A H.H. SIR RAMA VARMA (DEAD) BY L.RS.

v.

COMMISSIONER OF INCOME-TAX, KERALA

NOVEMBER 2, 1993.

B [B.P. JEEVAN REDDY AND S.P. BHARUCHA, JJ.]

Income Tax Act, 1961 : Section 80T—Capital gains—Capital loss—Set-off—Deduction—Whether to be given only for the amount of capital gains after set-off—"Expression "such income"—Meanings of.

C

Words & Phrases : "Such income" in the context of S.80T of Income Tax Act. 1961—Meanings of.

During the accounting year relevant to the assessment year 1970-71, the appellant-assessee made long-term capital gains, brought forward a D long-term capital loss from previous year to be set-off against the capital gains and claimed a deduction u/s. 80T of the Income Tax, 1961, of an amount as it stood before the set-off. The Income Tax Officer rejected his claim and allowed deduction of the amount after set-off. Assessee preferred an appeal which was allowed by the Appellate Assistant Com- E missioner. Revenue preferred an appeal to the Tribunal and which allowed the same and referred to the High Court the question whether deduction under S.80T was to be given only for the amount of capital gains after the capital loss was set off. The High Court answered the question in the affirmative. Aggrieved by the said judgment of the High Court, assessee preferred the present appeal, contending that the words "such income" in F S.80T referred only to capital gains received in the relevant accounting year, and that the capital loss carried forward was required to be set-off only after the chargeable capital gains had been assessed as reduced by the deduction under S.80T.

G **Dismissing the appeal, this Court**

HELD : 1.1. Section 80T of the Income Tax Act, 1961 opens with the words "Where the gross total income of an assessee.. includes any income chargeable under the head "Capital gains.." This clearly indicates that the gross total income of an assessee has to be determined before the provision H of section 80T can be applied. This is clear also from the provisions of

section 80A which says that in computing the total income of an assessee there shall be allowed from his gross total income the deduction specified in, *inter alia,* section 80T. [517-G-H, 518-A] A

1.2. Where the gross total income of an assessee, determined in accordance with the provisions of the Act, includes any income by way of long-term capital gains a deduction is permissible therefrom under the provisions of section 80T in computing his total income. The deduction is from "such income", viz., the assessee's long-term capital gains. [518-A-B] B

Distributors (Baroda) P. Ltd. **v.** *Union of India & Ors.,* **155 I.T.R. 120, relied on.**

C

CIT, Kerala **v.** *H.H. Sir Rama Varma,* **123 I.T.R. 156, affirmed.**

C.I.T., Gujarat **v.** *Gautam Sarabhai,* **129 I.T.R. 166;** *C.I.T.* **v.** *M. Seshasayee,* **129 I.T.R. 166,** *C.I.T. v. Vimla P. Kapadia,* **181 I.T.R. 394 and** *Gouri Prasad Goenka and others* **v.** *C.I.T.,* **190 I.T.R. 81, approved.**

D

C.I.T. v. V. Venkatachalam, **201 I.T.R. 737, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1489 (NT) of 1979.

From the Judgment and order dated November 2, 1978 of the Kerala High Court in I.T.R. Case No. 13/1977. E

Ms. Janki Ramachandran for the Appellant.

J. Ramamurthy, D.S. Mehra, Manoj Arora and Ms. A Subhashini (N.P.) for the Respondent. F

The Judgment of the Court was delivered by

BHARUCHA, J. The assessee made long-term capital gains during the accounting year relevant to the Assessment year 1970-71. He had brought a long term capital loss from previous assessment years to be set off there against. The assessee claimed a deduction under section 80-T of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). For the purposes of determining the amount on which such deduction was available to the assessee, the Income- tax Officer took into account the figure arrived at after setting of the capital loss of previous assessment years against the G H

A capital gains for the Assessment Year 1970-71. He rejected the contention of the assessee that for the purposes of the deduction under section 80-T that figure of capital gains should be taken as it stood before set off of the capital loss of previous assessment years. The Appellate Assistant Commissioner allowed the assessee's appeal. The Revenue preferred an appeal to the Income Tax Appellate Tribunal against the order of the Appellate B Assistant Commissioner. The Tribunal allowed the appeal.

Arising out of the judgment and order of Tribunal, the following question was referred to the High Court of Kerala :

C "Whether section 80T relief is to be given only for the amount of capital gains after the capital loss is set off?"

The High Court answered the question in he affirmative, that is to say, in favour of the Revenue and against the assessee. (The judgment of the High Court is reported in 123 I.T.R. 156.) This appeal is preferred by the D assessee by special leave.

On behalf of the assessee it was submitted that the High Court had erred in holding that the words "such income" in section 80-T referred to the amount which was arrived at after set off the capital loss brought forward from earlier years. The submission was that the words "such E income" referred only to the capital gains received in the relevant accounting year. It was submitted also that the placement of section 80-T in the said Act was not to be emphasised and that the capital loss carried forward was required to be set off only after the chargeable capital gains had been assessed as reduced by the deduction provided by section 80-T.

F

Learned counsel for the Revenue submitted that the view that had been taken by the Kerala High Court in the judgment under appeal was correct and that it had also been taken by the Gujarat High Court in *C.I.T., Gujarat* v. *Gautam Sarabhai,* 129 I.T.R. 166, by the Madras High Court in *C.I.T.* v. *Seshasayee,* 129 I.T.R. 166, by the Bombay High Court in *C.I.T.* v. G *Vimla P. Kapadia,* 181 I.T.R. 394, (to which judgment one of us, Bharucha, J., was party); and by the Calcutta High Court in *Gouri Prasad Goeka and others* v. *C.I.T.,* 190 I.T.R. 81. He also pointed out that this Court had in a recent judgment, in *C.I.T.* v. *V. Venkatachalam,* 201 I.T.R. 737 (to which one of us, B.P. Jeevan Reddy, J. was party) held that the words "such H income" in the main limb of section 80-T meant and referred to the capital

gains and not the total income of the assessee. A

In the case of *Gautam Sarabhai* (ibid), the Gujarat High Court said:

> "Thus before s.80-T contingency can arise, it must be shown that in a given assessment year, the gross total income of the assessee includes income chargeable under the head "Capital gains". But if B because of supervening event of operation of s.74 of the Act, the carried forward capital losses from earlier years completely drown and wipe off the capital gains for the given year, as assessable under s.45 read with s.48, then, no income from that head would be left for being the gross total income out of which special C deductions could be effected under Chap. VI-a for arriving at the net total income exigible to tax. It is only in cases where the capital gains of a given assessment year are either not fully set off against carried forward capital loss of a previous year as per s.74 or when such losses are not there at all, that the question of applicability of s.80T would arise, as in such cases, net income chargeable under D the head "Capital gains" would squarely form part of the computation of gross total income of the assessee for that year and it is at this stage that special deductions as provided by s.80T have to be effected. It is further pertinent to note that s.80T provides that "where the gross total income of an assessee not being a company E includes any income chargeable under the head 'Capital gains' relating to capital assets other than short-term capital assets (such income being hereinafter referred to as long-term capital gains), there shall be allowed, in computing the total income of he assessee, a deduction from such income of an amount equal to....." These words clearly show that the deduction which to be effected is from F the gross total income of the assessee and that too only when such gross total income is found to have as its component income chargeable to tax "Capital gains". But if the component of such capital gains does not form part of the gross total income of the assessee in a given year because of the supervening operation of G s.74, the stage for effecting deduction under s.80T from such gross total income is not reached at all."

In the case of *Vimla P. Kapadia* (ibid) the Bombay High Court said:

> "In the very nature of the scheme of the Income-tax Act, deductions H

A 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 B 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 expect deductions under C Chapter VI-A and section 280-O."

In the case of *Gouri Prasad Goeka'* (ibid), the Calcutta High Court said :

"Computation of income under the Income-tax Act will have to be D done, in the instant case, under the head "Capital gains" and all the deductions and allowances will have to be allowed. All adjustments of losses will have to be made in accordance with the provisions of the Income-tax Act for the purpose of arriving at the gross total income as defined in section 80-B. It is only that part of the income which has been included in the gross total income E which will be the basis for computation of the relief claimed by the assessee under section 80T."

By reason of section 14 of the said Act all income for the purposes of charge of income-tax and computation of total income is classified under F the heads of income therein mentioned. Capital gains is one such head of income. Section 45 deals with capital gains and says that any profits or gains arising from the transfer of a capital asset effective in the previous year shall, except as provided in the provisions therein mentioned, be chargeable to income tax under the head capital gains and shall be deemed to be income of the previous year in which the transfer took place. Section 48 G sets out the mode of computation of income chargeable under the head of capital gains. It refers to long-term capital gains as being capital gains arising from the transfer of long-term capital assets and it makes provision for certain deduction therefrom. Section 74 provides for losses under the head " Capital gains". It says that where in respect of any assessment year, H the net result of the computation under the head "Capital gains" is a loss

to the assessee and such loss cannot be or is not wholly set off against income under any other head of income, so much of the loss as has not been so set off or, where the assessee has no income under any other head, the whole loss shall be carried forward to the following assessment year and shall be set of against income, if any, under the head "Capital gains" assessable for that assessment year and if the loss cannot be wholly set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on far a maximum of eight assessment years immediately succeeding the assessment year for which the loss was first computed. Chapter VI-A is entitled "Deductions to be made in computing total income". Sub-section (1) of section 80A therein states that in computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of Chapter VI-A, the deductions specified in sections 80C to 80U. Sub-section 2 of section 80A makes it clear that the aggregate amount of the deductions under Chapter VI-A shall not exceed the gross total income of the assessee. Sub-section (5) of section 80B defines "Gross total income" for the purposes of Chapter VI-A to mean the total income computed in accordance with the provisions of the said Act before making any deduction under Chapter VI-A. Section 80T falls under Part C of Chapter VI-A, which deals with deduction in respect of certain incomes. Section 80T, so far as it is relevant reads thus :

> Section 80-T. Where the gross total income of an assessees not being a company includes any income chargeable under the head "Capital gains" relating to capital assets other than short-term capital assets such income being, hereinafter, referred to as long-term capital gains, there shall be allowed, in computing the total income of the assessee, a deduction from such income of an amount equal to, -

> xxxx xxxx xxxx

Section 80T opens the words "Where the gross total income of an assessee .... includes any income chargeable under the head "Capital gains".............." This clearly indicates that the gross income of an assessee has to be determined before the provisions of section 80T can be applied. This is clear also from the provisions of section 80A which says that in computing the total income of an assessee there shall be allowed from his

A gross total income the deduction specified in, *inter alia*, section 80T. Where the gross total income of an assessee, determined in accordance with the provisions of the said Act, includes any income by way of long-term capital gains a deduction is permissible therefrom under the provisions of section 80T in computing his total income. The deduction is from "such income". B As aforementioned, "such income" has been held by the this Court to be the assessee's long-term capital gains and there can be no doubt, having regard to the context, of the correctness of this interpretation.

The view that commended itself to the Gujarat, Madras, Bombay and Calcutta High Courts and to the Kerala High Court in the judgment under C appeal is, therefore, correct.

Reference may be made with advantage to this Court's judgment in *Distributors (Baroda) P. Ltd.* v. *Union of India & ors.*, 155 I.T.R. 120. A Constitution Bench of this Court was concerned there with interpreting the provisions of section 80M of the said Act, the main limb of which read thus : D

> "80M. Deduction in respect of certain intercorporate dividends - (1) Where the gross total income of an assessee being a company includes any income by way of dividends received by it from a domestic company, there shall, in accordance with and subject to E the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such income by way of dividends of an amount equal to -
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> xxxx xxxx xxxx

F (It will be seen that the phraseology of Section 80M is similar to that of section 80T.) The Constitution Bench held :

> "The opening words described the condition which must be fulfiled in order to attract the applicability of the provision contained in sub-s. (1) of s.80M. The condition is that the gross total income of G the assessee must include income by way of dividends from a domestic company, "Gross total income" is defined in s.80B, clause (5), to mean the "total income computed in accordance with the provisions of the Act before making any deduction under chapter VI-A or under s.280-O". Income by way of dividends from a H domestic company included in the gross total income would, there-

fore, obviously be income computed in accordance with the provisions of the Act, that is after deducting interest on monies borrowed for earning such income. If income by way of dividends from a domestic company computed in accordance with the provisions of the Act is included in the gross total income, or, in other words, forms part of the gross total income, the condition specified in the opening part of sub-s.(1) of s.80M would be fulfilled and the provision enacted in that sub-section would be attracted."

The judgment in the case of *Distributors (Baroda) P. Ltd.*, therefore, supports the view we take.

Section 80M had previously been interpreted differently by this Court in the judgment in *Cloth Traders P. Ltd.* v. *Addl. C.I.T.*, 118 I.T.R. 243. By reason of the interpreation placed upon section 80M in the *Cloth Traders'* case, the legislature had, by Finance (No.2) Act, 1980 introduced sections 80AA and 80AB into the said Act. Section 80AA was introduced with retrospective effect from Ist April, 1968 and section 80AB with effect from Ist April, 1981. Section 80AA and 80AB read thus :

"80AA. computation of deduction under section 80M - Where any deduction is required to be allowed under section 80M in respect of any income by way of dividends from a domestic company which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, the deduction under that section shall be computed with reference to the income by way of such dividends as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) and not with reference to the gross amount of such dividends.

80AB. Deductions to be made with reference to the income included in the gross total income - Where any deduction is required to be made or allowed under any section (except section 80M) included in this Chapter under the heading "C. - Deductions in respect of certain incomes" in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, notwithstanding anything contained in that section, for the purpose of computing the deduction under that

A section, the amount of income of that nature as computed in accordance with the provisions of this Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income."

B In the case of *Distributors (Broda) P. Ltd.*, it was the retrospective effect of section 80AA which was under challenge. The Court, as aforementioned, interpreted section 80M in a manner different from that placed upon it in the *Cloth Traders'* case. It held that the decision in the *Cloth Traders'* case was erroneous and had to be overturned. It was, C therefore, unnecessary to consider the question of the constitutional validity of the retrospective operation of section 80AA. Section 80AA, it was held, was, in its retrospective operation, merely declaratory of the law as it always had been since Ist April, 1968, when the provisions of Chapter VI-A were introduced.

D On a parity of reasoning it must be held that section 80AB was enacted the law as it always stood in relation to the deductions to be made in respect of the incomes specified under Head 'C' of Chapter VI-A. The manner of deduction specified under section 80AB accords with the interpretation that we have placed upon section 80T, read independently.

E Section 80T has been deleted from the said Act with effect from 1st April, 1981 and its provisions substantially incorporated in Section 48. We have not been called upon to consider the provision of Section 48 as amended express no opinion on the position obtaining subsequent to 1st April, 1981.

F In the result, we uphold impugned judgment and order and dismiss the appeal.

There shall be no order as to costs.

G.N. Appeal dismissed.