(1974) 07 AHC CK 0007

In the Allahabad High Court

Case No : Income-tax Reference No. 640 of 1972

Shanker Refrigeration Co. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 09-07-1974

Acts Referred:

Income Tax Act, 1961 — Section 84

Citation : (1976) 102 ITR 275

Hon'ble Judges : Satish Chandra, J;H.N. Seth, J

Bench : Division Bench

Advocate : Ashok Gupta, for the Appellant; R.R. Misra, for the Respondent

Judgement

H.N. Seth, J.—At the instance of the assessee, the Income Tax Appellate Tribunal, Delhi Bench, has stated the case and has referred the following question of law for the opinion of this court;

"Whether, on the facts and in the circumstances of the case, it would be proper in law for the Income Tax authorities and the Tribunal while deciding the case of the firm to determine whether any relief u/s 84 was due to any or all the partners of the firm and allocate the same among the partners?"

2. Assessee, Shanker Refrigeration Company, is a registered firm, which during the accounting year ending 31st January, 1963, relevant to the assessment year 1964-65, constructed refrigeration plants at Narayanpur, near Calcutta.

3. It claimed relief u/s 84 of the Income Tax Act, 1961, by reference to the capital employed by it as a new industrial undertaking. The Income Tax Officer found that the assessee was entitled to a rebate, amounting to Rs. 42,490 u/s 84 of the Act and drew up the assessment order accordingly. He, however, went on to observe in the assessment order that no rebate on this account will be given in the hands of the partners. Thereafter, the assessee filed an appeal before the Appellate Assistant Commissioner and objected to the note made by the Income Tax Officer directing that no rebate u/s 84 would be admissible in the hands of

individual partners. The Appellate Assistant Commissioner dismissed the appeal holding that the point relating to rebate admissible to partners of the assessee-firm did not and could not arise for consideration in the case of the firm. The assessee then filed a second appeal before the Tribunal and raised the same objection. It was contended on its behalf that the direction contained in the assessment order of the Income Tax Officer had the effect of prejudicing the case of the partners, inasmuch as even though under the law they were also entitled to claim rebate u/s 84 of the Act in their individual assessments, the same was to be disallowed. The assessee, therefore, requested the Tribunal to record a positive finding that in respect of the share income allocated to them as individual partners they were also entitled to claim rebate u/s 84 of the Act. The Tribunal dismissed the appeal and made the following observations :

"We are unable to accede to the request of the assessee. Whether the relief was due to the partners is a matter which will have to be considered in the cases of the partners. All we can do at this stage is to direct that the observations of the Income Tax Officer in the present case shall be ignored and will have no operative value at all in so far as the cases of the partners are concerned. The claim of the partners regarding relief u/s 84 will be treated on merits and in accordance with law in their respective cases."

4. The assessee not being satisfied with the order passed by the Tribunal, made an application requesting it to state the case and refer two questions of law for the opinion of this court. The Tribunal came to the conclusion that the two questions formulated by the assessee did not arise from out of its order but the real question that arose for consideration, and which was a question of law which could be referred to the High Court was the one which has already been quoted in the earlier portion of this judgment. It accordingly stated the case and referred that question for the opinion of this court.

5. For purposes of the Income Tax Act, a registered partnership firm and the partners constituting the same are distinct assessable entities different from each other. Accordingly, the question regarding admissibility of any rebate admissible to an individual partner, while computing his income, can be gone into only in his individual assessment and not during the firm''s assessment. Learned counsel for the assessee urged that the question whether in a case where rebate u/s 84 has been granted to a firm, the same is also admissible in the hands of the partners constituting the firm is necessary to be decided in the firm''s assessment as without doing that it would not be possible to work out the income of the firm to be allocated to individual partners. We are unable to accept this submission. So far as the assessee-firm is concerned its taxable income is to be worked out after making an allowance admissible to it u/s 84 of the Act. In this connection, any rebate or allowance deductible in the assessment of partners has no relevance. After the income has been so computed, the same, in the case of a registered firm, is to be allocated to the various partners. In computing the income of the firm, and allocating the same to its partners, the question regarding rebates

admissible to individual partners does not crop up for consideration. Under the law what can be allocated to various partners of a firm is the income of the firm. Since "rebate" admissible to its partners cannot be said to be the income of the firm, no question of apportioning or allocating the same to the partners constituting the firm arises. Accordingly, in proceedings for the assessment of the firm, the question regarding admissibility of rebate u/s 84 of the Act to individual partners could not be gone into.

6. Learned counsel for the assessee relied upon a Division Bench decision of this court in Commissioner of Income Tax Vs. Globe Engineers (P.) Ltd., wherein it had been held that where a registered firm manufactures or processes articles in an industrial undertaking, every partner of the registered firm does so and would also be entitled to any rebate in Income Tax allowed to a manufacturer. Those observations were made not in a case which arose out of the assessment of a firm, but were made in a case which arose out of the assessment of the individual partners. This case, therefore, is no authority for the proposition that the question whether indivi dual partners are entitled to a particular rebate on the share of income allocated to them as a result of the firm''s assessment, should be decided in the assessment proceedings of the firm itself.

7. In the result, we answer the question referred to us in the negative and in favour of the revenue. The assessee shall pay the costs of this reference, which are assessed at Rs. 200, to the Commissioner of Income Tax.

