H.H. Sir Rama Varma vs C.I.T on 2 November, 1993

Equivalent citations: 1994 AIR 1904, 1994 SCC SUPL. (1) 473, AIR 1994 SUPREME COURT 1904, 1994 AIR SCW 1848, 1994 TAX. L. R. 568, (1993) 71 TAXMAN 237, 1994 (1) UPTC 592, 1994 KERLJ(TAX) 17, (1993) 6 JT 183 (SC), 1994 (1) SCC(SUPP) 473, 1994 UPTC 1 592, 1993 (6) JT 183, 1994 SCC (SUPP) 1 473, (1994) 116 CURTAXREP 55, (1994) 205 ITR 433, (1994) 118 TAXATION 327

Author: S.P Bharucha

Bench: S.P Bharucha, B.P. Jeevan Reddy

PETITIONER:
H.H. SIR RAMA VARMA

Vs.

RESPONDENT:
C.I.T.

DATE OF JUDGMENT02/11/1993

BENCH:
BHARUCHA S.P. (J)
BENCH:
BHARUCHA S.P. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1994 AIR 1904 1994 SCC Supl. (1) 473
JT 1993 (6) 183 1993 SCALE (4)315

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by BHARUCHA, J.- The assessee made long-term capital gains during the accounting year relevant to the assessment year 1970-71. He had brought forward a long-term capital loss from previous assessment years to be set off thereagainst. The assessee

claimed a deduction under Section 80-T of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act'). For. the purpose of determining the amount on which such deduction was available to the assessee, the Income Tax Officer took into account the figure arrived at after setting off the capital loss of previous assessment years against the capital gains for the assessment year 1970-7 1. He rejected the contention of the assessee that for the purposes of the deduction under Section 80-T that figure of capital gains should be taken as it stood before set off of the capital loss of previous assessment years. The Appellate Assistant Commissioner allowed the assessee's appeal. The revenue preferred an appeal to the Income Tax Appellate Tribunal against the order of the Appellate Assistant Commissioner. The Tribunal allowed the appeal.

2.Arising out of the judgment and order of Tribunal, the following question was referred to the High Court of Kerala:

> "Whether under Section 80-T relief is to be given only for the amount of capital gains after the capital loss is set off?"

The High Court answered the question in the affirmative, that is to say, in favour of the Revenue and against the assessee. (The judgment of the High Court is reported in 129 ITR 156)1. This appeal is preferred by the assessee by special leave.

3.On behalf of the assessee it was submitted that the High Court had erred in holding that the words "such income"

> in Section 80-T referred to the amount which was arrived at after set off of the capital loss brought forward from earlier years. The submission was that the words "such income" referred only to the capital gains received in the relevant accounting year. It was also submitted that the placement of Section 80-T in the said Act was not to be emphasised and that the capital loss carried forward was required to be set off only after the chargeable capital gains had been assessed as reduced by the deduction provided by Section 80-T.

4.Learned counsel for the Revenue submitted that the view that had been taken by the Kerala High Court in the judgment under appeal was correct and that it had also been taken by the Gujarat High Court in CIT v. Gautam Sarabhai2, by the Madras High Court in CIT v. M. Seshasayee3, by the Bombay High Court in CIT v. Vimla P. Kapadia 4, (to which judgment one of us, Bharucha, J. was a party); and by the Calcutta High Court in Gouri Prasad Goenka v. CIT5. He also pointed out that this Court had in a recent judgment, in CIT v. V. VenkatachalaM6 (to which one of us, B.P. Jeevan Reddy, J. was a party) held that the words "such income" in the main limb of Section 80-T meant and referred to the capital gains and not the total income of the assessee.

5. In the case of Gautam Sarabhai2 the Gujarat High Court said:

> "Thus, before Section 80-T contingency can arise, it must be shown that in a given assessment year, the gross total income of the assessee includes income chargeable

under the head 'Capital gains'. But if because of supervening event of operation of Section 74 of the Act, the carried forward capital losses from earlier years completely drown and wipe off the capital gains for the given year, as assessable under Section 45 read with Section 48, then, no income from that head would be left for being added as a head of income for computing the gross total income out of which special deductions could be effected under Chap. VI-A for arriving at the net total income exigible to tax. It is only in cases where the capital gains of a given assessment year are either not fully set off against carried forward capital 1 H. H. Sir Rama Varma v. CIT, (1981) 129 ITR 156: 1979 Tax LR 852: 1979 KLT 446 (Ker) 2 (1981) 129 ITR 133 (Guj) 3 (1981) 129 ITR 166: (1979) 6 Tax Law Review 28 (Mad) 4 (1990) 181 ITR 394 (Bom) 5 (1991) 190 ITR 81 (Cal) 6 1993 Supp (3) SCC 413: (1993) 201 ITR 737 loss of a previous year as per Section 74 or when such losses are not there at all, that the question of applicability of Section 80-T would arise, as in such cases, net income chargeable under the head 'Capital gains' would squarely form part of the computation of gross total income of the assessee for that year and it is at this stage that special deductions as provided by Section 80-T have to be effected. It is further pertinent to note that Section 80-T provides that '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. ...' These words clearly show that the deduction which is to be effected is from the gross total income of the assessee and that too only when such gross total income is found to have as its component income chargeable to tax 'capital gains'. But if the component of such capital gains does not form part of the gross total income of the assessee in a given year because of the supervening operation of Section 74, the stage for effecting deduction under Section 80-T from such gross total income is not reached at all."

6. In the case of Vimla P. Kapadia 4 the Bombay High Court said:

"In the very nature of the scheme of the Income Tax Act, deductions under the provisions of Chapter VI-A which includes Section 80-T are to be made in computing the assessee's total income. The deductions are to be allowed from the gross total income and can, in no case, exceed the gross total income. Gross total income, for the purpose of allowing deductions under Chapter VI-A, had been defined in Section 80-B(5) to mean the total income computed in accordance with the provisions of the Act before making any deduction under Chapter VI-A and under Section 280-0. Thus, the first stage for determining the total income is to determine the gross total income, i.e., after taking into account the effect of all provisions including Section 74 of the Act except deductions under Chapter VI-A and Section 280-O."

7. In the case of Gouri Prasad Goenka5, the Calcutta High Court said:

> "Computation of income under the Income Tax Act will have to be done, in the instant case, under the head 'Capital gains' and all the deductions and allowances will have to be allowed. All adjustments of losses will have to be made in accordance with the provisions of the Income Tax Act for the purpose of arriving at the gross total income as defined in Section 80-B. It is only that part of the income which has been included in the gross total income which will be the basis for computation of the relief claimed by the assessee under Section 80-T."

8. By reason of Section 14 of the said Act all income for the purposes of charge of income tax and computation of total income is classified under the heads of income therein mentioned. Capital gains is one such head of income. Section 45 deals with capital gains and says that any profits or gains arising from the transfer of a capital asset effective in the previous year shall, except as provided in the provisions therein mentioned, be chargeable to income tax under the head capital gains and shall be deemed to be income of the previous year in which the transfer took place. Section 48 sets out the mode of computation of income chargeable under the head of capital gains. It refers to long-term capital gains as being capital gains arising from the transfer of long-term capital assets and it makes provision for certain deductions therefrom. Section 74 provides for losses under the head "Capital gains". It says that where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss to the assessee and such loss cannot be or is not wholly set off against income under any other head of income, so much of the loss as has not been so set off or, where the assessee has no income under any other head, the whole loss shall be carried forward to the following assessment year and shall be set off against income, if any, under the head "Capital gains" assessable for that assessment year and if the loss cannot be wholly set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on for a maximum of eight assessment years immediately succeeding the assessment year for which the loss was first computed. Chapter VI-A is entitled "Deductions to be made in computing total income". Sub-section (1) of Section 80-A therein states that in computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of Chapter VI- A, the deductions specified in Sections 80-C to 80-U. Sub- section (2) of Section 80-A makes it clear that the aggregate amount of the deductions under Chapter VI-A shall not exceed the gross total income of the assessee. Sub- section (5) of Section 80-B defines "Gross total income" for the purposes of Chapter VI-A to mean the total income computed in accordance with the provisions of the said Act before making any deduction under Chapter VI-A. Section 80-T falls under Part C of Chapter VI-A, which deals with deductions in respect of certain incomes. Section 80-T, so far as it is relevant, reads thus:

> "80-T. 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,

9. Section 80-T opens with the words "Where the gross total income of an assessee ... includes any income chargeable under the head 'Capital gains..... This clearly indicates that the gross total

income of an assessee has to be determined before the provisions of Section 80-T can be applied. This is clear also from the provisions of Section 80-A which says that in computing the total income of an assessee there shall be allowed from his gross total income the deduction specified in, inter alia, Section 80-T. Where the gross total income of an assessee, determined in accordance with the provisions of the said Act, includes any income by way of long-term capital gains a deduction is permissible therefrom under the provisions of Section 80-T in computing his total income. The deduction is from "such income". As aforementioned, "such income" has been held by this Court to be the assessee's long-term capital gains and there can be no doubt, having regard to the context, of the correctness of this interpretation.

10.The view that commended itself to the Gujarat, Madras, Bombay and Calcutta High Courts and to the Kerala High Court in the judgment under appeal is, therefore, correct.

11.Reference may be made with advantage to this Court's judgment in Distributors (Baroda) P. Ltd. v. Union of India'. A Constitution Bench of this Court was concerned there with interpreting the provisions of Section 80-M of the said Act, the main limb of which read thus:

> "80-M. Deduction in respect of certain inter- corporate dividends.- (1) Where the gross total income of an assessee being a company includes any income by way of dividends received by it from a domestic company, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such income by way of dividends of an amount equal to -
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> (It will be seen that the phraseology of Section 80-M is similar to that of Section 80-T.) The Constitution Bench held: (SCC pp. 56- 57, para 15) "The opening words describe the condition which must be fulfilled in order to attract the applicability of the provision contained in sub-section (1) of Section 80-M. The condition is that the gross total income of the assessee must include income by way of dividends from a domestic company. 'Gross total income' is defined in Section 80-B, clause (v) to mean 'total income computed in accordance with the provisions of the Act before making any deduction under Chapter VI-A or under Section 280-D'. Income by way of dividends from a domestic company included in the gross total income would therefore obviously be income computed in accordance with the provisions of the Act, that is, after deducting interest on monies borrowed for earning such income. If income by way of dividends from a domestic company computed in accordance with the provisions of the Act is included in the gross total income, or in other words, forms part of the gross total income, the condition specified in the opening part of sub-section (1) of Section 80-M would be fulfilled and the provision enacted in that subsection would be attracted."

The judgment in the case of Distributors (Baroda) P. Ltd .7 therefore, supports the view we take.

12.Section 80-M had previously been interpreted differently by this Court in the judgment in Cloth Traders P. Ltd. v. CIT8. By reason of the interpretation placed upon Section 80-M in the Cloth Traders case8 the legislature had, by Finance (No. 2) Act, 1980, introduced Sections 80-AA and 80-AB into the said Act. Section 80-AA was introduced with retrospective effect from April 1, 1968 and Section 80- AB with effect from April 1, 198 1. Sections 80-AA and 80-AB read thus:

> "80-AA. Computation of deduction under Section 80-M.- Where any deduction is required to be allowed under Section 80-M in respect of any income by way of dividends from a domestic company which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, the deduction under that section shall be computed with reference to the income by way of such dividends as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) and not with reference to the gross amount of such dividends.
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> 7 (1986) 1 SCC 43: 1986 SCC (Tax) 159: (1985) 155 ITR 120 8 (1979) 3 SCC 538: 1979 SCC (Tax) 246: (1979) 118 ITR 243 80-AB. Deductions to be made with reference to the income included in the gross total income.- Where any deduction is required to be made or allowed under any section (except Section 80-M) included in this Chapter under the heading 'C.- Deductions in respect of certain incomes' in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing the deduction under that section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income."

13.In the case of Distributors (Baroda) P. Ltd.7 it was the retrospective effect of Section 80-AA which was under

> challenge. The Court, as aforementioned, interpreted Section 80-M in a manner different from that placed upon it in the Cloth Traders' case8. It held that the decision in the Cloth Traders' case8 was erroneous and had to be overturned. It was, therefore, unnecessary to consider the question of the constitutional validity of the retrospective operation of Section 80-AA. Section 80-AA, it was held, was, in its retrospective operation, merely declaratory of the law as it always had been since April 1, 1968, when the provisions of Chapter VI-A were introduced.

14.On a parity of reasoning it must be held that Section 80-AB was enacted to declare the law as it always stood in relation to the deductions to be made in respect of the incomes specified under head 'C' of Chapter VI-A. The manner of deduction specified under Section 80-AB accords with the interpretation that we have placed upon Section 80- T, read independently.

15.Section 80-T has been deleted from the said Act with effect from April 1, 1981and its provisions substantially incorporated in Section 48. We have not been called upon to consider the provisions of Section 48 as amended and express no opinion on the position obtaining subsequent to April 1, 1981.

16.In the result, we uphold the impugned judgment and order and dismiss the appeal. There shall be no order as to costs.