
(1996) 03 MP CK 0094

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2497 of 1988

MAHENDRA KUMAR

APPELLANT

Vs

UNION OF INDIA and Another

RESPONDENT

Date of Decision : 18-03-1996

Acts Referred:

Income Tax Act, 1961 — Section 147, 148, 271, 80L

Citation : (1997) 140 CTR 331

Judgement

Petitioner has by this petition challenged the validity of Taxation Laws (Amendment) Act, 1984, whereby sub-s. (3) to s. 80L has been introduced with retrospective effect, i.e., 1st April, 1976. The petitioner has also prayed that the assessment for asst. yr. 1985-86 may be declared illegal. He has also prayed that the penalty proceedings initiated under s. 271(1)(c) of IT Act, 1961, for imposition of penalty for the said period of assessment should be quashed. The petitioner has also prayed for quashing the notices issued under s. 148 of the Act as illegal.

2. Brief facts giving rise to this petition are that the petitioner is an assessee. He was assessed to Income Tax by respondent No. 2, ITO B Ward, Ujjain. The sources of his income are house property and share income from three partnership firms namely - Babulal Porwal, Ujjain, Harishchand Ashok Kumar, Ujjain and Sharad Textiles Agency. During the asst. yr. 1985-86, he also derived income from bank interest amounting to Rs. 3,076. This amount of Rs. 3,076 fell to the share of the petitioner from the total interest of the firm in which he is a partner. The petitioner claimed deduction under s. 80L of the Act. It was disallowed by the ITO on the ground that s. 80L was amended by insertion of sub-s. (3) by Taxation Laws (Amendment) Act, 1984 with retrospective effect from 1st April, 1976. It was clarified that for such income, the petitioner is not entitled to the benefit under s. 80L. Hence, the petitioner has challenged the validity of sub-s. (3) of s. 80L introduced by Taxation Laws (Amendment) Act, 1984.

3. In view of the amendment by Act of 1984 w.e.f. 1st April, 1976, a notice was issued to the assessee under s. 148 r/w s. 147 of the Act for reopening proceedings for asst. yrs. 1983-84 and 1984-85 seeking thereby to tax the escaped income from interest in accordance with the provision introduced by the Amendment Act of 1984. Meanwhile, the assessee was assessed and penalty proceedings were directed to be initiated by order of the assessing authority (Annex-A dt. 11th March, 1988). The petitioner has therefore, challenged the provision of the Amendment Act, notice under s. 148 IT Act and the penalty proceedings proposed to be initiated against him under s. 271(1)(c) of the Act.

4. No return has been filed by the respondents. However, Shri Tankha, learned counsel for the respondents submitted that sub-s. (3) to s. 80L introduced by Taxation Laws (Amendment) Act, 1984 is only clarificatory in nature and does not in any way operate in an arbitrary manner or violates any provision of law. Shri Nema, learned senior advocate and Shri Rawat, learned counsel appearing for the petitioner submitted that in fact this so called clarification which has been made retrospective will deprive of the benefits which accrued to the assessee and thus it will operate harshly and arbitrarily because the assessments had been closed long back and they are being sought to be reopened on account of sub-s. (3) of s. 80L. In order to appreciate the controversy, we will examine as to what is the purpose and intention of the legislature in inserting s. 80L(3) - whether it contemplated benefit of deduction in the gross total income of an assessee, being an individual, or an HUF, or an AOP or a BOI, or not.

5. We have considered the arguments of both sides and we are of the opinion that s. 80L of the Act provides benefit of deduction to small people for their small savings and previously benefit was upto the extent of Rs. 7,000 which was increased to Rs. 13,000. Clauses (i) to (x) of sub-s. (1) of s. 80L enumerate income by way of interest from various sources, like security of the Central Government or State Government, debentures, National Deposits Scheme, etc. Where the income as referred to in sub-s. (1) is derived from any asset held by, or on behalf of, a firm, an AOP or a BOI, no deduction shall be allowed under the said sub-section in respect of such income in computing the total income of any partner of the firm or any member of the association or body. It was intended only for the benefit of an individual, or an HUF and it is not intended to widen the scope of this benefit to any other BOI or firms. The benefit is to be extended to an individual, an HUF or (sic) an AOP or BOI for investment in various securities and various institutions enumerated in s. 80L(i) to (x). We are, therefore, of the opinion that right from the beginning it was only intended to benefit individuals or HUF. Subsequently, a clarification has been introduced by inserting sub-s. (3) in s. 80L by Amendment Act, 1984 only with a view to remove the doubt which had arisen in some quarters, may be in the mind of assessee and may be as a result of some assessment. Be that as it may, it appears that s. 80L clearly lays down that this benefit is only admissible to individual or HUF and not to any firm or body of persons. We are of the opinion that this clarification has been made w.e.f. 1st April, 1976, but in any way it does not deprive any person of any

vested rights and as such, it cannot be held ultra vires or arbitrary or violative of Arts. 14 and 19 of the Constitution of India.

6. Next question is regarding the penalty proceedings sought to be initiated against the petitioner by issuing notice and reopening assessment proceedings under s. 148 of the Act. This action of initiating penalty proceedings against the assessee does not appear to be well founded. As a matter of fact, the assessee also woke up when this clarification under sub-s. (3) to s. 80L was made and when action under s. 148 of the Act was initiated. The assessing authority was himself labouring under misconception whether benefit under s. 80L was to be given or not and assessment was made and it was sought to be reopened. The assessee had honestly disclosed the income and had not concealed anything deliberately and his action did not suffer from any mens rea. Since the assessee is not guilty of any concealment, penalty proceedings under s. 271(1)(C) are absolutely unwarranted.

7. In view of above discussion, we uphold the validity of sub-s. (3) of s. 80L of the IT Act, 1961; but at the same time we quash the proposal in the assessment order for initiating penalty proceedings against the petitioner after reopening under s. 148 of the Act. The petition is disposed of accordingly.