

Banaras State Bank Ltd. vs Commissioner Of Income-Tax, Uttar ... on 13 August, 1968

Equivalent citations: [1969]74ITR863(SC)

Bench: A.N. Grover, J.C. Shah

JUDGMENT

Shah, J.

1. Two question were referred to by the Tribunal to the High Court of Allahabad under section 66 (1) of the Indian Income-tax Act, 1922. We are concerned with the first question alone, because the second has been answered in favour of the assessee and no appeal has been filed by the revenue against the decision on that question. The question which was decided against the assessee reads as follows :

"Whether the interest on securities issued by the erstwhile Indian States of Travancore and Cochin is assessable under section 8 of the Act or under section 12 of the Act ?"

2. There is no dispute that he securities held by the appellant bank were issued by the Indian States of Travancore and Cochin some time before August 15, 1947. The securities were "tax free". Under section 8 of the Income-tax Act, 1922, the tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security or other securities for money issued by or on behalf of a local authority or a company. The third proviso to that section provides :

"Provided further that the income-tax payable on the interest receivable on any security of a State Government issued income-tax free shall by payable by the State Government."

3. The appellant-bank contended that the securities of the Indian State of Travancore and Cochin were State Government securities and relied upon the definition of State Government in section 3(60) of the General Clauses Act. The High Court rejected the contention holding that the securities were "Government securities" within the meaning of section 3(24) of the General Clauses Act and, on the express terms of that clause, Government securities did not include securities of the Government of any Part B Estate where reference was made in any Act or Regulation before the commencement of the Constitution to such securities. " But section 8 does not use the expression "Government securities". It uses the expression "securities of the State Government" and there is no reason to substitute in a taxing statute in expression which the question is covered by a judgment of

this court in Commissioner of Income-tax v. H. E. H. Mir Osman Ali Bahadure, where this court held in dealing with the claim of an assessee to exemption from liability to pay tax in respect of the Hyderabad State Securities issued before the Constitution was enacted that the assessee was entitled under section 8, third proviso, to exemption from tax on interest on those securities.

4. The appeal is therefore allowed and the answer recorded by the High Court on the first question discharged. The answer to the first question will be that the securities issued by the Indian State of Travancore and Cochin were assessable under section 8 of the Income- tax Act, 1922. The Commissioner will pay the costs of the appellant- bank in this court and in the High Court.