

K. Nandakumar Vs Income Tax Officer and Another**O.P. No"s. 10909 of 1989 (W) and 593 of 1990**

Court: High Court Of Kerala**Date of Decision:** March 29, 1993**Acts Referred:**

Constitution of India, 1950 – Article 226#Income Tax Act, 1961 – Section 37, 80AB, 80L

Citation: (1993) 204 ITR 856**Hon'ble Judges:** T.L. Viswanatha Iyer, J**Bench:** Single Bench**Advocate:** P. Balachandran, for the Appellant; N.R.K. Nair, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.

The two petitioners in these original petitions have been assessed to tax under the Income Tax Act, 1961, ("the

Act"). They were in receipt of the income from two firms, Messrs. Thirumani Publications (Trust) and Messrs. United Film Exhibitors. Both of

them had also income by way of interest on fixed deposits and savings accounts in banks. The petitioners had taken loans from the Indian Bank for

the purposes of contributing their portion of the share capital in the firm, Messrs. United Film Exhibitors. Both the petitioners had filed returns

claiming deduction of Rs. 6,000 u/s 80L of the Act in respect of their interest from deposits in the bank. The assessments were completed for the

year 1983-84 by exhibit P-2 orders without granting the benefit. On enquiry they knew that they were not granted the benefit for the reason that

they had to pay interest to the bank on the loans on the fixed deposits and, therefore, there was no scope for granting the benefit u/s 80L. The

petitioners filed revision petitions, exhibit P-4, before the Commissioner of Income Tax pointing out that the interest paid by them on the loans

taken from the bank for contributing their share capital had to be deducted as admissible expenditure from the income from business and,

therefore, they were entitled to the benefit of the deduction u/s 80L. They also pointed out that, for the previous year 1982-83, in an appeal

carried by them to the Appellate Assistant Commissioner, that authority had accepted their case that the amount taken as loan from the bank was

for the purpose of contributing their share capital and, therefore, the interest paid on that loan was liable to be deducted from their business

income. The Commissioner of Income Tax did not, however, accept this contention and rejected the revision petition by his order, exhibit P-5.

These original petitions are filed challenging exhibits P-2 and P-5 with the contention that the interest on the loan taken from the bank should be

deducted as admissible expenditure from the income from business and that they should be given the benefit of the deduction u/s 80L.

2. The Commissioner of Income Tax had relied on Section 80AB which was introduced with effect from April 1, 1981, to hold that the benefit u/s

80L could be allowed only out of the net amount remaining by way of interest after adjusting the interest paid to the bank on the loan from the fixed

deposit and if so there was no amount which could be deducted u/s 80L. In other words, the view taken was that the interest paid on the loan from

the bank was to be adjusted against the interest due from the bank and since that resulted in a negative figure, no deduction u/s 80L could be

allowed.

3. It cannot be disputed that interest paid on the amounts borrowed from the bank for the purpose of contributing their share capital is liable to be

deducted from the petitioners' income as an admissible item of expenditure u/s 37 of the Act. In fact, it was so held in the appeals relating to the

year 1982-83 by the order, exhibit P-3. In that order, it was held that the loan was taken for the purpose of contributing the share capital of the

petitioners to the firm. The contention of the Revenue incidentally raised that there is no evidence to show that the loans had been taken for the

purpose of contributing their share capital to the firm is, therefore, not capable of acceptance in the face of the appellate order, exhibit P-3, and the

finding rendered therein. The admissibility of the said expenditure is also supported by the decision of the Supreme Court in Jeewanlal (1929) Ltd.

Vs. Commissioner of Income Tax, West Bengal II, .

4. The effect of Section 80AB is that, for the purpose of computing the deduction u/s 80L, the amount of income of that nature as computed in

accordance with the provisions of the Act shall alone be deemed to be the amount of income of that nature. What the section means is that the net

income by way of interest computed in the manner provided by the provisions of the Act shall alone be taken into account for computing the

benefit. But it must be noted that payment of interest under a loan transaction incurred for the purpose of deriving income from business is not an

item which arises in the computation of interest income ""in accordance with the provisions"" of the Act. The said amount has to be paid irrespective

of whether any interest income is otherwise received or not. Though the interest is payable to the same bank, the fact remains that the amount of

income by-way of interest is not calculated under the provisions of the Act with reference to such outgoings which fall under different heads. The

assessee is entitled to deduction u/s 37 of all expenditure incurred for the purpose of deriving the business income, and it is under that head that the

interest paid on the loan taken from the bank is deducted. The net amount of interest contemplated by Section 80AB should take in the net amount

arrived at after meeting the expenses deductible from that item under the provisions of the Act as explained above. That is not the case here.

Therefore, Section 80AB has no application to the facts of these cases. The interest paid on the loan transactions has to be deducted from the

business income, and not from the interest received from the bank on the fixed deposits. The assesseees were therefore right in the submissions

which they made before the Commissioner of Income Tax in the revision petitions which they filed. This aspect of the matter has been overlooked

by the Commissioner in passing the order, exhibit P-5.

5. Accordingly, I allow the original petitions, and quash exhibits P-2 and P-5. The first respondent is directed to complete the assessments afresh

after deducting the interest paid by each of the petitioners to the bank on the loans on their fixed deposits from out of the business income of the

petitioners, and also to grant them the deduction u/s 80L.

6. There will be no order as to costs.