IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 7563 of 2005

Between:

Pentakota Appala Naidu, S/o. Ramu Naidu,
D.No. 10-16-50, Main Road, Anakapally, Visakhapatnam.

... PETITIONER

AND

1 The Commissioner of Income Tax-I, Visakhapatnam.
2 The Additional Commissioner of Income Tax, Range-5, Visakhapatnam.
3 The Income Tax Officer, Ward No.1, Income Tax Office, Anakapalli, Visakhapatnam.

.RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ or Order or orders or directions particularly one in the nature of Writ of Mandamus or any other Writ declaring the action of the respondents by setting aside the proceedings dated 18-8-2004 of the 3rd Respondent and the proceedings dated 24-2-2005 of the 1st Respondent rejecting the claim of the Petitioner as illegal, arbitrary, contrary to law and contrary to the provisions under Section 88B of the Income Tax Act and consequently declaring that Petitioner eligible to have a deduction under the Section 88B and consequently directing the Respondents to drop the demand of Rs. 12,524/- as per the

Assessment Year 2003-2004 in the interest of justice.

Counsel for the Petitioner:MR.M.V.RAJA RAM

Counsel for the Respondents : MR.S.R.ASHOK, STANDING COUNEL FOR INCOME TAX.

The Court made the following:

ORDER: (Per BRSR,J)

The writ petitioner-assessee filed his Return of Income for the assessment year 2003-04 on 23.02.2004 admitting income of Rs.1,01,980/-. The said Return was processed and while processing, the rebate under Section 88B of the Income Tax Act, 1961 (for short 'the Act'), meant for Senior Citizens to an extent of Rs.15,000/- was disallowed and accordingly, the demand was raised for a sum of Rs.12,524/-. The writ petitioner filed a petition on 13.08.2004 before the Assessing Officer stating that he is entitled for rebate under Section 88B of the Act as he has attained the age of 65 years on 16.10.2002 during the financial year 2002-03 and accordingly requested to allow the claim of rebate under Section 88B of the Act. The Assessing Officer found that since the date of birth mentioned in the Return of Income is 16.10.1938, the assessee's age as on 31.03.2003 would be 64 years 5 months and 15 days and he has not completed the age of 65 years during the financial year 2002-03. The Assessing Officer accordingly rejected the request.

Thereafter, the writ petitioner-assessee filed a petition under Section 264 of the Act before the Commissioner of Income Tax-1, Visakhapatnam, raising the very same debate which he did before the Assessing Officer claiming the benefit under Section 88B of the Act.

There is no dispute that the writ petitioner-assessee was born on 16.10.1938 and he completed his age of 64 years during the financial year 2002-03. The case of the writ petitioner is that the completion of his age of 64 years during the financial year 2002-03 amounts to attaining age of 65 years as contemplated under Section 88 of the Act.

The Commissioner of Income Tax, after an elaborate consideration of the matter and after verification of the date of birth from the S.S.L.C. register filed by none other than the petitioner himself, found that the writ petitioner-assessee is not eligible for rebate under Section 88B of the Act since he has not completed the age of 65 years during the previous year relevant for the assessment year 2003-04.

In this writ petition, Sri M.V.Rajaram, learned counsel for the petitioner relying upon the expression "*who is of the age of sixty five years or more at any time during the previous year*" employed in Section 88B of the Act, contends that such person shall be entitled to a deduction from the amount of income tax on his total income and entitled for the benefit under Section 88B of the Act. Learned counsel placed reliance upon the decision in ***VASANTLAL*** v. ***UNION OF INDIA*** and the decision of this Court in ***IN RE V.S. METHA,*** in support of his submission.

The said decisions in no manner support the point urged by the learned counsel for the petitioner. In our considered opinion, the expression "*an individual, who is of age of sixty five years or more at any time during the previous year*" means that one should have completed 65 years of age. Entering into 65th year of age after completing 64 years of age is of no consequence. Even according to the case of the petitioner as putforth by him before the Commissioner, one should have completed the age of 64 years and attained the age of 65 years during the financial year 2002-03, which qualify one to get the benefit of rebate under Section 88B of the Act. The very contention urged by the writ petitioner-assessee before the Commissioner is the complete answer for the question raised in the writ petition. Attaining age of 65 years means one should have completed the age of 65 years.

In the circumstances, we do not find any error to have been committed by the Commissioner of Income Tax-1, Visakhapatnam in interpreting Section 88B of

the Act and rejecting the claim of the writ petitioner-assessee for the benefit of rebate under Section 88B of the Act.

The writ petition fails and shall accordingly stand dismissed.

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B. SUDERSHAN REDDY, J.

Date: 25/04/2005

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C.V. RAMULU, J.

GS/BSC

To

1 The Commissioner of Income Tax-I, Visakhapatnam.

2 The Additional Commissioner of Income Tax, Range-5, Visakhapatnam.

3 The Income Tax Officer, Ward No.1, Income Tax Office, Anakapalli, Visakhapatnam.

4 Two C.D. Copies.