(1992) 08 AP CK 0031

In the Andhra Pradesh High Court

Case No : Case Reference No. 219 of 1983

Commissioner of Income Tax	APPELLANT
Vs	
M.A. Mois	RESPONDENT

Date of Decision : 27-08-1992

Acts Referred:
Income Tax Act, 1961 — Section 80RRA, 90, 91

Citation : (1994) 210 ITR 284

Hon'ble Judges : S.S. Mohammed Quadri, J;P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; S. Ravi, for the Respondent

Judgement

Syed Shah Mohammad Quadri, J.—At the instance of the Revenue, the following question of law, is referred to this court for opinion :

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was correct in holding that the assessee is entitled to full relief u/s 91 of the Income Tax Act, 1961, of the entire amount of tax paid to the Government of Iran though a deduction of 50 per cent. of gross total income allowed u/s 80RRA while computing the total income?"

2. The assessee is a medical practitioner working as Deputy Civil Surgeon, Gandhi Hospital, Secunderabad. During the relevant previous year, he went to Iran on employment and earned income by way of salary. The relevant assessment year is 1978-79 for which the previous year ended on March 31,1978. During the said period of the assessment year, the assessee earned salary of Rs. 1,10,208 in Iran (hereinafter referred to as the "Iranian income"). On that Iranian income, he paid tax of Rs. 11,785 to the Iranian authorities. Before the Income Tax Officer, the assessee claimed that the whole of the tax paid by him to the Iranian Government should be deducted from the tax payable by him in India. The Income Tax Officer did not agree with the claim of the assessee but, however, he granted relief by way of deducting 50 per cent. of the

tax paid by the assessee in Iran in the order of assessment dated July 7, 1981. Dissatisfied by the order of assessment passed by the Income Tax Officer, the assessee filed an appeal before the Appellate Assistant Commissioner. The appeal late authority granted the relief as prayed for by the assessee following the decision of the Supreme Court in K. V. AL. M. Ramanathan Chettiar v. CIT [1973] ITR 169. Aggrieved by the same, the Revenue went in appeal before the Income Tax Appellate Tribunal. The Tribunal while upholding the order of the Appellate Assistant Commissioner dismissed the appeal of the Revenue.

3. At the request of the Revenue, the above question of law referred for our opinion.

4. Sri S. R. Ashok, learned standing counsel for the Revenue, contends that the above said question is covered by a decision of this court in CIT v. C. S. Murthy [1988] 169 ITR 686, wherein a similar question was answered against the assessee. Sri Ravi s., learned counsel for the assessee, on the other hand, contends that having regard to the provisions of section 91 of the Income Tax Act (hereinafter referred to as the "Act"), the assessee is entitled to relief on the amount of income which is taken into computation and as the whole of the Iranian income has gone into computation the assessee is entitled to deduction of the total amount of tax paid by him to the Iranian authorities. To appreciate the contention of learned counsel for the assessee it is relevant to have a look at sub-section (1) of section 91 of the Act, which reads as follows :

"91. (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."

5. From a perusal of the above section, it is clear that for avoidance of double taxation relief is provided to any person, who is a resident in Indian in any previous year, in respect of his income which accrued or arose during the previous year outside India and if he has paid the tax under the law in force in that country, a deduction of a sum calculated on such doubly taxed income has to be made from the Indian Income Tax payable by that person. The tax has to be calculated at the Indian rate of tax or if the rate of tax in that country is lower than the Indian Income Tax at the rate applicable in the foreign country and if both are equal at the Indian rate of tax. The relief granted in India is by way of reduction of tax by deducting the tax paid in the foreign country on doubly taxed income from out of the amount of Income Tax payable by him in India. The Indian tax is reduced by the amount of tax paid by the assessee in the foreign country on such doubly taxed income. In a given case, the foreign income that

has gone into computation may be much more than the income which actually suffered double taxation. The intention of the Legislature is not to exempt from tax the whole foreign income which has gone into computation; not also that the whole of the tax paid by an assessee in a foreign country be deducted from out of Income Tax payable by him in India. Unilateral relief is granted to a person resident in India in respect of his income which accrued or arose outside India in countries with which no agreement for double taxation exists u/s 90 of the Act to the extent his foreign income suffers taxation in India.

6. The relief granted by section 91 of the Act is different from and independent of relief by way of the reduction of income by operation of section 80RRA of the Act. For granting relief u/s 91 of the Act, the test is what is the income of the assessee which is being doubly taxed. Relief is available only in respect of such income which is doubly taxed by allowing deduction of tax on that income at the Indian rate unless rate of tax in the foreign country is less in which case at the rate applicable in that country.

7. In K.V.A.L.M. Ramanathan Chettiar by Lrs. Vs. Commissioner of Income Tax , Madras, , his Lordship Justice Jaganmohan Reddy, speaking for the majority, observed as follows (at page 191) :

"... the relief to which an assessee would be entitled would be the amount of tax paid on the foreign income which by its inclusion in the total income once again bear tax under the Act."

8. It is this observation which is relied on by Sri Ravi S. in support of his contention that the relief should be granted on the amount of income which has gone into computation of the total income. We are unable to accede to his contention. The observations of the Supreme Court have to be understood in the context in which they are used. The true import will be lost or distorted if they are taken in isolation and out of context. That observation is elucidated in the passage that follows it which reads thus (at page 191) :

"The word ''such'' in the phrase ''such doubly taxed income'' has reference to the foreign income which is again being subjected to tax by its inclusion in the computation of the income under the Act and not the same income under an identical head of income under the Act."

9. Thus, it is clear that the relief u/s 91 of the Act is limited only to the amount of tax paid on such doubly taxed income at the Indian rate of tax or the rate of tax of the foreign country, whichever is the lower, or at the Indian rate of tax, if both the rates are equal.

10. A Division Bench of this court in CIT v. C. S. Murthy [1988] 169 ITR 686 understood the judgment of the Supreme Court in K.V.A.L.M. Ramanathan Chettiar by Lrs. Vs. Commissioner of Income Tax , Madras, in the same way as we did. That was also a case of an assessee resident in India who was having foreign income in respect of which double taxation relief was claimed. The

Division Bench held that by merely including the foreign income in the total income it could not be said that the whole foreign income was subjected to tax in India. It laid down the criteria that only the foreign income must be included in the total income in the assessment made under the Income Tax Act in India, but it should also be subjected to tax in India. For claiming relief u/s 91 of the Act, these two conditions must be satisfied. Respectfully we agree with this test.

11. For the above reasons, we answer the question in the negative, that is, in favour of the Revenue and against the assessee.

12. The case referred is accordingly answered. No costs.

