

(1969) 09 AHC CK 0009

In the Allahabad High Court

Case No : Income-tax Miscellaneous Case No. 372 of 1963

Bajrang Lal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 05-09-1969

Acts Referred:

Income Tax Act, 1922 — Section 16(3)

Citation : (1970) 77 ITR 309

Hon'ble Judges : V.G. Oak, C.J;M.N. Shukla, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; Shanti Bhushan, General and R.R. Misra, for the Respondent

Judgement

M.N. Shukla, J.—The assessee was an "individual". The assessment year was 1958-59 for which the relevant accounting year was the year ending October 22, 1937. The assessee held 1/5th share in the firm of M/s. Phool Chand Bajrang Lal, Azamgarh. He had four sons, namely. Lakshmi Narain Dalmia who was an adult on the relevant date and three minor sons, namely, Sarvasri Bansari Lai, Radhey Shyam and Girdhari Lal. The firm in question was constituted under an indenture made on November 3, 1956. The said partnership deed is on record and indicates that the partnership was started by the assessee and his adult son, Lakshmi Narain Dalmia. The minor sons were admitted to the benefits of the partnership in the firm. Under Clause 6 of the partnership deed the parties (the assessee and Lakshmi Narain Dalmia) were entitled to the profits earned and had to contribute to the losses sustained by the firm in accordance with their respective shares which were 1/5th share each. Clause 7 of the partnership deed provided that the three minors were admitted to the benefits of partnership in the firm and their respective shares were also 1/5th share each and that the minors would become partners on attaining majority. Under Clause 9 of the partnership deed the capital subscribed by the partners was to carry interest at the rate of 6 per cent, per annum. There was no provision in the partnership deed as to how much capital was to be invested by each partner.

2. By virtue of Section 16(3)(a)(ii) of the Income Tax Act, the Income-tax Officer included in the assessment of the assessee the share incomes of the minor sons including the interest which was credited to their respective capital accounts in the firm's account books. The assessee filed an appeal before the Appellate Assistant Commissioner, who deleted the interest income from the assessment. At the stage of the appeal before the Appellate Assistant Commissioner, the assessee sought to raise an additional ground of objection, namely, that the correct status of the assessee should have been the "Hindu undivided family" and not an "individual". The Appellate Assistant Commissioner refused to allow this additional ground to be raised before him.

3. There were two cross-appeals preferred to the Income Tax Appellate Tribunal. The department's appeal was directed against the order of the Appellate Assistant Commissioner in so far as the latter had directed that the amount of Rs. 5,331, being the amount of interest received by the minor sons from the firm, be excluded from the total income of the assessee. The assessee's appeal challenged the order of the Appellate Assistant Commissioner on the ground that it had refused to allow him to agitate the plea constituting the capacity in which the assessee was assessed. The department's appeal was allowed and the assessee's appeal was dismissed by the Income Tax Appellate Tribunal by its consolidated order dated March 17, 1962.

4. The assessee applied to the Appellate Tribunal to refer to this court certain questions of law which were said to arise out of the Tribunal's order dated March 17, 1962. So far as the request for referring the question as to whether the Appellate Assistant Commissioner was justified in not admitting the additional ground of objection raised before him is concerned, it was rejected by the Tribunal and no reference was made on that question. The only question of law which was referred to this court at the assessee's instance is as follows :

"Whether, on a true interpretation of the deed of partnership dated November 3, 1956, the aggregate amount of interest of Rs. 5,331 earned by the three minor sons of the assessee was liable to be included in the total income of the assessee u/s 16(3)(a)(ii) of the Act ? "

5. The contention of the assessee was that the Income Tax Officer was not justified in taxing the sum of Rs. 5,331, the interest received by the minor sons of the assessee from the firm in the hands of the assessee. For this proposition, reliance was placed on a decision of the Bombay High Court in the case of *Bhogilal Laherchand Vs. Commissioner of Income Tax, Bombay City*, . The facts of the case were that the assessee started a partnership business with his major son and admitted to the benefits of the partnership his two minor sons. In the relevant assessment year the share of the profit of each of the minors was included in the total income of the assessee u/s 16(3)(a)(ii) of the Indian Income Tax Act, 1922. The question was whether the interest which the minors received on deposits standing to their credit in the firm could be included in the total income of the assessee. The deed fixed the rate of interest and provided that

interest at that rate should be paid by the firm if there were any deposits or moneys standing to the credit of the minors. It was held that the interest earned by the minors on the amount standing to their credit in the firm could not be included in the total income of the assessee u/s 16(3)(a)(ii). It will be noticed that in the Bombay case there was no finding of fact reached by the Income Tax Appellate Tribunal to the effect that the interest was paid on capital invested and not on a loan or deposit.

6. In the instant case, the Income Tax Appellate Tribunal had recorded a categorical finding that all the partners of the firm were originally members of a Hindu undivided family, that after effecting a partial partition of their, business capital, they had formed a partnership in respect of the erstwhile Hindu undivided family business assets and the business assets were agreed to be retained in the partnership as capital. The Appellate Tribunal also referred to the fact that the interest had been credited in the firm's account books to the respective capital accounts of the minors. It has not been found as a matter of fact by the Tribunal that the minors had invested their money in the partnership by way of loan or deposit. On the contrary, the finding is otherwise and this court is bound by the finding of fact.

7. The present case appears to come nearer to the rule enunciated by the Assam High Court in Chouthmal Kejriwal Vs. Commissioner of Income Tax, Assam, wherein the facts were very much similar. In that case the assessee was a partner of the registered firm, M/s. Bhimraj Chouthmal. Chouthmal had four sons. Two of them, namely, Prasanna and Om Prakash were minors and the other two, Loknath and Gaurishankar were majors. Under the partnership deed entered into between the father, namely, Chouthmal, and his two major sons, the two minor sons were admitted to the benefits of the partnership. For the relevant assessment year certain sums had been credited in the accounts of the minors as their shares of profits including certain distinct sums as interest. It was held that the interest paid to the minors admitted to the benefits of the partnership on their capital invested was the income derived directly or indirectly by them from such admission. The basis of the decision was that the supply of capital by the minors was connected with their admission to the benefits of the partnership and the interest earned was an income derived, even if indirectly, from such admission. In other words, the view expressed was that if the minors had not been admitted to the benefits of the partnership, they could not have contributed to the capital and would not have earned any interest on it.

8. The Assam case was followed by this court in L. RAM NARAIN GARG Vs. COMMISSIONER OF Income Tax, U. P., wherein it was held by a Division Bench that the interest paid to a minor son admitted to the benefits of a partnership on his capital investment was the income derived directly or indirectly by him from the admission and was includible in the income of the father u/s 16(3)(a)(ii) of the Income Tax Act, 1922.

9. Thus, on the materials before it, the Income Tax Appellate Tribunal, in the

present case, came to the conclusion that the minors had contributed capital to the firm and had earned interest on account of being admitted to the benefits of the partnership. In that view of the matter the share income of the minors was rightly included in the income assessed in the hands of Bajrang Lal, the assessee.

10. In the result our answer to the question referred is in the affirmative and against the assessee. The assessee shall pay the opposite party Rs. 200 as costs of this reference.