

ANDHRA PRADESH HIGH COURT

Commissioner of Income-Tax

Vs

Amonbolu Rajiah

(G.R Ekbote,C.J. M Rao, J.)

01.03.1973

JUDGMENT

Gopal Rao Ekbote, C.J.

1. The assessee is an individual and is concerned with the assessment year 1965-66, for which the relevant accounting year is ending with November 4, 1964.
2. The Zilla Parishad owned a piece of land at Malkajgiri. The Zilla Parishad intended to construct a building for Balika Unnata Patashala. The assessee entered into an arrangement with the Zilla Parishad to donate necessary funds in order to construct the school building. A contractor, therefore, was appointed. The assessee was advancing from time to time various amounts to the contractor for the purpose of constructing the school building. The amounts were thus advanced between April 13, 1964, and October 28, 1964. The total amount thus advanced came to Rs. 16,557. The assessee debited that amount to the school account. The Zilla Parishad, who was also the owner of the land, took possession of the building from the contractor and commenced the Girls High School in that building.
3. The assessee claimed exemption from tax on the said amount under Section 88 of the Income-tax Act, 1961. The Income-tax Officer as well as the Appellate Assistant Commissioner rejected the claim on the ground that the donation was not made in cash which is essential for the application of Section 88 of the Act.
4. On an appeal to the Tribunal, the Tribunal took a contrary view. It held that in fact the donation was made in cash and, therefore, it squarely came within the purview of Section 88. Secondly, it was found that donation in kind was not precluded for the purpose of allowance of rebate under Section 88 of the Act. The Tribunal, consequently, allowed the appeal and granted rebate to the assessee on the said amount.
5. On an application by the Commissioner under Section 256(1) of the Act, the following question has been referred to us :

"Whether, on the facts and in the circumstances of the case, the assessee is entitled to rebate under Section 88 of the Income-tax Act, 1961, in respect of the sum of Rs. 16,557

?"

6. Now Section 88, in so far as it is relevant, reads:

- (1) Subject to the provisions of this section, the assessee shall be entitled to a deduction from the amount of income-tax on his total income with which he is chargeable for any assessment year of an amount ... on any sums paid by him in the previous year--...
- (iii) as donations to Government or to any local authority made on or after the 1st April, 1960, to be utilised for any charitable purpose."

7. Even a casual reading of this provision would indicate that in order to attract the provisions of Section 88, what must have been paid is the sums. That word can only mean payment in cash. According to Chambers' 20th Century Dictionary, the word "sum" means a quantity of money. It can admit of no meaning which would include within its fold property or a thing also. Thus, a plain reading of the section would only mean that it is only in a case where any sum is paid by way of donation to a local authority that the assessee would be entitled to rebate. On the other hand, if he donates a building or a thing which may have money value, merely because that donation is in kind it cannot be brought within the fold of Section 88. The conclusion of the Tribunal, therefore, that donation in kind is not precluded for the purpose of allowance of rebate in terms of Section 88 of the Act cannot be said to be correct. It is contrary to the plain language of Section 88. The Tribunal seems to have relied upon *Commissioner of Income-tax v. Associated Cement Co, Ltd¹*, a decision of the Bombay High Court. The facts in brief of that case were that on 26th December, 1962, the University of Bombay wrote to the chairman of the board of directors of the assessee-company saying that their professor of chemical engineering was carrying out important laboratory experiments on certain chemicals and for that purpose he desired to institute pilot plant experiments on the problem. One of the items of the pilot plant was a "rotary experimental kiln". Since the assessee fabricated all their rotary kilns for cement making in its own workshop, the university requested the assessee to persuade the directors of the Associated Cement Company to arrange for the fabrication of a small rotary experimental furnace for the department which will enable the university to complete an investigation of national importance. Pursuant to this request, the board of directors sanctioned a sum of Rs. 5,000 for the pilot kiln department of chemical technology, University of Bombay. The pilot kiln was then prepared at a cost of Rs. 6,600. By another resolution, the board of directors sanctioned a further sum of Rs. 1,600. The Income-tax Officer was of the view that the rebate under Section 15B was not admissible. The Appellate Assistant Commissioner as well as the Tribunal reached a contrary conclusion. The Tribunal observed :

"It is learnt that the department is inclined to allow donations which take the shape of stock-in-trade as the only exception to the legal requirement of cash. If so the instant claim too is eligible by a slight extension of the same principle. The materials and labour have gone out of what otherwise would have gone into cost of production. The Appellate Assistant Commissioner's order is upheld."

8. Before the learned judges of the Bombay High Court, it was contended that the manner in which the donation was given showed that it was not a sum of money which was paid by the assessee but the donation was of movable property, viz., the kiln. Characterising the said contention as technical in the extreme, the learned judges observed that if one were to look to the

substance of the transaction, there could be no doubt that in substance what the assessee-company gave to the University of Bombay was ultimately a sum of Rs. 6,600. That amount ultimately went out of its coffers and in another shape was received by the University of Bombay. The learned judges said:

"In substance, therefore, the amount was paid to the University, though ultimately because of the exertions of the assessee the kiln came to be prepared out of that amount and was handed over to the University. In our opinion, looking to the substance of this transaction there is no doubt that the sum of Rs. 6,600 was paid by the assessee-company as a donation to the University of Bombay. Any other construction upon this transaction would, in our opinion, be unnecessarily limiting the language of the section as well as its purpose."

9. We fail to see from this judgment how one can deduce that a donation in kind can also earn rebate under Section 88 of the Act. The finding of the Bombay High Court was that in substance it was the amount which was donated and not the kiln. There is no justification to make the following observation which the Tribunal made in its order on the basis of this judgment of the Bombay High Court.

"The disallowance of rebate on tax was based more on a technical misinterpretation of the objects of Section 88 than on a true understanding of its objects."

10. This passage nowhere appears in the body of the judgment. No doubt, the following head-note is given to the judgment:

"Held also, that in order that an assessee may be entitled to the rebate under Section 15B in respect of 'sums paid as donations', the donations need not be in the shape of actual cash."

11. With due respect to the author who gave that heading to that judgment, we are bound to say that it is misleading. The learned judges have not said anything of that kind. The judgment, on the other hand, on facts, found that it was cash which was donated and not a kiln. We do not, therefore, agree with the view taken by the Tribunal that even if it be taken that the donation was of the building itself after having been constructed by the assessee, the rebate would still be admissible.

12. Our attention was drawn to an earlier order of the Income-tax Appellate Tribunal made in I.T.As. Nos. 21345 and 21347 of 1967-68 on October 8, 1970. The Tribunal in the present order relied on the said order. The Tribunal in that case also relied upon *Commissioner of Income-tax v. Associated Cement Company Ltd.*², The following observations then appear :

"Their Lordships were concerned with the meaning of the expression 'any suras paid by him,.....as donation'. In that case, the assessee, instead of donating Rs. 6,600 in cash, has donated a rotary experimental kiln for the purposes of research work to the University of Bombay, and their Lordships held that, in substance, the transaction amounted to payment of a donation which was entitled to the allowance of tax rebate. In view of the said decision of the Hon'ble Bombay High Court, we must hold, differing with the view

expressed by the Tribunal in the said income-tax appeals, that the disallowance of rebate of tax was based more on a technical misinterpretation of the objects of the section than on a true understanding of its objects."

13. If the Tribunal by the said observations intended to say that Section 88 permits rebate even on the donation of movable or immovable property excluding money, we must say that it is inconsistent with the plain language of Section 88. On the other hand, if on the facts it was found that in substance what was donated was the sum of money and not the movable or immovable property, then such a decision would be valid under Section 88 of the Act. We, however, agree with the conclusion of the Tribunal that in the instant case what was donated was not the school building but was actually the money. When once it is found that the land on which the building was constructed belonged to the Zilla Parishad, then there would be no difficulty in holding that any accretion to the immovable property would be that of the Zilla Parishad.

14. In this case it is not clear whether the contractor was appointed by the assessee or by the Zilla Parishad. If the contractor was appointed by the Zilla Parishad, then the matter is very easy. The amount paid by the assessee to such contractor would amount to payment of the money to the Zilla Parishad itself because the contractor would be an agent of the Zilla Parishad. On the other hand, if, as it appears from the statement of facts, the contractor was appointed under an arrangement made between the Zilla Parishad and the assessee, even then the amount paid by the assessee to the contractor would amount to a payment to the Zilla Parishad for the purpose of constructing the building. The arrangement was intended to ensure that the amount was actually spent for the construction of the building and nothing more. The arrangement itself indicates that the intention was to donate the money earmarked for the purpose of constructing a girls school building. The Tribunal, therefore, was right in reaching the conclusion that it was a donation of money and not in kind. Once it is found that it was a donation of a sum of money, then such a case would squarely fall within the ambit of Section 88 of the Income-tax Act.

15. For the abovesaid reasons, we would answer the question in favour of the assessee and against the department subject of course to what is stated above in regard to Section 88 of the Act. The department will pay the costs. Advocate's fee Rs. 250.

Cases Referred.

1[1968] 68 ITR 478 (Bom)

2[1968] 68 ITR 478 (Bom)