

Commissioner of Income Tax Vs Gopal Krishna Singhania

Court: Allahabad High Court

Date of Decision: Sept. 6, 1978

Acts Referred: Income Tax Act, 1961 " Section 80G

Citation: (1980) 121 ITR 260

Hon'ble Judges: Satish Chandra, C.J; M.B. Farooqi, J

Bench: Division Bench

Advocate: Ashok Gupta, for the Appellant; V.B. Upadhya, for the Respondent

Final Decision: Dismissed

Judgement

Satisii Chandra, C.J.

During the accounting year relevant to the assessment year 1971-72, the assessee-HUF donated some shares to

Smt. Sulochana Devi School Trust, Bombay. In the assessment proceedings, the assessee claimed relief u/s 80G of the I.T. Act, This relief was

disallowed. The assessee went up in appeal. The AAC allowed the appeal in part. Aggrieved, the department filed an appeal before the Tribunal.

The Tribunal, relying upon the decisions of the Bombay High Court in Commissioner of Income Tax, Bombay City I Vs. Associated Cement Co.

Ltd., and of the Mysore High Court in Commissioner of Income Tax, Mysore Vs. Bangalore Woollen, Cotton and Silk Mills Co. Ltd., , held that

the reliefs u/s 80G were not confined to cash donations but included donations in kind as well and dismissed the appeal.

2. At the instance of the department, the Tribunal has referred the following question for our opinion :

Whether, on the facts and circumstances of the case, the Tribunal was correct in law in holding that relief u/s 80G is admissible in respect of

donations in kind also ?

3. In Saru Smelting and Refining Corporation (P.) Ltd. Vs. Commissioner of Income Tax, a Bench of this court has held that u/s 80G the sums

allowable as a deduction are sums paid by the assessee as donations to a local authority to be utilised for any charitable purpose and that a

donation of a statue or a gate to a local authority does not fall within the purview of Section 80G. In other words, it was held that the donation

ought to be in cash before it could attract Section 80G. This view finds support from the decision of the Andhra Pradesh High Court in

Commissioner of Income Tax Vs. Amonbolu Rajiah, . In this case, it was held that only donation in cash attracts Section 80G. It considered the

decision of the Bombay High Court in Commissioner of Income Tax, Bombay City I Vs. Associated Cement Co. Ltd., but observed that in that

case the finding was that, in substance, donation was of cash and not in kind.

4. On behalf of the assessee reliance was placed upon the decision of the Mysore High Court Commissioner of Income Tax, Mysore Vs. Bangalore

Woollen, Cotton and Silk Mills Co. Ltd., . In that case, donation of cloth manufactured by the assessee-company was made. It appears that the

CBR on March 14, 1960, issued a circular, stating (p. 168) :

" The Board has decided that when an assessee makes a donation out of his stock-in-trade, for example, cloth in the case of textile mills or sugar

in the case of sugar mills, the benefit of Section 15B of the 1922 Act may be given to such donations also and that the value of the stock-in-trade

donated should be included in the sale and the contra debit to the profit and loss account should be treated as the sum donated ".

5. This circular was withdrawn by the Board on January 17, 1964. Referring to this circular the Mysore High Court observed that if the assessee

had given a cheque as donation and for the same amount prepared a bill of sale, it could have obtained the benefit of Section 88(i) (which is

equivalent to Section 80G).

6. It will be seen that the exception was made in favour of donation of stock-in-trade of the assessee. This is a case of specific facts which is not

applicable to the present case. Therefore, the circular of the Board as well as the Mysore High Court decision would not be helpful to the present

assessee. The decision of this court in Saru Smelting and Refining Corporation (P.) Ltd. Vs. Commissioner of Income Tax, seems to suggest that

donations of movable and immovable property are not within the purview of Section 80G.

7. In our opinion, the assessee was not entitled to claim exemption of the donation u/s 80G.

8. In the result, the answer to the question referred to us is in the negative, in favour of the department and against the assessee. The CIT would be

entitled to costs which are assessed at Rs. 200.