
(2005) 02 AHC CK 0284

Allahabad High Court

Case No: IT Reference No. 236 of 1991 1 February 2005

Commissioner of Income Tax

APPELLANT

Vs

Vidya Sagar Dewan and Sons

RESPONDENT

Date of Decision: Feb. 1, 2005

Acts Referred:

- Income Tax Act, 1961 - Section 256, 80C

Citation: (2005) 147 TAXMAN 35

Hon'ble Judges: R.K. Agrawal, J; Prakash Krishna, J

Bench: Full Bench

Advocate: Amitabh Agarwal and P.K. Jain, A.N. Mahajan,, for the appearing parties;

Judgement

@JUDGMENTTAG-ORDER

1. The Income Tax Appellate Tribunal, New Delhi, has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for opinion to this Court:

"1. Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in law in upholding the order of the CIT(A) directing the assessing officer to allow deduction u/s 80C of the Income Tax Act, 1961 subject to statutory limits?"

"In favour of assessee.

The reference relates to the assessment year 1985-86.

2. Briefly stated the facts giving rise to the present reference are as under:

The assessing authority in the course of assessment proceeding for the relevant assessment year did not accept the claim of the assessee for deduction u/s 80C towards purchase of National Saving Certificates for Rs. 20,000. He was of the view that under the provisions of section 80C deduction was admissible only if National Saving Certificates had been purchased out of the assessee's income chargeable to

tax. He found that in the present case the assessee purchased National Saving Certificates through Saving Bank account with the bank of Baroda out of the amount of Rs. 20,000 received on 24-3-1985 from Vidya Sagar Parag Kumar. The Assessing Authority concluded that National Saving Certificates having not been purchased out of the income chargeable to tax deduction u/s 80C was not admissible. He was of the view that under the provisions of section 80C deduction was admissible only if the National Saving Certificates had been purchased out of the assessee's income chargeable to tax. This order was set aside in appeal by the CIT(A), who directed the Assessing Authority to allow admissible deductions subject to statutory limit. In appeal filed by the revenue the Tribunal had confirmed the order of CIT(A).

3. Heard Sri Amitabh Agarwal, Advocate, holding brief of Sri P.K. Jain, learned counsel for the assessee and Sri A.N. Mahajan, learned Standing counsel for the revenue.

4. We find that this court in CIT v. Ramesh Chandra Khandelwal (IT Reference No. 14 of 1989, dated 17-12-2004) has held that it is 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 which is more than the amount invested u/s 80C. The investment in NSC can be said to be out of income of the previous year. This court has agreed with the view taken by Orissa High Court in the case of [Commissioner of Income Tax Vs. N. Benugopal Choudhury](#), the Kerala High Court in the case of [Commissioner of Income Tax Vs. Jobie K. John](#), and Punjab and Haryana High Court in [Ravi Kumar Mehra Vs. Commissioner of Income Tax](#), . This court had respectfully dissented with the view taken by Orissa High Court in the case of [Commissioner of Income Tax Vs. Dr. Usharani Panda](#), and [Commissioner of Income Tax Vs. Ram Mohan Rawat](#), .

5. For the reasons given in the case of Ramesh Chandra Khandelwal (supra) with which we respectfully agree we answer the question referred to us in affirmative, i.e., against the revenue and in favour of the assessee. There shall be, however, no order as to costs.