(1988) 12 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 25 of 1980

Amrit Lal APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 02-12-1988

Acts Referred:
Income Tax Act, 1961 — Section 64(2)

Citation : (1989) 79 CTR 148 : (1989) 179 ITR 105

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : S.S. Mahajan, for the Appellant; L.K. Sood, for the Respondent

Judgement

S.S. Sodhi, J.—The matter here pertains to the assessment year 1976-77.

2. On October 13, 1970, the assessee, Shri Amrit Lal, as karta of the Hindu undivided family consisting of himself, his wife and two minor sons impressed his separate funds to the extent of Rs. 31,226 with the character of Hindu undivided family funds. Later, with effect from October 13, 1970, he became a partner of a firm, Amritsar Brick Kiln Co., on behalf of the Hindu undivided family and this entire amount of Rs. 31,226 was invested by the Hindu undivided family as its capital in this firm. During the assessment year 1976-77, the Hindu undivided family received as its share interest amounting to Rs. 8,223 and profit of Rs. 17,394, the total of the two being Rs. 25,617. The question that came up for consideration was : whether this entire sum of Rs. 25,617 was includible in the assessment of the assessee u/s 64(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

3. According to the Tribunal, this was a case of conversion of property of Rs. 31,226 into other property and was thus hit by the provisions of Section 64(2)(b) of the Act and the income derived from this converted property must be deemed to arise to the individual and not to the family.

4. It was in this background that the following question of law was referred to

this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the entire profit and interest from Amritsar Brick Kiln Co. received by the Hindu undivided family in the assessment year 1976-77 was liable to be included in the individual assessment of the assessee u/s 64(2) of the Income Tax Act, 1961 ?"

5. The question posed has clearly to be answered in the affirmative, in favour of the Revenue and against the assessee, it being covered by a judicial precedent with which we respectfully agree. In P. Nagalingam Vs. Commissioner of Income Tax, the case was of an assessee who was a partner in a firm. A sum of Rs. 30,000 was debited to the personal account of the assessee and he converted this sum, by means of a declaration, into an asset of the Hindu joint family consisting of himself, his wife and minor son, The transfer was treated as a gift and assessed to gift-tax. This sum of Rs. 30,000 was later invested in the firm. The Income Tax Officer, applying Section 64(2)(b) of the Act, rejected the contention of the assessee, that the interest in relation to the sum of Rs. 30,000 which worked out to Rs. 3,346 alone was attributable to the converted property and the rest of the income should be assessed as that of the Hindu undivided family, and held that the entire income that came to the share of the assessee was his personal income and assessable in his hands. With this view, both the Appellate Assistant Commissioner and the Tribunal concurred. On a reference, it was held that Section 64(2)(b) of the Act specifically enjoined that the income derived from the converted property or any part thereof should be deemed to arise to the individual and not to the Hindu undivided family. When the sum of Rs. 30,000 was invested in the partnership business, that amount became "converted property" within the meaning of Section 64(2)(b) of the Act. The money which belonged to the assessee was thrown into the common stock of the family by a positive declaration of the assessee. It was the converted property which fetched income during the previous year relevant to the assessment year in question. The income derived from the converted property, therefore, must be deemed to arise to the assessee as his individual income and not to the Hindu undivided family of the assessee.

6. A similar view has been taken by the High Court of Allahabad in Commissioner of Income Tax Vs. Mulkh Raj and Sons, . The reference is thus answered accordingly. There will, however, be no order as to costs.

