(1990) 07 RAJ CK 0029

In the Rajasthan High Court

Case No : DB IT Reference No. 41 of 1986 and 13 of 1989

Commissioner of Income Tax APPELLANT

Vs

P.N. Sachdev RESPONDENT

Date of Decision : 11-07-1990

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 80RRA, 91(1)

Citation : (1991) 54 TAXMAN 92

Hon'ble Judges : K.C. Agrawal, C.J;A.K. Mathur, J

Bench : Division Bench

Advocate : B.R. Arora, for the Appellant; Rajesh Balia, for the Respondent

Judgement

1. On an application made by the department u/s 256(1) of the income tax Act, 1961 (''the Act'') the following question has been referred to the High Court for its opinion: Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the assessee was entitled to deduct full amount of tax deducted at source by the Government of foreign country from the tax payable on the said income in India?

The dispute relates to the assessee''s claim for tax deducted at source for Rs. 4,776. The ITO gave credit only half of this figure, as according to him half of the income was exempt u/s 80RRA of the Act. The revenue filed an appeal before the Tribunal which was dismissed by the order dated 28-11-1985. Thereafter it filed an application u/s 256(1) and on that application the question mentioned above was referred to the High Court for its opinion.

2. In Commissioner of Income Tax Vs. Dr. R.N. Jhanji, this Court held that an assessee is not entitled to relief u/s 91(1) of the Act, of the full amount of tax paid on the total foreign income earned in the foreign country and that the assessee could he entitled to relief u/s 91(1) only of the amount of tax paid on fifty per cent of the total foreign income.

3. On construction of section 91(1) we find ourselves in agreement with the view

taken in Dr. R.N. Jhanji''s case. Section 91(1) has to be construed along with section 80RRA being a part of the same scheme. If that is so done, the irresistible conclusion would be that no amount of tax paid on the total foreign income in the foreign country is entitled to relief u/s 91(1) of the Act. Only fifty per cent of the total foreign income is liable to be excluded.

4. For the reasons given above, we answer the question in favour of the revenue and against the assessee, by holding that the assessee was not entitled to deduct full amount of tax deducted at source by the Government of Iran on its foreign currency earned in Iran from the tax payable on the said income in India.

D.B. IT Ref. No. 13 of 1989:

On the application made by the Department u/s 256(1), the following question has been referred to the High Court for its opinion:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the assessee was entitled to deduct full amount of tax deducted at source by the Government of foreign country from the tax payable on the said income in India?

5. The dispute relates to the assessee''s claim for tax deducted at source for Rs. 9,692. The ITO gave credit only half of this figure, as according to him, half of the income was exempt u/s 80RRA. The revenue filed an appeal before the Tribunal which was dismissed by the order dated 28-11-1985. Thereafter it filed an application u/s 256(1) and on that application the question mentioned above was referred to the High Court for its opinion.

6. In Dr. R.n. Jhanji''s case (supra), this Court held that an assessee is not entitled to relief u/s 91(1) of the Act, of the full amount of tax paid on the total foreign income earned in the foreign country and that the assessee could be entitled to relief u/s 91(1) only of the amount of tax paid on fifty per cent of the total foreign income.

7. On construction of section 91(1), we find ourselves in agreement with the view taken in Dr. R.N. Jhanji''s case (supra). Section 91(1) has to be construed along with section 80RRA being a part of the same scheme. If that is so done, the irresistible conclusion would be that no amount of tax paid on the total foreign income in the foreign country is entitled to relief u/s 91(1). Only fifty per cent of the total foreign income is liable to be excluded. For the reasons given above, we answer the question in favour of the revenue and against the assessee, by holding that the assessee was not entitled to deduct full amount of tax deducted at source by the Government of Iran on its foreign currency earned in Iran from the tax payable on the said income in India.