

(1988) 08 RAJ CK 0039

In the Rajasthan High Court

Case No : Income Tax Reference No. 36 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Dr. R.N. Jhanji

RESPONDENT

Date of Decision : 29-08-1988

Acts Referred:

Income Tax Act, 1961 — Section 80RRA, 91, 91(1)

Citation : (1988) 73 CTR 152 : (1990) 185 ITR 586 : (1988) 2 RLW 463 :
(1988) 2 WLN 143

Hon'ble Judges : J.S. Verma, C.J;N.C. Kochhar, J

Bench : Division Bench

Advocate : C.R. Mehta, for the Appellant; R. Balia, for the Respondent

Judgement

J.S. Verma, C.J.—This is a reference u/s 256(1) of the Income Tax Act, 1961, ("the Act"), at the instance of the Revenue to answer the following question of law, namely :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to relief u/s 91(1) of the Income Tax Act, 1961, on the full amount of tax deducted at source of Rs. 16,413 in the foreign country ?"

2. The relevant assessment year is 1976-77. During the relevant period, the assessee, a medical practitioner had received salary in Iran of Rs. 1,41,265 on which the tax deducted at source in Iran was Rs. 16,413. The assessee also earned an income of Rs. 5,247 in India during the same year. The assessee claimed deduction u/s 80RRA of the Act in respect of the remuneration received by him for services rendered outside India and also relief from double taxation u/s 91(1) of the Act. The Income Tax Officer held that the relief u/s 91(1) was allowable only on the amount of tax paid on Rs. 70,632 which was 50 per cent. of the remuneration received for services rendered outside India since the deduction u/s 80RRA was allowed to the same extent. The Income Tax Officer took the view that 50 per cent. of the foreign income which was deducted u/s

80RRA was not doubly taxed and, that, therefore, the remaining half only which had been included in the income for the purpose of tax in India was doubly taxed. Accordingly, it was only 50 per cent. of the foreign income which qualified for relief from double taxation u/s 91(1).

3. The assessee's appeal to the Appellate Assistant Commissioner failed as the Appellate Assistant Commissioner confirmed the view taken by the income tax Officer. However, the assessee's further appeal to the Tribunal has been allowed and it has been held by the Tribunal that the assessee is entitled to the credit of the entire amount of tax of Rs. 16,413 deducted at source in the foreign country on the total foreign income of Rs. 1,41,265 and not merely to the credit of tax paid on 50 per cent. of the foreign income, i.e., Rs. 70,632, which alone has been included for tax in India under the Act. Hence, this reference at the instance of the Revenue.

4. There is no controversy about the construction of Section 80RRA. According to this provision, the assessee was entitled to a deduction from the remuneration received by him from the foreign employer of the amount equal to 50 per cent. thereof. On this basis, deduction of Rs. 70,632, being 50 per cent. of the total foreign income of Rs. 1,41,265, was given to the assessee in computing the total income on which the assessee was required to pay tax in India under the Act. The controversy is only about the construction of Section 91(1). According to the assessee, he is entitled to relief u/s 91(1) from double taxation of the total amount of tax amounting to Rs. 16,413 paid by him in the foreign country on the total foreign income of Rs. 1,41,265 notwithstanding the fact that only 50 per cent. of the foreign income amounting to Rs. 70,632 has been included in computing the total income for the purpose of payment of tax in India. On the other hand, the Revenue contends that since Rs. 70,632 only being 50 per cent. of the total foreign income has been included in computing the total income for the purpose of taxation, it is only the tax paid on this amount in the foreign country which qualifies for relief from double taxation u/s 91(1). The question is which of the constructions made of Section 91(1) has to be accepted.

5. The relevant parts of Section 80RRA and Section 91(1) as they existed at the relevant time are as under :

"80RRA. Deduction in respect of remuneration from foreign employers.--(1) Where the gross total income of an individual who is a citizen of India includes any remuneration received by him from any foreign employer for any service rendered by him outside India, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the individual, a deduction from such remuneration of an amount equal to fifty per cent. thereof :"

"91. Countries with which no agreement exists.--(1) If any person who is resident in India in any previous year proves that, in respect of his income which accrued or arose during that previous year outside India (and which is not

deemed to accrue or arise in India), he has paid in any country with which there is no agreement u/s 90 for the relief or avoidance of double taxation, Income Tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian Income Tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal."

6. Section 80RRA says that "in computing the total income of the individual", a deduction equal to 50 per cent. of the foreign income Shall be given. Thus, the "total income" computed under the Act includes only 50 per cent. of the foreign income by virtue of the deduction granted, u/s 80RRA. As earlier stated, there is no controversy about the meaning or effect of Section 80RRA and a deduction of an amount equal to 50 per cent. of the foreign income has been given "in computing the total income of the individual".

7. Now comes for consideration the disputed meaning of Section 91(1) which admittedly applies in the present case. This provision provides for relief from double taxation on that amount included in the income which has already been taxed in the foreign country. The question is : what is the amount which can be said to be doubly taxed in these circumstances ? The expression requiring construction in Section 91(1) is "such doubly taxed income". The provision for relief from double taxation is that deduction would be given from the Indian Income Tax payable by the individual of "a sum calculated on such doubly taxed income" at the rate of tax specified. This means that after ascertaining the total Indian Income Tax payable on the total income determined under the provisions of the Act, giving the deduction u/s 80RRA and all benefits permitted by other provisions of the Act, a deduction would be made therefrom of tax calculated at the specified rate on "such doubly taxed income", on which tax has already been paid in the foreign country.

8. Ordinarily, this should mean that any part of the foreign income which has not been included in the income on which the Indian Income Tax is payable cannot be treated as doubly taxed ; and it is only that amount of the foreign income which is included once again in the income on which the Indian Income Tax is payable which can be characterised as doubly taxed. Accordingly, it is only the tax already paid on that part of the foreign income which is included once again in the income and is taxed again under the Indian Income Tax Act which is required to be deducted for the purpose of giving relief from double taxation. In other words, that part of the foreign income on which deduction is given u/s 80RRA "in computing the total income of the individual" for the purpose of determining the Indian Income Tax payable cannot be said to be taxed once again in India in order to qualify for the relief from double taxation.

9. This appears to be the logical construction of Section 91(1) which is also in consonance with the object of its enactment. If the assessee's contention is accepted, then the assessee would be given relief not only in respect of the

amount which has been taxed twice but also in respect of the amount which has been taxed once only in the foreign country and not also in India on account of the deduction given u/s 80RRA while computing the total income of the individual. It is obvious that Section 91(1) is not to be construed in isolation but in the company of Section 80RRA since the two are parts of the same scheme.

10. We shall now consider certain other provisions and the specific argument of learned counsel for the assessee based on those provisions.

11. The argument of learned counsel for the assessee in substance is that the total foreign income is included while computing the "total income" and deduction u/s 80RRA is given only thereafter and, therefore, for the purpose of Section 91(1), it must be held that the expression "such doubly taxed income" means the total foreign income and not merely 50 per cent. of that amount which is included in the total income for purposes of payment of tax in India; The argument is based on the definition of "total income" in Section 2(45) read along with Section 4(1) and Section 5(1)(c) of the Act. The argument is that the "total income", according to the definition, means the total amount of income referred to in Section 5, computed in the manner laid down in this Act ; according to Section 5(1)(c), the total income of a person who is a resident includes all income including the total foreign income, and the charge of Income Tax according to Section 4, is in respect of the total income so computed. In short, the argument is that, according to Section 5(1)(c), the total foreign income is to be included in computing the "total income" and, therefore, the tax paid on the total foreign income in the foreign country and not merely that on 50 per cent. of that amount qualified for relief from double taxation u/s 91(1). Reliance has been placed by learned counsel for the assessee on the Supreme Court decision in K.V.A.L.M. Ramanathan Chettiar by Lrs. Vs. Commissioner of Income Tax , Madras, in support of this submission. In our opinion, this contention of learned counsel for the assessee cannot be accepted.

12. We shall first refer to the Supreme Court decision in K.V.A.L.M. Ramanathan Chettiar by Lrs. Vs. Commissioner of Income Tax , Madras, , which is the sheet anchor of the argument of learned counsel for the assessee. This decision was rendered in relation to Section 49D of the Indian Income Tax Act, 1922 ("the 1922 Act"), corresponding to Section 91(1) of the Income Tax Act, 1961. It may be mentioned at the outset that there was no provision corresponding to Section 80RRA of the 1961 Act in the 1922 Act, but Section 49D was amended by the Indian Income Tax (Amendment) Act, 1953, and it is with reference to the provisions of Section 49D as in existence prior to and after the amendment that the case was decided. Prior to the 1953 amendment, Section 49D provided for double taxation relief by giving a deduction from the Indian Income Tax payable of a sum equal to one-half of such Indian Income Tax or to one-half of such tax payable in foreign country, "in respect of the same income", whichever was less. After the amendment, the relief given was of deduction from the Indian Income Tax payable of a sum calculated on "such doubly taxed income" at the Indian

rate of tax or the rate of tax of the foreign country, whichever was lower. The question arose about the meaning of "in respect of the same income" in Section 49D prior to the amendment and "such doubly taxed income" after the amendment. The Supreme Court held that prior to the amendment, the benefit given was of deduction of only one-half of the amount of tax whereas, after the amendment, the benefit given was of deduction of the entire amount of tax paid on the foreign income which was taxed also in India. The object of the amendment in Section 49D was to encourage Indian residents to start business in the foreign country and to give full relief at the Indian rate of tax or the rate of tax of the foreign country, whichever was lower. Under the 1922 Act, no such deduction was given as is provided in Section 80RRA of the 1961 Act in computing the "total income", and, therefore, the total foreign income was taxed in India also. This Supreme Court decision does not support the assessee's contention in the present case.

13. The consequence of the construction we have made of Section 91(1) is that the entire foreign income which is actually taxed in India being included in computing the "total income" is only 50 per cent of the total foreign income by virtue of the deduction given u/s 80RRA. This entire amount which alone is taxed is in effect doubly taxed and, therefore, relief from double taxation u/s 91(1) can be given only by allowing deduction of the amount of tax paid once again in India on half of the total foreign income. The principle enunciated in the above Supreme Court decision supports this construction.

14. We find that the Andhra Pradesh High Court in CIT v. C.S. Murthy [1988] 169 ITB 686 has taken the same view and construed the Supreme Court decision in K.V.A.L.M. Ramanathan Chettiar by Lrs. Vs. Commissioner of Income Tax , Madras, , similarly. The conclusion reached by the Andhra Pradesh High Court is as under (at page 694) :

"The relief by way of deduction of tax u/s 91 of the Act should be confined to the amount doubly taxed in accordance with the provisions of the Act and not to the full amount received by the assessee from the foreign employer. It is reasonable to assume that in enacting Section 80RRA, the Legislature intended to grant relief u/s 91 with reference to the amount of foreign income doubly taxed in accordance with the provisions of the Act and not with reference to the full amount which did not bear tax in this country. The Legislature intended only to prevent double taxation but not to provide an additional benefit in respect of foreign income which is not subjected to tax in this country We are unable to agree that the majority judgment of the Supreme Court in K.V.A.L.M. Ramanathan Chettiar by Lrs. Vs. Commissioner of Income Tax , Madras, , supports the assessee's claim for deduction of tax treating the entire income as doubly taxed income ignoring the fact that one-half of such income was not subjected to tax at all in this country."

15. With respect, we concur with this view. No other decision on the point was cited at the Bar.

16. As a result of the above discussion, we hold that the Tribunal was not justified in holding that the assessee is entitled to relief u/s 91(1) of the full amount of tax paid on the total foreign income in the foreign country ; the assessee is entitled to the relief u/s 91(1) only of the amount of tax paid on 50 per cent. of the total foreign income. The reference is answered accordingly. No costs.