

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 24TH DAY OF OCTOBER 2011

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MR.JUSTICE RAVI MALIMATH

ITA.NO.434 OF 2010

A/W

MISC.CVL.629 OF 2011

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
C.R.BUILDING, QUEENS ROAD,
BANGALORE.
2. THE INCOME TAX OFFICER
WARD-11(2), C.R.BUILDING,
QUEENS ROAD,
BANGALORE.

...APPELLANTS
COMMON

(BY SRI K.V.ARAVIND, ADVOCATE)

AND:

M/S.HORIZON CAPITAL LTD.,
NO.11/10, HAYS ROAD CROSS,
RICHMOND TOWN,
BANGALORE - 560 025.

...RESPONDENT
COMMON

(BY SRI K.S.RAVISHANKAR, ADVOCATE)

This ITA filed under section 260-A of I.T Act, 1961 arising out of order dated 16.07.2010 passed in ITA.No.592/Bang/2010, for the Assessment year 2005-2006, praying to formulate the substantial questions of law stated therein, allow the appeal and set aside the order passed by the ITAT, Bangalore in ITA.No.592/Bang/2010 dated 16.07.2010 and confirm the order passed by the Income Tax Officer, Ward-11(2), Bangalore.

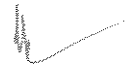
This Misc.cvl filed under section 5 of the Limitation Act R/w Section 260A of the Income Tax Act 1961, praying to allow the application and condone the delay of 2 days in filing the appeal.

This ITA a/w Misc.Cvl coming on for orders this day, KUMAR J., delivered the following:-

JUDGMENT

There is a delay of two days in preferring this appeal. Respondent has no objection for the same. Accepting the cause shown in the affidavit filed in support of the application for condonation of delay, delay of two days is condoned.

2. The revenue has preferred this appeal challenging the order passed by the Tribunal allowing the



assessee's appeal and granting rebate under Section 88E for the Securities Transaction Tax paid by the assessee.

3. The assessee is a company, which is engaged in the business of purchase and sale of shares for more than a decade. It filed its return of income for the assessment year 2005-06 on 31.10.2005 declaring taxable income as nil. The assessee had also made a payment of Securities Transaction Tax (for short hereinafter referred to as STT) for the assessment year 2005-06 of Rs.35,05,443/-. The Assessing Officer issued a notice under Section 148 of the Income Tax Act, 1961 (for short hereinafter referred to as the Act) dated 05.02.2008 stating that certain income in respect of the assessment year 2005-06 had escaped assessment. The assessee filed its reply stating that the assessee had returned an income of Rs.1,04,81,991/-. After set off of the carry forward losses from the previous years to the extent of the profit in the year, the taxable profit was nil. Therefore, although the credit for the amount paid as STT was available under

Section 88E, no rebate has been claimed in view of the total taxable income returned being nil. A notice under Section 143(2) dated 28.04.2008 seeking details, relevant documents and other proofs was issued to the assessee. The assessee submitted his reply dated 18.06.2008 stating that the payment of tax of both TDS and STT put together exceeded the tax liability not only under Section 115JB but even the liability under regular tax, even if there were no carried forward loss to be set off. Again one more notice was issued to the assessee under Section 154 of the Act on 18.06.2009. The assessee submitted his reply along with the statement of total income and also MAT computation and therefrom, the assessee claimed a rebate under Section 88E of the Act for the STT paid by it. The Assessing Officer rejected the claim of the assessee for rebate on STT and computed the tax liability against the income computed under Section 115JB of the Act. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals) who

confirmed the said order. The assessee preferred a second appeal to the Tribunal. The Tribunal on consideration of the rival contentions held that the rebate under Section 87 of the Act is to be granted from the amount of income tax chargeable on the total income of the assessee. The income tax is computed after arriving at the total income of the assessee and Section 87 of the Act does not differentiate between the total income computed under the regular provisions of the Act or under section 115JB of the Act. Even though sub-section (1) of section 115JB starts with the non-abstente clause, it is only for the computation of the total income and sub section (5) of section 115JB provides for a saving clause that the rest of the provisions of the Act relating to deductions, rebate, etc the other provisions of the Act shall apply. Therefore, the provision of section 87 and 88A to 88E also apply after the total income is computed under Section 115JB of the Act and since the assessee's total income includes the income from the taxable Securities Transaction, the assessee is entitled

to a deduction of the amount equal to the STT paid by him in respect of the taxable Securities Transaction entered into in the course of business during the previous year. Therefore, the appeal was allowed and rebate was ordered to be granted. Aggrieved by the said order, the revenue is in appeal.

4. The learned Counsel for the revenue assailing the impugned order contends that having regard to the language employed both in Sections 88E and 115JB of the Act, rebate under Section 87 is applicable only if an assessment is made under other provisions of the Act and not under section 115JB. The reason is Section 115JB starts with a non-abstante clause and assessment of income on the basis of book entries is a self contained code in itself and the income chargeable arrived at in terms of Section 115JB, does not attract rebate. Therefore, he submits that the impugned order passed by the Tribunal is erroneous and requires to be set aside.

5. Per contra, the learned Counsel for the assessee supported the impugned order.

6. Section 115JB provides that if the tax payable on the total income is less than 7.5% of the book profit, the tax payable under this provision shall be the amount of income tax at the rate of 7.5% of book profit. In other words, if computation of income is done under the provisions of the Act and if the tax payable is less than 7.5% of the book profit and the assessee is a company, then the minimum tax payable by such a company is 7.5% of the book profit. Except to that extent, all other provisions in the Act are applicable in respect of both type of assessment.

7. Sections 87 and 88E provides for rebate. It reads as under:-

"87. Rebate to be allowed in computing income tax.-(1) In computing the amount of

income tax on the total income of an assessee with which he is chargeable for any assessment year, there shall be allowed from the amount of income tax (as computed before allowing the deductions under this Chapter), in accordance with and subject to the provisions of [sections 88, 88A, 88B, 88C, 88D and 88E], the deductions specified in those sections.

2. *The aggregate amount of the deductions under section 88 or section 88A [or section 88B] [or section 88C] [or section 88D or section 88E] shall not, in any case, exceed the amount of income-tax (as computed before allowing the deductions under this Chapter) on the total income of the assessee with which he is chargeable for any assessment year.*

88E. Rebate in respect of securities transaction tax.-(1) Where the total income of an assessee in a previous year includes any income, chargeable under the head "Profits and gains of business or profession", arising from taxable securities transactions, he shall be entitled to a deduction, from the amount of income-tax on such income arising from such transactions,

computed in the manner provided in sub-section (2), of an amount equal to the securities transaction tax paid by him in respect of the taxable securities transactions entered into in the course of his business during that previous year:

Provided that no deduction under this sub-section shall be allowed unless the assessee furnishes along with the return of income, evidence of payment of securities transaction tax in the prescribed form.

Provided further that the amount of deduction under this sub-section shall not exceed the amount of income-tax on such income computed in the manner provided in sub-section (2).

(2) For the purposes of sub-section (1), the amount of income tax on the income arising from the taxable securities transactions, referred to in that sub-section, shall be equal to the amount calculated by applying the average rate of income-tax on such income.

Explanation:- For the purposes of this section, the expressions "taxable securities transaction" and "securities transaction tax"

shall have the same meanings respectively assigned to them under Chapter VII of the Finance (No.2) Act, 2004."

8. As is clear from the aforesaid sections, the said provision does not give any indication as to its applicability to the computation of amount of income tax on the total income of an assessee under any particular provision of law under the Act. If after such computation of the amount of the income tax payable on the total income of the assessee under the Act, if such an assessee has paid tax under the aforesaid provisions mentioned in the said section to the extent of the tax paid under that Section is deductible as rebate.

9. The word rebate has been defined under the Act. The Apex Court in the case of *Commissioner of Income Tax vs. Anant Rao B.Kamat reported in 1964 (53) ITR 307 (SC)* held as under:-

"The word "rebate" is an apt word to use in respect of a remission.



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The word "rebate" is not qualified and is wide enough to include any rebate which may be granted by other statutory orders. The form of the certificate referred to us which mentions reduction of rate cannot change the meaning of the word "rebate".

10. The word rebate in the Dictionary of English Law by Jewitt at page 1480 is defined as:

"Rebate, discount; reducing the interest of money in consideration of prompt payment or otherwise; a deduction made from a payment."

11. In Black's Law Dictionary, Second Edition, the meaning assigned to the word rebate is:

"Discount; reducing the interest of money in consideration of prompt payment. Also a deduction from a stipulated premium on a policy of insurance, in pursuance of an

antecedent contract and also a deduction or drawback from a stipulated payment, charge, or rate not taken out in advance of payment, but handed back to the payer after he has paid the full stipulated sum."

12. Corpus Juris Secundum defines the word rebate as

"The etymological or dictionary meaning of the term includes any discount or deduction from a stipulated payment, charge, or rate not taken as in advance of payment, but handed back to the payer after he has paid the stipulated sum, even when such discount or deduction is equally applied to all from whom such payment is demandable."

13. The Kerala High Court in the case of *Deputy Commissioner of Sales Tax, South Zone, Quilon vs. Travancore Rayons Ltd.* reported in 1961 XII STC 178 (Ker), after considering the aforesaid definitions held as under:-

"Rebate means relinquishing part of the liability by a person entitled to with a view to persuade a person liable to follow a particular conduct which such person was not otherwise compelled."

14. The Bombay High Court in the case of *Someshwar Sahakari Sakhar Karkhana Ltd., vs. Union of India and others reported to 1988 (34) ELT 522 (Bom)* held as under:-

"Rebate means deduction from the sum to be paid, discount, or partial refund. To give back (part of the amount), to make deduction from a bill. Therefore, in substance rebate, is a deduction from the sum to be paid or partial refund. Refund or deduction could from the amount paid or payable."

15. Under Section 88E, where the total income of an assessee in a previous year includes any income, chargeable under the head "Profits and gains of business

of profession", arising from taxable securities transactions, he shall be entitled to a deduction, from the amount of income-tax on such income arising from such transactions. Section also provides the limit to which deductions shall be given.

16. Therefore, it is clear that the assessee is liable to pay securities transaction tax when he enters into securities transaction. Tax is payable simultaneously after realizing the consideration. However, if that transaction is included in the total income of the assessee where the total income is assessed either under the provisions of the Act or under Section 115JB when tax chargeable on such income is arrived at, he is given the benefit of tax deductions of the amount, which he has paid under section 88E by virtue of Section 87. When under Section 82A, the assessee is made liable to pay tax with an assurance that it will be deducted and 87 of the Act gives effect to such promise made under the statute. That is the reason why ✓

the word used is rebate. The amount paid is handed back to the assessee. In other words, payment of tax twice on the same income is avoided.

17. Therefore, the contention that this benefit is not available to the assessee whose total income is assessed under Section 115JB has no substance. In other words, when the total income is assessed and the tax chargeable is computed, it is from that tax which is chargeable, the tax paid under Section 88E is given deduction, by way of rebate, under Section 87 of the Act. This is the legislative intent. That is a promise to give deduction of the tax already paid. This is the mode in which tax already paid is handed back at the time of final computation. Therefore, the judgment referred by the Tribunal is strictly in accordance with law and does not suffer from any legal infirmity, which called for interference. We do not see any substantial question of

law involved in this appeal, which merits admission. The appeal is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

Prs*

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