Commissioner Of Income-Tax vs V. Venkatachalam on 13 April, 1993

Equivalent citations: AIR1994SC1267, [1993]201ITR737(SC), 1993(3)SCALE253, 1993SUPP(3)SCC413, AIR 1994 SUPREME COURT 1267, 1994 AIR SCW 612, 1994 TAX. L. R. 562, 1993 (3) SCC(SUPP) 413, 1993 ( ) JT (SUPP) 563, (1993) 70 TAXMAN 231, (1993) 113 CURTAXREP 55, (1993) 201 ITR 737, (1993) 116 TAXATION 82

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, N. Venkatachala

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ORDER



B.P. Jeevan Reddy, J.
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1. This appeal is directed against the judgment of the Madras High Court (reported in 120 ITR 688). The question referred for the opinion of the High Court, under Section 256(1) of the Income-tax Act, 1961, reads as follows:

> Whether on the facts and in the circumstances of the case, the Tribunal was correct in holding that the assessee was entitled, for the assessment year 1973-74, to relief under Section 80-T of the Income Tax Act, 1961, on an amount calculated, in terms of the aforesaid provisions, with reference to the gross capital gains of Rs. 1,02,740/-?

2. The assessee, a Hindu Undivided Family, derived capital gains in a sum of Rs. 1,02,740/- during the previous year relevant to the assessment year 1973-74. He claimed deductions thereon under and as provided by Section 80-T of the Income Tax Act. The Income Tax Officer, however, adopted a different method. He found that during the said previous year the assessee had suffered a business loss of Rs. 41,892/-. He set off the said loss against the capital gains of Rs. 1,02,740/- and applied the deductions provided in Section 80-T to the balance figure. The assessee's appeal was allowed by the Appellate Assistant Commissioner, who held that the deductions provided by Section 80-T should be applied to the sum of Rs. 1,02,740/-. An appeal preferred by the Revenue failed jn the Tribunal. Thereupon, the aforesaid question was referred at the instance of the Revenue.

3. Under Section-14 of the Ineome Tax Act, "Capital gains" is a separate head of income. Capital gains have to he computed in accordance with the provisions, contained, in Section 45 to 48, among

other provisions, occuring under the sub-head "Capital Gains" in Chapter IV - Computation of Total Income. Section 48, as it stood at the relevant time, prescribed the manner in which the capital gains have to be determined. It read:

> The income chargeable under the head "Capital gains" shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:
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> (i) expenditure incurred wholly, and exclusively- in connection with such transfer;
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> (ii) the cost of acquisition of the capital asset and the cost of any improvement thereto.

4. Section 80-T as it was in force at the relevant time, provided for deductions in the case of long-term capital gains. Section 80-T, insofar as is relevant, read as follows: 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,-

5. The language of Section 80-T is plain and unambiguous. It says,-

> (i) Where the gross total income of an assessee (not being a company)
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> (ii) included any income chargeable under the head 'capital gains' in the nature of long-term capital gains.
>
> (iii) there shall be allowed, in computing the total income of the assessee, a deduction from such income of an amount equal to-----.

6. Evidently, the deductions provided for by the said provision had to be made from out of the capital gains. In this case, the capital gain was Rs. 1,02,740. It is on the said sum that the deductions provided for by Section 80-T had to be applied. In such a case, no question can arise of the business loss being set off against this capital gain. The profits and gains (and loss) from business had to be computed in accordance with a different set of provisions namely Section 30 to 43-A, as they obtained at that time. Room for argument has arisen on account of the use of the words from such income in the main limb of Section 80-T. Relying upon the said orders, the Revenue contends that the Income Tax Officer must apply, the deductions under Section 80-T to the 'total income' computed by him in accordance with the Act. The order of the Income Tax Officer is sought to be justified on this basis. It is not possible to agree. The language of section, 80-T, reasonably understood, is not capable of and does not admit such construction. Probably, the placement of Section 80-T is wrong. It ought to have been placed alongside Section 48, as has since been done by the Finance Act, 1987, with effect from 1.4.88. By the said Act, Section 80-T has been omitted and its provisions, with certain changes, have been placed in Section 48. (Of course, Section 48 has been

totally recast with effect from 1.4.93 by Finance Act, 1992). The words "such income", in our opinion meant and referred to the capital gains and not the total income of the assessee.

7. The learned counsel for the Revenue, Shri Shukia, pointed out that the High Court has, while answering the question referred against the Revenue applied the principle of Cloth Traders Private Limited v. Additional Commissioner of Income Tax 118 ITR 243 while construing the words 'such income'. Inasmuch as the said decision has been over-ruled by this Court in Distributors (Baroda) v. Union of India 155 ITR 120. It is argued, the very basis of the High Court's judgment gets knocked out. In our opinion, the said argument is beside the point. The character of deduction provided by Section 80-M, which was the provision considered in the said two decisions of this Court, is different from the character of deduction provided by Section 80-T. Because the same words occur in both the sections, it does not necessarily follow that they must carry the same meaning. The High Court has referred to the decision in Cloth Traders by way of an additional factor supporting its understanding and nothing more. The fact that Cloth Traders has since been over-ruled makes no difference to the ratio of the decision of the High Court.

8. Reliance is then placed upon the decision of this Court in Cambay Electric Supply Industrial Company Ltd. v. Commissioner of Income Tax, Gujarat 113 ITR 84. The said decision was rendered with reference to Section 80-E, as it then stood. Two questions arose for consideration in that case viz., (i) whether the balancing charge (i.e., deemed profits) computed under Section 41(2) of the Income Tax Act should be added to the business income before applying the deduction provided by Section 80-E and (ii) whether the unabsorbed depreciation and development rebate should be deducted out of such income before applying the deduction provided by Section 80-E. This Court held on the first question that the deemed profits arising under Section 41(2) shall have to be added to the business income before making the said deduction. On the second question, it was held that unabsorbed depreciation and development rebate shall have to be deducted before making the said deduction. In short, the principle of the decision is that the Income Tax Officer must first have to arrive at the profits and gains of the business in accordance with Sections 28 to 43-A before granting the deduction provided for by Section 80-T. We do not think that the principle of the said decision has any relevance herein.

9. For the above reasons, the appeal fails and is accordingly dismissed. There shall, however, be no order as to costs.