

## Addl. Commissioner of Income Tax Vs K. Al. Kr. Ramaswami Chettiar

**Court:** Madras High Court

**Date of Decision:** Feb. 17, 1978

**Acts Referred:** Income Tax Act, 1961 " Section 70, 72, 80E, 80T

**Citation:** (1979) 120 ITR 694

**Hon'ble Judges:** Govindan Nair, C.J; Sethuraman, J

**Bench:** Division Bench

### Judgement

Sethuraman, J.

The question referred in this case runs as follows :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee was entitled to relief u/s

80T on the gross amount of capital gains on assets other than short-term capital assets but not on the net amount after set off of short-term capital

loss u/s 70(2) of the Income Tax Act ?

2. The assessee is an individual. He derived long-term capital gains on the sale of immovable property. The amount so computed as capital gains

was Rs. 1,28,344. The assessee had incurred a short-term capital loss on sale of certain shares to the extent of Rs. 76,650. Both these amounts

had to be considered in the assessment for the assessment year 1970-71. The ITO set off against the capital gains of Rs. 1,28,344 the short-term

capital loss of Rs. 76,650 and applied the provisions of Section 80T with reference to the balance of Rs. 51,694. The relief available to the

assessee was thus computed at Rs. 26,012 under the provisions of Section 80T. The assessee appealed to the AAC contending before him that

the long-term capital gain of Rs. 1,28,344 after deduction of the initial expenses of Rs. 5,000 should have been taken into account in applying

Section 80T and not after adjusting the short-term capital loss. The result of the assessee's contention would be that an amount of Rs. 60,513

would be deductible u/s 80T from the total income as against Rs. 26,012 deducted by the ITO. The AAC accepted this contention and allowed

the appeal accordingly. On further appeal, the Appellate Tribunal confirmed this order. The revenue questions this order of the Appellate Tribunal.

3. Section 80T runs as follows:

80T. Where the gross total income of an assessee not being a company includes any income chargeable under the head " Capital gains" relating

to capital assets other than short-term capital assets (such income, being hereinafter, referred to as long-term capital gains), there shall be allowed,

in computing the total income of the assessee, a deduction from such income of an amount equal to,--

(a) in a case where the gross total income does not exceed ten thousand rupees or where the long-term capital gains do not exceed five thousand

rupees, the whole of such long-term capital gains;

(b) in any other case, five thousand rupees as increased by a sum equal to-

(i) twenty-five per cent, of the amount by which the long-term capital gains relating to capital assets, being buildings, or lands, or any rights in

buildings or lands, exceed five thousand rupees;

(ii) forty per cent, of the amount by which the long-term capital gains relating to any other capital assets exceed five thousand rupees:

Provided that in a case where the long-term capital gains relate to buildings or lands, or any rights in buildings or lands, as well as to other assets,

the sum referred to in Sub-clause (ii) of clause (b) shall be taken to be-

(A) Where the amount of the long term capital gains relating to the capital assets mentioned in Sub-clause (i) is less than five thousand rupees, forty

per cent, of the amount by which the long-term capital gains relating to any other capital assets exceed the difference between five thousand rupees

and the amount of the long-term capital gains relating to the capital assets mentioned in Sub-clause (i) ; and

(B) Where the amount of the long-term capital gains relating to the capital assets mentioned in Sub-clause (i) is equal to or more than five thousand

rupees, forty per cent, of the long-term capital gains relating to any other capital assets.

4. The opening words "" where the gross total income of an assessee not being a company includes any income chargeable under the head " Capital

gains" relating to capital assets other than short term capital assets "" would clearly mean that in applying Section 80T, one has to take the income

chargeable under the head "" capital gains "" relating to capital assets. The ""capital gains"" relating to capital assets in the case under consideration

would be Rs. 1,28,344 and not Rs. 51,694 as taken by the ITO. A similar provision, viz., Section 80E, came up for construction before this court

in Commissioner of Income Tax Vs. L.M. Van Moppes Diamond Tools (India) Ltd., . Section 80E provides for deduction in respect of the profits

and gains from the specified industries. In the case of a company to which that section applies, where the total income included any profits and

gains attributable to the business of generation or distribution of electricity or any other form of power or of construction, manufacture or

production of any one or more of the articles or things specified in the list in the Fifth Schedule, deduction has to be allowed from such profits and

gains of an amount equal to eight per cent, thereof, in computing the total income of the assessee-company. The contention in that case was that

this 8% should be applied on the sum of Rs. 2,45,431 being the profit from the scheduled industry. The ITO, however, adjusted the carried

forward loss which was liable to be set off u/s 72 of the Act and found that the assessee was not entitled to any deduction at all as there was no

positive income in the relevant year to which Section 80E could apply. This court negated the contention and held that so long as the total income

as computed in accordance with the other provisions of the Act included any profits and gains attributable to the priority industries, the assessee

would be entitled to a rebate of 8% on the said profits and gains attributable to such priority industries and that the question of set-off would come

in only subsequently. We consider that the same principle applies to the construction of Section 80T also as the two provisions are substantially

similar in language.

5. We, therefore, answer the question referred to us in the affirmative and against the revenue. The assessee will be entitled to its costs. Counsel's

fee Rs. 500.