
(1996) 07 MP CK 0032
In the Madhya Pradesh High Court
Case No : M.P. No. 2497 of 1988

Mahendra Kumar	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 18-07-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226
Income Tax Act, 1961 — Section 147, 148, 271(1), 80L
Taxation Laws (Amendment) Act, 1984 — Section 80L, 80L(3)

Citation : (1997) 226 ITR 718 : (1997) 94 TAXMAN 3

Hon'ble Judges : A.K. Mathur, C.J.;Shahi Kant Kulshreshtha, J

Bench : Division Bench

Advocate : B.L. Nema and Sudhir Rawat, for the Appellant; V.K. Tankha, for the Respondent

Judgement

1. The petitioner has by this petition challenged the validity of the Taxation Laws (Amendment) Act, 1984, whereby Sub-section (3) of Section 80L has been introduced with retrospective effect, i.e., April 1, 1976. The petitioner has also prayed that the assessment for the assessment year 1985-86 may be declared illegal. He has also prayed that the penalty proceedings initiated u/s 271(1)(c) of the Income Tax 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 u/s 148 of the Act as illegal.

2. The 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 assessment year 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 u/s 80L of the Act. It was disallowed by the Income Tax Officer on the ground that Section 80L was

amended by the insertion of Sub-section (3) of the Taxation Laws (Amendment) Act, 1984, with retrospective effect from April 1, 1976. It was clarified that for such income, the petitioner is not entitled to the benefit u/s 80L. Hence, the petitioner has challenged the validity of Sub-section (3) of Section 80L introduced by the Taxation Laws (Amendment) Act, 1984.

3. In view of the amendment by Act of 1984 with effect from April 1, 1976, a notice was issued to the assessee u/s 148 read with Section 147 of the Act for reopening of proceedings for the assessment years 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 the order of the assessing authority (annexure "A", dated March 11, 1988). The petitioner has therefore challenged the provision of the Amendment Act, the notice u/s 148, Income Tax Act, and the penalty proceedings proposed to be initiated against him u/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-section (3) to Section 80L introduced by the Taxation Laws (Amendment) Act, 1984, is only clarificatory in nature and does not in any way operate in an arbitrary manner or violate 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 the assessee 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-section (3) of Section 80L. In order to appreciate the controversy, we will examine as to what is the purpose and intention of the Legislature in inserting Section 80L(3) whether it contemplated benefit of deduction in the gross total income of an assessee, being an individual, or a Hindu undivided family, or an association of persons or a body of individuals, or not.

5. We have considered the arguments of both sides and we are of the opinion that Section 80L of the Act provides benefit of deduction to small people for their small savings and previously the benefit was up to the extent of Rs. 7,000 which was increased to Rs. 13,000. Clauses (i) to (x) of Sub-section (1) of Section 80L enumerate income by way of interest from various sources, like securities of the Central Government or a State Government, debentures, National Deposits Scheme, etc. Where the income as referred to in Sub-section (1) is derived from any asset held by, or on behalf of, a firm, an association of persons or a body of individuals, 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 a Hindu undivided family and it is not intended to widen the scope of this benefit to any other body of individuals or firms. The benefit is to be

extended to an individual, a Hindu undivided family or an association of persons or a body of individuals for investment in various securities and various institutions enumerated in Section 80L(1)(i) to (x). We are, therefore, of the opinion that right from the beginning it was only intended to benefit individuals or Hindu undivided families. Subsequently, a clarification has been introduced by inserting sub-section (3) in Section 80L by the Amendment Act, 1984, only with a view to remove the doubt which had arisen in some quarters", may be in the mind of the assessee and may be as a result of some assessment. Be that as it may, it appears that Section 80L clearly lays down that this benefit is only admissible to an individual or Hindu undivided family and not to any firm or body of persons. We are of the opinion that this clarification has been made with effect from April 1, 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 articles 14 and 19 of the Constitution of India.

5. The next question is regarding the penalty proceedings sought to be initiated against the petitioner by issuing notice and reopening the assessment proceedings u/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-section (3) to Section 80L was made and when action u/s 148 of the Act was initiated. The assessing authority was himself labouring under a misconception whether benefit u/s 80L was to be given or not and the 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 u/s 271(1)(c) are absolutely unwarranted.

6. In view of the above discussion, we uphold the validity of Sub-section (3) of Section 80L of the Income Tax Act, 1961, but, at the same time, we quash the proposal in the assessment order for initiating penalty proceedings against the petitioner after reopening u/s 148 of the Act. The petition is disposed of accordingly.