

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.**

**INCOME TAX APPEAL NO.2440 OF 2009
WITH
INCOME TAX APPEAL (L) NOS.922 AND 1275 OF 2009**

The Commissioner of Income Tax-12. ...Appellant.

Vs.

M/s.Tarun R.Tahiliani. ...Respondent.

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Mrs.Anamika Malhotra for the Appellant in ITXA 2440 of 2009 and ITXAL 1275 of 2009..

Ms.Suchitra Kamble for the Appellant in ITXAL 922 of 2009.

Mr.Percy J.Pardiwala, Sr. Advocate with Ms.Vasanti B.Patel for the Respondent.

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**CORAM : DR.D.Y.CHANDRACHUD AND
J.P.DEVADHAR, JJ.**

June 14, 2010.

ORAL JUDGMENT (PER DR.D.Y.CHANDRACHUD, J.) :

These appeals pertain to Assessment Years 1999-2000, 2000-01 and 2001-02. The issue is whether the assessee, who is a dress designer, is entitled to a deduction under Section 80RR of the Income Tax Act, 1961. The appeals by the Revenue under Section 260A are admitted on the following substantial question of law:

“ Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that a dress designer is an artist entitled to a deduction under Section 80RR.”

2. The assessee in his return of income for Assessment Years 1999-2000, 2000-01 and 2001-02 claimed a deduction under Section 80RR. The deduction was claimed in respect of the design fees received by the assessee from persons not resident in India in convertible foreign exchange. The Assessing Officer rejected the claim of the assessee, holding that the assessee was not an author, or a playwright, artist, musician, actor or sportsman and hence did not fall within one of the categories to whom a deduction can be allowed. Appeals filed by the assessee were dismissed by the Commissioner (Appeals). The Income Tax Appellate Tribunal allowed the appeal for Assessment Year 2001-02 by an order dated 31 October 2008. The Tribunal followed that order while deciding the appeals for Assessment Years 1999-2000 and 2000-01 on 16 December 2008. The Revenue is in appeal under Section 260A.

3. Counsel appearing on behalf of the Revenue submitted that (i) The expression “artist” in Section 80RR must be restricted to the field of fine arts; (ii) The purpose of the provision is to showcase Indian culture abroad; and (iii) The field of design is an area of technical expertise and not an art form. On this foundation

Counsel urged that the assessee, who is a dress designer, is not an artist under Section 80RR.

4. On the other hand, Counsel appearing on behalf of the assessee submitted that (i) The expression “artist” is not defined in Section 80RR and hence, must receive its ordinary meaning; (ii) The work of an artist involves imagination, skill and visualization; (iii) A person who does the work of dress designing is required to conceptualize a garment or outfit; (iv) The work must be regarded as that of an artist because a high degree of imagination, skill and visualization is involved; and (v) Since the expression “artist” has not been artificially defined for the purpose of Section 80RR it must receive a broad meaning and the expression cannot be confined to the fine arts.

5. Section 80RR provides as follows:

“80RR. Where the gross total income of an individual resident in India, being an athlete, includes any income derived by him in the exercise of his profession from the Government of a foreign State or any person not resident in India, there shall be allowed, in computing the total income of the individual, a deduction from such income of an amount equal to -

- (i) sixty per cent of such income for an assessment year beginning on the 1st day of April, 2001;
- (ii) forty-five per cent of such income for an assessment year beginning on the 1st day of April, 2002;
- (iii) thirty per cent of such income for an assessment year beginning on the 1st day of April, 2003;
- (iv) fifteen per cent of such income for an assessment year beginning on the 1st day of April, 2004;

as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year or within such further period as the competent authority may allow in this behalf and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year.

Explanation – For the purposes of this section, the expression “competent authority” means the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.”

6. The essential requirements of Section 80RR are that (i) The deduction is available to a resident individual who is an author, playwright, artist, musician, actor or sportsman, including an athlete; (ii) The gross total income of such a person must include income derived by him “in the exercise of his profession”;

(iii) The income must be derived from a Government of a foreign State or from any person not resident in India. If these requirements are met, then in computing the total income of the individual a deduction is allowable, to the extent provided, at a proportion of the amount which is brought into India in convertible foreign exchange within the stipulated period. The deduction was available during the course of the Assessment Years beginning on 1 April 2001, 1 April 2002, 1 April 2003 and 1 April 2004. No deduction is permissible with effect from the Assessment Year beginning on 1 April 2005.

7. The Finance Act of 1969 inserted Section 80RR with effect from 1 April 1970. The reasons for the introduction of the provision were explained in Circular 22 of 17 July 1969 thus:

“This provision is designed to encourage successful authors, playwrights, artists, musicians and authors in our country to project their activities outside India with a view to contributing to greater understanding of our country and its culture abroad and also augmenting our foreign exchange resources. Some of the professional activities coming within the scope of this Section are: publication outside India of a book produced by the author, contribution of articles to foreign journals or magazines, exhibition of paintings, sculptures and other works of art in foreign countries, giving of music concerts

to foreign audiences and acting in dramatic performances, cinematograph films and television programmes in foreign countries.”

The circular refers to the object as being to promote a greater understanding of the country and its culture abroad and the enhancement of foreign exchange reserves. Yet, it must be noted that the statutory provision does not require an author or playwright to write a book or play on an aspect of Indian culture to qualify for a deduction. The freedom of the author, and for that matter, of a playwright, musician, artist or actor to choose the medium of the message is as wide as it can be under the constitutional guarantee of free speech. The content of the message is not structured by Section 80RR. Even fiscal legislation has to be deferential to constitutional rights. Parliament has contemplated the grant of a deduction to broad categories. Those categories are not artificially defined. The nature of the work which is the source of the income is subject to the requirement that the income must be derived from the ‘exercise of the profession’. In a circular (No.31) of the Board dated 25 October 1969 it was clarified that the expression artist includes photographers and T.V.

cameramen for Section 80RR. By a circular (No.675) dated 3 January 1994, the Board clarified that a script writer is a playwright and that a Director is an artist for the purpose of Section 80RR. However, a producer does not fall in any of the stated categories.

8. The categories of persons to whom Section 80RR allows a deduction are (i) authors; (ii) playwrights; (iii) artists; (iv) musicians; (v) actors; and (vi) sportsmen, including athletes. The expression “artists” is not defined by the statute. Hence, Parliament must have intended that an artist must be understood in its ordinary sense. No artificial constructs or deeming fictions. There is nothing in the statutory provision which would confine the meaning of the expression to a person engaged in the fine arts. The expression “artist” occurs after the expression author, and playwright and before the expression musician, actor or sportsman. An artist is defined in the Corpus Juris Secundum as follows :

“A person of special skill or ability in any field, one who is highly accomplished, especially one versed in the liberal arts. Also one who professes and practices one of

the fine arts.

The term “artist” may refer to one skilled in trade or art; and has been held broad enough to include architects and a surveyor.

The term has been held not include a dancing instructor, a neon sign maker, a barber, cook, dressmaker, milliner, or tailor.”

The expression is defined in the Random House Dictionary as follows :

- “1. One who produces works in any of the arts that are primarily subject to aesthetic criteria.
- 2. A person who practices one of the fine arts especially a painter or sculptor.
- 3. One whose trade or profession requires knowledge of design, drawing, painting etc. a commercial artist.
- 4. A person who works in one of the performing arts, as an actor, musician, or singer, a public performer, a mime artist of the dance.
- 5. One who exhibits exceptional skill in his work.”

Websters Third New International Dictionary defines the expression as :

“1(a) One who professes and practices an art in which conception and execution are governed by imagination and taste. (b) A person skilled in one of the fine arts; especially painter. 2(a) A performer of music in public (as a singer, pianist or conductor). (b) A theatrical performer.”

In the Oxford English Dictionary an artist is defined as “one skilled in the ‘liberal’ or learned arts, one who is a master of the liberal arts or a skilled performer, a proficient, a connoisseur.” In the Concise Oxford Dictionary the expression has been defined as follows :

- “(i) a painter
- (ii) a person who practices any of the arts
- (iii) an artiste
- (iv) a person who works with the dedication and attributes associated with an artist.
- (v) a devotee; a habitual practiser of a specified activity.”

9. Simply stated, an artist is a person who engages in an activity which is an art. Artists, as we understand them, use skill and imagination in the creation of aesthetic objects and

experiences. Drawing, painting, sculpture, acting, dancing, writing, film making, photography and music all involve imagination, talent and skill in the creation of works which have an aesthetic value. A designer uses the process of design and her work requires a distinct and significant element of creativity. The canvass of design is diverse and includes graphic design and fashion design. An artist, as part of his or her creative work, seeks to arrange elements in a manner that would affect human senses and emotions. Design, in a certain sense, can be construed to be a rigorous form of art or art which has a clearly defined purpose. Though the field of designing may be regarded as a rigorous facet of art, creativity, imagination and visualization are the core of design. Dress designing has assumed significance in the age in which we live, influenced as it is by the media and entertainment. As a dress designer, the assessee must bring to his work a high degree of imagination, creativity and skill. The fact that designing involves skill and even technical expertise does not detract from the fact that the designer must visualize and imagine. A designer is an artist.

10. In **Commissioner of Wealth Tax vs. SB.Zainab Noorul Sayeeda**,¹ a Division Bench of the Andhra Pradesh High Court construed the expression “works of art”, for the purpose of the Wealth Tax Act, 1957. The Division Bench noted that the term “art” in its original sense covers not only the fine arts or aesthetic arts, but any kind of transmitted or useful skill. Subsequently, in the nineteenth and twentieth Centuries, there has been a tendency to abandon the term “art” in speaking of the purely utilitarian skills and to call them instead industries or applied sciences. The word “art” is now commonly understood to mean fine or aesthetic arts. The distinguishing characteristic is that art produces an experience of beauty or aesthetic satisfaction. In the moderately broad, technical sense, some, but not all, architecture, furniture and clothing can qualify as arts in spite of their useful purposes. The Division Bench held that it would not be possible to exclude an article, even if it is jewellery from the expression “works of art” if it is made or composed with manifest skill.

1 2003 (262) ITR 306

11. In **Bharat Bhawan Trust vs. Bharat Bhawan Artists Association**,² (2001) 7 SCC 630, the Supreme Court considered whether an artist engaged in the production of a drama or in theatre management would be a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. Answering the question in the negative, the Supreme Court observed as follows:

“The work that the respondents perform is in the nature of a creative art and their work is neither subject to an order required from the Art Director nor from any of the artists. In performing their work, they have to bring to their work, their artistic ability, talent and a sense of perception for the purpose of production of drama involving in the course of such work, the application of the correct technique and the selection of the cast, the play, the manner of presentation, the light-and-effects and so on. In effect, the work they do is creative art which only a person with an artistic talent and requisite technique can manage. To call such a person, a skilled or a manual worker is altogether inappropriate.”
(emphasis supplied).

For the purpose of this case, the significance of the judgment lies in its emphasis on the element of creativity, talent and a sense of perception as being the hall mark of a person who is an artist.

12. The Tribunal in the present case, was not in error in

² (2001) 7 SCC 630

holding that the assessee is an artist for the purposes of Section 80RR. The question of law is answered in the affirmative, in favour of the assessee and against the Revenue. It is an admitted position before the Court that the deduction was sought by the assessee only in respect of design fees that were received by him in convertible foreign exchange. The appeals shall accordingly stand dismissed. No order as to costs.

(Dr.D.Y.Chandrachud, J.)

(J.P.Devadhar, J.)