

# **BOMBAY HIGH COURT**

Commissioner of Income-Tax

Vs

Vimla P. Kapadia

(S Bharucha and T Sugla, JJ.)

13.09.1989

## **JUDGMENT**

**T.D. Sugla, J.**

1. The only question of law raised in this reference at the instance of the Department is :

"Whether the set off of capital loss brought forward from the earlier year against the capital gain of the current year as contemplated under section 74 of the Act should be made only after the deduction contemplated under section 80T of the Act is made from such income ?"

2. The assessee is an individual. The proceedings relate to the assessment for the assessment year 1972-73. The assessee had earned during the previous year long-term capital gains of Rs. 77,520. She had also unabsorbed loss under the head "Long-term capital gains" of Rs. 28,385 determined in the earlier year. The question that arose for consideration was whether the loss under the head "Long-term capital gains" from the earlier year should be set off first against the long-term capital gains of the current year or whether the assessable amount out of the long-term capital gains of the current year be determined first under section 80T and then the loss under the head "Long-term capital gains" brought forward from the earlier year be set off. The Income-tax Officer adopted the first method. The Appellate Assistant Commissioner agreed with him. The Tribunal, however, agreed with the assessee and held that the taxable amount out of the long-term capital gains under section 80T should be determined first and the loss under the head "Long-term capital gains" from the earlier year should be set off thereafter.

3. In the very nature of the scheme of the Income-tax Act, deductions under the provisions of Chapter VI-A which includes section 80T are to be made in computing the assessee's total income. The deductions are to be allowed from the gross total income and can, in no case, exceed the gross total income. Gross total income, for the purpose of allowing deductions under Chapter VI-A, has been defined in section 80B(5) to mean the total income computed in

accordance with the provisions of the Act before making any deduction under Chapter VI-A and under section 280-O. Thus, the first stage for determining the total income is to determine the gross total income, i.e., after taking into account the effect of all provisions including section 74 of the Act except deductions under Chapter VI-A and section 280-O. The opening words of section 80T, which read as under, make this position clear :

"Where the gross total income of an assessee not being a company includes any income chargeable under the head 'Capital gains'.. there shall be allowed, in computing the total income of the assessee, a deduction from such income of an amount equal to, - ....."

4. Therefore, section 74 is to be applied first before computation is to be made under section 80T. This is also the view taken by the Madras High Court in the decision relied upon by Dr. Balasubramanian, learned counsel for the Department, in *CIT v. M. S. P. Nadar Sons<sup>1</sup>*

5. Accordingly, the question is answered in the negative and in favour of the Revenue. No order as to costs.

Case Referred.

1[1989] 179 ITR 55