a plain reading of the section that an expenditure incurred by an assessed in respect of any proceedings before an income-tax authority, or the Tribunal or any court relating to the determination of any liability under the Act by way of tax, penalty or interest is restricted to Rs. 5,000. Obviously, any

expenditure incurred in connection with any proceedings other than proceedings relating to the determination of liability under the Act would not fall within the ambit of the constricted restriction laid down in section 80VV of the Act.

Thus, the short question for consideration is whether the expenditure incurred by the assessed in resisting the action of the assessing officer, initiated under section 147/148 of the Act for reopening a completed assessment, can be said to be an expenditure relating to the determination of liability under the Act, falling within the ambit of section 80VV ?

In our view, the answer to the question has to be in the negative. As noted above, the writ petition was filed by the assessed challenging the validity of the initiation of reassessment proceedings after the assessments for the relevant years stood completed. The Act lays down certain essential conditions for reopening an assessment and an assessed has a right to object to initiation of reassessment proceedings on the ground that mandatory conditions laid down in section 147 or 148 were not fulfilled. Though in the statement of the case there is no indication about the grounds of challenge to the initiation of reassessment proceedings but it can safely be inferred that the challenge was to unlawful assumption of jurisdiction by the assessing officer. therefore, the action of the assessed, in respect whereof he has incurred expenditure, may be in a matter connected with the proceedings under the Act but these cannot be described as proceedings 'relating to the determination of any liability under the Act by way of tax, penalty or interest, which pre-supposes valid proceedings. In fact the filing of the writ petition or consultations on the issue with the lawyer was an attempt by the assessed to prevent the assessing officer from assuming jurisdiction to take fresh proceedings for redetermination of what, according to the assessed, had already been determined. These were the proceedings challenging the very assumption of jurisdiction by the assessing officer to reopen the assessments determine any liability under the Act. There is a material difference between bare proceedings 'in connection with the Act' and proceedings 'relating to the determination of liability under the Act'. We are of the view that the expenses in question fell in the former category. We, therefore, hold that the Tribunal was correct in its conclusion that the provisions of section 80VV were not attracted in respect of the expenses

incurred by the assessed for challenging the validity of notice issued under section 147/148 of the Act.

Support to this view is lent by a decision of the Calcutta High Court in Grindlays Bank PLC v. CIT : [1994]207ITR454(Cal) which is the only decision directly on the point at issue. In this case also it has been held that the expenditure incurred by an assessed in connection with challenging the validity of notice issued under section 148 of the Act could not be disallowed under section 80VV of the Act. No contrary view by any High Court has been brought to our notice by learned counsel for the revenue.

In the result, the question referred is answered in the negative, i.e., in favor of the assessed and against the revenue. There will, however, be no order as to costs.

OPEN

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