

(1971) 03 AHC CK 0049

In the Allahabad High Court

Case No : Income-tax Application No. 22 of 1967

Commissioner of Income Tax

APPELLANT

Vs

Bharat Bhandar

RESPONDENT

Date of Decision : 24-03-1971

Acts Referred:

Income Tax Act, 1961 — Section 80G, 80J, 84, 88

Citation : (1974) 94 ITR 315

Hon'ble Judges : R.S. Pathak, J;H.N. Seth, J

Bench : Division Bench

Advocate : Gopal Behari, B.L. Gupta and R.R. Misra, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Seth, J.—Commissioner of Income Tax, U. P., has made this application u/s 256(2) of the Income Tax Act, 1961.

2. The assessee in this case is a registered firm, Messrs. Bharat Bhandar. In the assessment year 1963-64, the assessee gave donations amounting to Rs. 15,530. It also derived income from a newly set up industry. The assessee claimed that it was entitled to rebate in respect of the aforesaid items, under Sections 88 and 84 of the Income Tax Act, 1961. The Income Tax Officer made an order holding that the assessee was entitled to claim rebate under Section 84 of the Income Tax Act 1961, and was entitled to an exemption of tax on a sum of Rs. 13,303 on this account. Thereafter, he proceeded to apportion the amount of exemption u/s 84 in the hands of individual partners. He apportioned the total donation of Rs. 15,530 also in the hands of individual partners. The Income Tax Officer, therefore, did not actually allow the rebate u/s 88 and relief u/s 84 of the Act to the assessee.

3. The assessee then went up in appeal before the Appellate Assistant Commissioner. It was claimed that the exemption from tax and rebate, under

Sections 84 and 88 of the Act, should have been allowed to the assessee. The Appellate Assistant Commissioner rejected the claim of the assessee on the ground that necessary exemption and relief under Sections 88 and 84 of the Act had already been granted to the individual partners. Neither of these sections are meant for granting of exemption and relief twice over.

4. The assessee then filed a second appeal before the Income Tax Appellate Tribunal. The Tribunal held that on the wordings of Sections 84 and 88 of the Income Tax Act the assessee was entitled to claim exemption under these two sections. The appeal filed by the assessee was allowed and the order of assessment made by the Income Tax Officer was modified accordingly.

5. The Commissioner of Income Tax then moved an application u/s 256(1) of the Income Tax Act requesting the Tribunal to refer the question about the right of the assessee to claim exemption and relief under Sections 84 and 88 of the Act for the opinion of this court. The Tribunal rejected the application on the ground that the language used in Sections 84 and 88 was quite clear and unambiguous. The assessee was clearly entitled to the benefits under the two sections as claimed by it. The Commissioner of Income Tax has now made the present application and has prayed that the Tribunal should be required to state a case on the following question of law :

" Whether, on the facts and in the circumstances of the case, the Tribunal rightly held that the rebate and relief under Sections 84 and 88 of the Income Tax Act, 1961, were to be allowed in the hands of the registered firm ? "

6. The language of Section 84 is quite clear. It provides that Income Tax is not payable by an assessee on so much of the profits and gains derived from any industrial undertaking, to which that section applies, as does not exceed 6% per annum on the capital employed in such undertaking or business. There is no dispute that the industrial undertaking commenced by the assessee in this case, was such which was covered by Section 84. In the circumstances, the assessee was clearly entitled to the benefits of Section 84 of the Act. Similarly, Section 88 provides that an assessee is entitled to claim certain deduction from the amount of Income Tax on his total income with which he is chargeable for any assessment year, on account of certain types of donations made by him. Again, there is no dispute that the donations said to have been made in this case were covered by Section 88 of the Act. It is, therefore, clear that the assessee was entitled to relief in accordance with the provisions of Section 88 of the Act. The two sections very clearly, and in no uncertain words provided for grant of relief and exemption to the assessee. The fact that the Income Tax Officer had granted exemption and relief in respect of the items covered by these sections in other hands is no reason to deny the benefit to which the assessee is clearly entitled.

7. Learned counsel for the department, however, argued that relief in respect of the donations would depend on the fact whether the donation was made by the firm on its own account or on account of individual partners. If the donation was

made on account of the individual partners the procedure adopted by the Income Tax Officer would be correct and the assessee would not be entitled to claim exemption u/s 88. The submission that the donations were made by the firm on behalf of the individual partners was not made before any of the revenue authorities. This fact is not mentioned even in the application moved u/s 256(2) of the Act. Prima facie, any donation made by the firm would be on account of the firm itself. In the circumstances, it is not open to the Commissioner to question the propriety of the order made by the Income Tax Appellate Tribunal on the ground that the donations might have been made for and on behalf of individual partners.

8. In the circumstances, we feel that no arguable question of law arises out of the appellate order which may deserve the consideration by this court. This application, therefore, fails and is rejected. As no one has appeared on behalf of the assessee, we make no order as to costs. Counsel's fee is assessed at Rs. 100.