(2004) 12 AHC CK 0217

Allahabad High Court

Case No: Income Tax R. No. 14 of 1989

Commissioner of Income Tax		APPELLANT
	Vs	
Ramesh Chandra Khandelwal		RESPONDENT

Date of Decision: Dec. 17, 2004

Acts Referred:

- Income Tax Act, 1961 - Section 80C

Citation: (2005) 195 CTR 276 : (2005) 273 ITR 363

Hon'ble Judges: R.K. Agarwal, J; K.N. Ojha, J

Bench: Division Bench

Advocate: Shambhoo Chopra, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

R.K. Agarwal, J.
The Income Tax Appellate Tribunal Allahabad, has referred the following question of law u/s 256(1) of the Income Tax Act, 1961, (hereinafter referred to as "the Act"), for the opinion of this court :

"Whether, on the facts and circumstances of the case, the Appellate Tribunal erred in law in holding that the deduction u/s 80C was claimable by the assessee in respect of NSCs purchased out of sale proceeds of motor cycle and out of loan secured on the basis of the NSCs purchased in the same financial year ?"

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

3. Briefly stated the facts giving rise to the present reference are as follows :

4. The respondent-assessee who earned income as an individual is employed with the Punjab National Bank, Daresi No. 2, Agra. Besides the provident fund contribution and

insurance premium amounting to Rs. 2,490 and Rs. 590, respectively, the respondent had also claimed the benefit of investment of Rs. 37,000 in the purchase of National Savings Certificates (hereinafter referred to as "the NSCs") u/s 80C of the Act. The details of the investment and the sources thereof as declared by the respondent are as follows ;

Sl. No.	Value of the NSC purchased	Date of purchase	Source of the purchase
1.	Rs. 5,000	16-5-1984	By sale of old motorcycle No. YSA 548 Rs. 4,000 on 8-5-1984 and balance of R 1,000 out of own savings.
2.	Rs. 10,000	2-11-1984	By receipt of arrears of salary from 1983, amounting to Rs. 8,778 ad balanc Rs. 1,222 out of own savings.
3.	Rs. 5,000	14-1-1985	Out of personal savings and withdrawa from bank.
4.	Rs. 5,000	21-3-1985	By pledging the NSCs purchased on 16-5-1984,
5.	Rs. 2,000	26-3-1985	2-11-1984 and 14-1-1985 with the Punj
6.	Rs. 10,000	31-3-1985	National Bank and securing a loan of 17,000 thereon.

5. The Income Tax Officer, however, only allowed deduction u/s 80C of the Act with reference to the provident fund contributions, LIC premium and NSCs to the extent of Rs. 17,000, i.e., Rs. 1,000, invested out of own saving while purchasing NSC of Rs. 5,000 on May 16, 1984, NSC worth Rs. 10,000 purchased on November 2,1984 and NSC worth Rs. 5,000 purchased on January 14, 1985. It was done obviously on the basis that these were the only investments in NSCs which could be said to have been made by the respondent out of his income chargeable to tax. Feeling aggrieved by the assessment order the respondent preferred an appeal before the Appellate Assistant Commissioner, who took the view that since the total salary of the respondent from the Punjab National Bank was Rs. 47,877.50 the benefit for purchase of NSC amounting to Rs. 37,000 could not be denied to the respondent simply because he had purchased some NSCs out of the sale proceeds of his old motor cycle and by pledging the NSCs already purchased. He, therefore, allowed the benefit of Section 80C of the Act to the respondent on the entire

investment of Rs. 37,000 in the purchase of NSCs during the assessment year in question. Feeling aggrieved the Revenue preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal noticed that in the case of Chandulal Harjivandas, Jamnagar Vs. Commissioner of Income Tax, Gujarat, the apex court has held that the object of Section 15(1) of the Indian Income Tax Act, 1922, which corresponds to Section 80C of the Act was for the encouragement of thrift and that it required to be interpreted in such a manner as not to nullify that object. The Tribunal relying upon a decision of the Punjab and Haryana High Court in the case of Ravi Kumar Mehra Vs. Commissioner of Income Tax, has held that the NSC which has been purchased from the amount of sale of old motor cycle and by pledging the NSCs already purchased makes no difference as the over all deduction claimed by the respondent was much below his income and the entire amount invested for the purchase of NSCs could be treated as paid out of his income chargeable to tax. The Tribunal has affirmed the order passed by the Assistant Appellate Commissioner.

6. We have heard Sri Shambhoo Chopra, learned standing counsel for the Revenue. Nobody has appeared for the respondent-assessee.

7. Learned standing counsel has submitted that u/s 80C of the Act which provides special deduction in respect of certain investments, the requirement is that the investment should have been made out of the income chargeable to tax and as in the present case the respondent had made investment in the NSCs not out of his income but from the sale proceeds of his old motor cycle and by pledging the NSCs the respondent-assessee was not at all entitled for deduction in respect of the NSC. He submitted that the order of the Income Tax Officer was perfectly justified and required no interference. He has relied upon the following two decisions :

(1) CIT v. Dr. Usharani Panda [1995] 212 ITR 119 ; and

(2) Commissioner of Income Tax Vs. Ram Mohan Rawat, .

8. Having heard learned standing counsel we find that the facts are not in dispute. The respondent-assessee is an employee of the Punjab National Bank and has drawn the gross salary of Rs. 47,878 during the assessment year in question. He had purchased NSCs for Rs. 37,000 partly from the sale of old motor cycle and by pledging NSCs and partly from his savings from salary. The question is as to whether the respondent is entitled for deduction u/s 80C of the Act in respect of such NSC which he had purchased from the sale proceeds of old motor cycle and by pledging of old NSCs or not. u/s 80C(2) of the Act the investment has to be made by the assessee out of his income chargeable to tax.

9. In the case of Chandulal Harjivandas, Jamnagar Vs. Commissioner of Income Tax, Gujarat, the apex court while considering the provisions of Section 15(1) of the Indian Income Tax Act, 1922, has held that the object of the said provision was the

encouragement of thrift and that it required to be interpreted in such a manner as not to nullify that object.

10. In the case of Ravi Kumar Mehra Vs. Commissioner of Income Tax, the Punjab and Haryana High Court has held that where an assessee may make payment towards life insurance premium out of his savings with the bank where the balance to his credit is available before the commencement of the accounting year it would in no case mean that the payment of premium so made is not to be deducted out of the total income of the assessee in the relevant accounting year and the corresponding assessment year. Such a construction of Section 80C would not be proper nor is it intended by the provisions of Section 80C(l) of the Act. The Punjab and Haryana High Court has relied upon the decision of the apex court in the case of Chandulal Harjivandas, Jamnagar Vs. Commissioner of Income Tax, Gujarat, and has held that Section 15(1) of the Indian Income Tax Act, 1922, which came up for consideration before the apex court in the aforesaid case is corresponding to Section 80C of the Act.

11. In the case of Commissioner of Income Tax Vs. N. Benugopal Choudhury, , the Orissa High Court has held that it is a normal behaviour in an individual''s private life that all incomes are amalgamated and spent and we can safely draw the conclusion that the assessee who is a salaried person was putting amounts received by him to the common fund. It cannot be ruled out that the money received from fixed deposits was being spent by him and money received from salaries was invested in National Savings Certificates. In the aforesaid case, the assessee had purchased NSC for Rs. 10,000 out of fixed deposits for the previous years. The Orissa High Court has held that it cannot be a ground to deprive him of the benefit available under the Act since it is not in dispute that the amount is so negligible that it can be invested from out of his salary received during the year.

12. In the case of Dr. Usharani Panda [1995] 212 ITR 119, the Orissa High Court has held that the deduction u/s 80C of the Act can be claimed by an individual only if he has paid any sum in the previous year out of his income chargeable to tax and if the same has been paid out of an income which was not chargeable in the previous year, then the deduction claimed cannot be allowed.

13. In the case of Commissioner of Income Tax Vs. Abraham George, the Kerala High Court has held that in view of the clear language used in Section 80C of the Act the deduction in terms of Section 80C can be granted only if the payment is made out of his income "chargeable to tax".

14. However, we find that the Kerala High Court in the case of Commissioner of Income Tax Vs. Jobie K. John, after referring to its earlier decision in the case of Commissioner of Income Tax Vs. Abraham George, and of the Orissa High Court in the case of Dr. Usharani Panda [1995] 212 ITR 119 has held that in view of the clear finding by the Tribunal that as the income was admittedly more than the amount invested in the NSC,

the assessee was entitled to special deduction u/s 80C on his contribution for purchase of NSC. In the aforesaid case the Tribunal had found that the assessee had an income of Rs. 30,750 which was more than the amount invested in the NSC.

15. In the case of Commissioner of Income Tax Vs. Ram Mohan Rawat, the Rajas-than High Court has held that if we go by the plain language of the provision of Section 80C(2)(h) of the Act, the assessee is entitled for deduction only if he invests in NSCs out of the income "chargeable to tax". Under the aforesaid provision chargeable to tax means the income of the current year and not the income of any other years.

16. As held by the apex court in the case of Chandulal Harjivandas, Jamnagar Vs. Commissioner of Income Tax, Gujarat, the object of Section 15(1) of the Indian Income Tax Act, 1922, which corresponds to Section 80C of the present Act was the encouragement of thrift and it required to be interpreted in such a manner as not to nullify that object. The Punjab and Haryana High Court in the case of Ravi Kumar Mehra Vs. Commissioner of Income Tax, held that if the interpretation as sought by the Revenue is placed on the provisions of Section 80C of the Act it would nullify its object. The only requirement is that the investment should not exceed the total income of an assessee and deduction is to be confined to that limit. We are in respectful agreement with the view of the Orissa High Court in the case of Commissioner of Income Tax Vs. N. Benugopal Choudhury, that it is a normal behaviour of an individual''s private life that all incomes are amalgamated and spent. The Income Tax Act does not require that the investment in NSC should be made from the same amount which an assessee had earned by way of income. It is always open to an assessee to either spend the amount earned by him as an income or to invest the same and the Kerala High Court in the case of Commissioner of Income Tax Vs. Jobie K. John, , where an assessee had an income which was more than the amount invested in NSC, held that the investment in NSC can be said to be out of income of the previous year.

17. For the above reasons we regret that we are unable to persuade ourselves to agree with the view taken by the Orissa High Court in the case of Dr. Usharani Panda [1995] 212 ITR 119 , the Kerala High Court of Commissioner of Income Tax Vs. Jobie K. John, , and the Rajasthan High Court in the case of Commissioner of Income Tax Vs. Ram Mohan Rawat,

18. In view of the foregoing discussions, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. However, there shall be no order as to costs.