
(1984) 02 OHC CK 0012
In the Orissa High Court
Case No : S.J.C. No. 74 of 1978

Bijoy Kumar Choudhury

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 02-02-1984

Acts Referred:

Income Tax Act, 1961 — Section 37

Citation : (1984) 148 ITR 146

Hon'ble Judges : J.K. Mohanty, J;B.N. Misra, J

Bench : Division Bench

Judgement

1. In an application filed by the assessee u/s 256(2) of the I.T. Act, 1961 (hereinafter called the " Act"), this court directed the Tribunal to state a case and refer the question of law arising out of its order for the opinion of this court and the Tribunal has referred the following question for opinion of this court:

" Keeping in view the terms of the agreement relied upon for authorising payment to the karta, whether the payment is admissible u/s 37 of the Income Tax Act of 1961 ? "

2. This Court further directed that the Tribunal would go into the question of the agreement and indicate as to what, in its opinion, is the real purport and as to whether such a claim was with reference to the Work done by the karta to the family or work done by the karta for the joint family business relating to the partnership firm.

3. This, case relates to the assessment year 1975-76. The assessee is a HUF consisting of the karta, his wife and a minor son. The assessee is a partner in the firm, M/s. Jagannath Choudhury and M/s. Choudhury & Partner. By virtue of an agreement dated April 9, 1974. it was agreed that Rs. 750 would be paid to the karta as salary from the firm for looking after the day to day management of the affairs of the firm's business. This claim was disallowed by the ITO. In appeal before the AAC, the order of the ITO was confirmed. Second appeal was carried

to the Tribunal and the Tribunal also dismissed the same. Thereafter an application u/s 256(1) of the Act having been dismissed, this application u/s 256(2) of the Act was filed before this court to state a case and refer the question of law arising in this case for the opinion of this court. The Tribunal, after considering the agreement and the facts and circumstances of the case in its order of reference, has observed :

"Thus the remuneration to the karta was provided with reference to work done by him not to the family as such but for the family business relating to the partnership firms. The purport of the agreement is an attempt at legal avoidance by the way of diversion of part of income assessable in the hands of the HUF representing the share income from the aforesaid two firms."

4. In a decision of the Supreme Court in Jugal Kishore Baldeo Sahai Vs. Commissioner of Income Tax, U.P., Lucknow, , it has been held (p. 243) :

" In our view, if a remuneration is paid to the karta of the family under a valid agreement which is bona fide and in the interest of, and expedient for, the business of the family and the payment is genuine and not excessive, such remuneration must be held to be an expenditure laid out wholly and exclusively for the purpose of the business of the family and must be allowed as an expenditure u/s 10(2)(xv) of the Act (1922 Act)."

5. In the present case, there is nothing before us to come to a finding that the agreement is invalid.

6. In another decision of the Gujarat High Court in Shankerlal H. Dave Vs. Commissioner of Income Tax, Gujarat-III, , it has been held (p. 760);

" Therefore, these decisions amply bear out the settled legal position that the general law or Hindu law does not prohibit the HUF from carrying on business activity by managing and looking after its business interest in the various businesses run through its representative entering into a contract of partnership with others. In such cases, the beneficial interest of the partner actually entering into partnership would be assessed in the hands of the HUF and the character of the income would not change so far as the computation of that income under the scheme of the various heads under the I.T. Act has to be considered. If the principle could not be disputed that a person need not carry on business himself personally, but he can carry on business through agents and managers or representatives, it could never be urged that the HUF carrying on business in representative capacity forming such partnership was not carrying on business activity. That is why, their Lordships never went into this question and sub silentio the decision in Jugal Kishore Baldeo Sahai Vs. Commissioner of Income Tax, U.P., Lucknow, was reached, allowing the claim for deduction of a remuneration to the karta for services rendered to the HUF itself and not to the partnership firms by way of looking after the business interest of the HUF in these firms. The net of the Income Tax law is to rope in real business profits. Therefore, their Lordships were at great pains to point out that this was not in

any manner a device so long as remuneration claimed was a bona fide claim and was not an excessive one as it was genuine business expenditure justified by commercial expediency, when the HUF paid its member for looking after and managing its interest even in the partnership business."

7. Applying these principles and considering the facts and circumstances of the case, we are of the view that the assessee's claim that deduction of salary paid to the karta is admissible. Therefore, the question is answered in the affirmative and in favour of the assessee.

8. However, we make it clear that the Tribunal is free to assess the actual amount that is admissible as deduction in the facts and circumstances of the case. No costs.