

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 37

Income Tax Reference No. 292 of 1983
Commissioner of Income Tax (Central), Kanpur Vs. Sri P.D.Singhania,
(Individual), Kanpur.

Honorable R.K.Agrawal, J.
Honorable Vikram Nath, J.

(Delivered by R.K.Agrawal, J.)

1. The Income Tax Appellate Tribunal, Allahabad has referred the following question of law under Section 256(1) of the Income Tax Act, 1961, hereinafter referred to as "the Act" for opinion to this Court:

"Whether, on the facts and in the circumstances of the case, the assessee is entitled to exemption u/s.10(13A) of the Income-tax Act, 1961?"

2. The present Reference relates to the Assessment Years 1978-79 and 1979-80.

3. Briefly stated the facts giving rise to the present Reference are as follows:

The assessee, an individual, was living in the house owned by him. The Income Tax Officer, however, did not accept the claim of exemption to the extent of Rs. 4,800/- under Section 10(13A) of the Act on the ground that the assessee was residing in his own house and was not paying any rent.

4. The assessee appealed to the Commissioner of Income Tax (Appeals). The accepted the claim of the assessee and held that to the extent of Rs. 4,800/- the assessee was entitled to exemption as laid down under Section 10(13A) of the Act.

5. The Income Tax Officer appealed to the Tribunal. The learned Departmental Representative relied on the orders of the Income-tax Officer. On the other hand, the assessee's learned counsel Shri Agarwal submitted before the Tribunal that in view of the rulings of the Honorable High Court of Punjab & Haryana in the case of C.I.T. V. Justice S.C.Mittal(121 I.T.R.-503), C.I.T. V B.R.Tuli(125 I.T.R.-460) and C.I.T. V. M.S.Gujral, Chief Justice(125 (ITR-655), the assessee's claim of exemption under Section 10(13A) Act was admissible and was rightly allowed by the Commissioner of Income-tax (Appeals). Proceeding further Shri Agarwal pointed out that the municipal assessment of the house was on a value of Rs.6,000/- and the claim under Section 10(13A)

was limited to Rs.4,800/- which was the maximum admissible under the Act and the Rules.

6. The Tribunal dealt with the matter in paragraph 5 of its order in the following words:

"We have carefully considered the rival submissions. Following with respect, the rulings of the Honorable High Court of Punjab & Haryana, cited by the assessee's learned counsel Shri Agarwal, and in the absence of any ruling to the contrary, cited before us by the learned departmental representative, we have no hesitation in coming to the conclusion that the claim of exemption under section 10(13A) was admissible and was rightly allowed by the Commissioner of Income-tax(appeals). On this issue, therefore, the order of the Commissioner of Income-tax(Appeals) is upheld."

7. We have heard Sri Shambhoo Chopra, learned Standing Counsel appearing for the Revenue. Nobody has appeared on behalf of the respondent- assessee.

8. Learned Standing Counsel submitted that it is not in dispute that the respondent- assessee was living in his own house, therefore, the question of payment of rent to anybody did not arise. According to him, whatever may have been position regarding grant of exemption under Section 10(13A) of the Act, in view of the Explanation which was inserted by the Taxation Laws(amendment) Act, 1984 w.e.f. 1.4.1976 the provisions of sub-section (13A) of Section 10 of the Act cannot be in the case where the residential accommodation is occupied by the assessee is owned by him. For a ready reference the provisions of sub-section (13A) of Section 10 of the Act as it stood at the relevant period is reproduced below:

"(13A) any special allowance specifically granted to an assessee by his employer to meet expenditure actually incurred on payment of rent (by whatever name called) in respect of residential accommodation occupied by the assessee, to such extent (not exceeding four hundred rupees per month as may be prescribed having regard to the area or place in which such accommodation is situate and other relevant considerations."

9. The Explanation which was inserted by the Taxation Laws (Amendment) Act, 1984 w.e.f. 1.4.1976 reads as under:

"Explanation--For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply in a case where--

(a) the residential accommodation occupied by the assessee is owned by him; or

(b) the assessee has not actually incurred expenditure on payment of rent (by whatever name called) in respect of the residential accommodation occupied by him;"

10. From a reading of the clauses (a) and (b) of the Explanation referred to above, it is absolutely clear that in order to claim deduction under sub-section (13A) of Section 10 of the Act, the assessee should not reside in the accommodation which is owned by him and further the expenditure should have been actually incurred on payment of rent.

11. As in the present case we find that the assessee was residing in his own house, there was no payment of rent, the provisions of sub-section (13A) of Section 10 of the Act was not attracted. We are fortified with the Division Bench decision of the Madras High Court in the case of Commissioner of Income Tax vs. K.Chockalingam, (2001) 248 ITR 557 wherein the Madras High Court has held that in view of the introduction of the Explanation to Section 10(13A) of the Act, with retrospective effect from April 1, 1976, the assessee was not entitled to claim the benefit of Section 10(13A).

12. In view of the aforesaid case, we are of the considered opinion that the Tribunal has committed error in granting exemption under Section 10(13A) of the Act. We accordingly, answer the question referred to us in the negative i.e. in favor of the Revenue and against the assessee. There shall be no order as to costs.

17.8.2006