

Commissioner of Income Tax, Kerala

Vs

South Indian Bank Ltd

Civil Appeal No. 842 of 1964

(K. Subba Rao, J. C. Shah, S. M. Sikri JJ)

23.11.1965

JUDGMENT

SUBBA RAO J. –

The respondent, the South Indian Bank Limited, Trichur, is a banking company. This appeal is concerned with the assessment year 1956-57, the corresponding previous year being the calendar year 1955. During the accounting year the bank received a sum of Rs. 44,720 toward interest in respect of tax-free Cochin and Travancore securities. During the course of the assessment of its income to tax, it claimed that rebate should be allowed on the entire sum of Rs. 44,720 received on interest from the said securities. But the income-tax officer, while completing the assessment, arrived at the figure of Rs. 33,444 as the sum representing two items, viz., (i) reasonable sum expended by the assessee in realising the said interest; and (ii) the interest payable on the money borrowed for the purpose of investment. After deducting from the said sum from the interest receivable from the said securities, he granted only a sum of Rs. 7,276 as rebate for income-tax. On appeal, the Appellate Assistant Commissioner

"Whether on the facts and circumstances of the case the Tribunal was right in holding that the explanation of the section 8 is not applicable in this case and that the entire interest of Rs. 44,720 earned by the assessee from securities issued by the former Native States, etc., is entitled to rebate the income-tax."

A Division bench of the High court expressed the opinion that the entire interest of Rs. 44,720 was entitled to rebate the income-tax under the notification issued by the Central Government in exercise of its powers under section 60A of the Indian Income-tax Act, 1922. Hence the appeal.

Mr. R. Ganapathy Iyer, learned counsel of the revenue, argued that under section 8 of the Indian Income-tax Act, income-tax was computed under the head "interest on securities" in respect of the interest received by an assessee on any Government securities minus the expenditure incurred by him to realise the same in term of the first proviso and the Explanation thereto that when under the third proviso the assessee was exempted from paying tax on the interest receivable of any securities of the State Government issued income-tax free, he was only exempted from such tax payable by him if it was not so exempted. To put it differently, his argument was that the exemption under the third proviso was only in regard to that part of the interest which was taxable but for the exemption. His further contention was that the notification issued by the Central Government under section 60A of the income-tax act did not enlarge the scope of exemption but that the said notification must be construed only in terms of section

Mr. A. V. Vishwanath Sastri, learned counsel of the respondent argued that the substantive part of the section 8, read with the first proviso and the explanation thereto, had no application to securities issued income tax free and that the interest from the State Government securities was governed by the third proviso which did not provide for any deduction from the interest receivable from such securities for the purpose of income-tax. Further he sought to sustain the order of the High Court on the ground that the interest in question was solely governed by the notification issued by the central government were under the entire interest receivable from such securities was exempted from income-tax.

As we agree with the High court of the construction of the notification issued by the central government, we do not propose to express our opinion on the rival contention of the parties based upon the provision of section 8 of the income-tax Act.

Section 8 of the income-tax act provides for the computation of income and deduction therefrom under the head "interest of securities". Section 60 of the Acts confers a powers on the Central Government to make an exemption, reduction in rate, or other modification in respect of income tax in favour of any class of income or in regard to the whole or any part of any income of any class of persons. This power is conferred on the government to meet special situations de hors section 8. If section 8 of the Income-tax Act makes an exemption in respect of the particular income, there is no scope or occasion for invoking the special power conferred on the Central Government under section 60A of the income-tax act. Unless we accept the contention that the notification under section 60A was issued by the Central Government in superabundant caution to cover the same ground occupied by the section 8 - we need not attribute any such redundancy to the Central Government - we do not see any reason why the notification sho

"No income-tax shall be payable by the assessee on the interest receivable on the following income-tax free loans issued by the former Government of Travancore of by the former Government of Cochin, provided that such interest is received within the territories of the state of Travancore Cochin and is brought about into any other part of the taxable territories to which the said act applies. Such interest shall, however be included in the total income of the assessee for the purpose of section 16 of the Indian Income-tax Act, 1922 : ..."

It is common case that this notification applies to the securities in question. It will be noticed that this notification does not refer to the provisions of section 8 of the income-tax act at all. It gives a total exemption from income-tax to an assessee in respect of the interest receivable on income-tax act free loans mentioned there in. It gives that exemption subject to two condition namely, (i) that the interest is received within the territories of the State of Travancore-Cochin, and (ii) that it not brought into any other part of the taxable territories. It includes the said exempted interest in the total income of the assessee for the purpose of the section 16 of the income tax act. Shortly Stated, the notification is a self contained one; it provides an exemption from income-tax payable by an assessee on a particular class of income subject to specified conditions. Therefore, there is no scope of controlling the provisions of the notification with reference of section 8 of the Income-tax Act. The e

In the result, the appeal failed and is dismissed with costs.

Appeal dismissed.

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