

(1992) 02 OHC CK 0019
In the Orissa High Court
Case No : S.J.C. No's. 61 and 62 of 1984

Biraj Mohan Biswal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 12-02-1992

Acts Referred:

Income Tax Act, 1961 — Section 22, 256, 64(1)

Citation : (1992) 103 CTR 159 : (1992) 198 ITR 465

Hon'ble Judges : S.K. Mohanty, J;A. Pasayat, J

Bench : Division Bench

Advocate : None, for the Appellant; A.K. Ray, for the Respondent

Judgement

A. Pasayat, J.—Since both the reference applications are interlinked, they are disposed of by this common judgment.

2. At the instance of Shri Biraj Mohan Biswal (hereinafter referred to as " the assessee"), the following questions have been referred to this court u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as " the Act"), by the Income Tax Appellate Tribunal, Cuttack Bench (hereinafter referred to as " the Tribunal").

" (1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in coming to the conclusion that the assessee was in fact the owner of the house at Dolmundai, Cuttack, standing in the names of his two minor sons ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the actual title to the house property in question vests in the assessee's sons and income therefrom would still be liable to be added in the hands of the assessee?"

3. The facts as revealed from the statement of the case drawn up by the Tribunal are as follows :

4. The assessee is an individual and was assessed to tax by the Income Tax

Officer, Ward "C", Bhubaneswar, for the assessment years 1977-78 and 1978-79. During the course of assessment, the Assessing Officer found that a plot of land was purchased on July 8, 1972, in the names of two minor sons of the assessee. As per narration in the sale deed, the consideration for the same was stated to have been paid on behalf of one Smt. Santimoyee Nayak out of her stridhan. On April 5, 1974, a plan was approved for construction of a residential building on the said plot. During the assessment year 1978-79, the house fetched a rent of Rs. 24,000 which income was not reflected in the return submitted by the assessee. The Assessing Officer treated the rent as income from house property of the assessee.

5. The case of the Assessing Officer was that although the house formally stood in the names of two minor sons, it was actually the assessee's money with which the land had been purchased and the house had been constructed. He sought for clarification of several aspects. There was no co-operation by the assessee and no evidence was adduced in support of the source from which the money was invested in the acquisition of the land and construction of the building. Though there was a mention in the sale deed that the consideration flowed from the funds of the maternal grandmother of the assessee's minor sons, on examination of her financial condition, it was noticed that the lady was not capable of making any investment. The claim that a sum of Rs. 17,000 which was spent for purchase of land and registration charges was from the lady's funds was not accepted. It was noticed that from the bank account No. C-14/430 with the State Bank of India, sums of Rs. 4,000, Rs. 2,000 and Rs. 11,300 were withdrawn on May 25, 1972, May 3, 1972, and July 8, 1972, respectively. The sale deed was executed on July 8, 1972, in favour of the two minor sons. The conclusion was that with the money withdrawn from bank, the land was purchased. It was also noticed that a loan obtained from the Life Insurance Corporation of India was spent by the assessee for construction of the house. The stand of the assessee that part of the investment came out of the funds of the assessee's wife was not accepted. On consideration of the materials on record, the Assessing Officer came to the conclusion that the investments were made by the assessee for acquisition of the land and construction of the building thereon. It was found that Rs. 39,200 was spent for construction of the house over and above what had been disclosed by the assessee. The Assessing Officer included the same in the income of the assessee for the assessment year 1978-79 as income from undisclosed sources. The rental incomes of both the assessment years were included in the assessee's assessments. In appeal, the assessments were confirmed. The Tribunal also did not grant any relief to the assessee in the second appeals filed. It held that the Assessing Officer had come to the right conclusion that the entire investment had come from the assessee's funds and that there was no contribution whatsoever by the grandmother of the minor children as was claimed. It also observed that, even if assuming for the sake of argument it was held that in law the children are the owners of the property and were liable to tax on the income from the house property u/s 22 of

the Act, by application of Section 64(l)(v), the income was to be included in the assessment of the assessee. On being moved u/s 256(1) of the Act, the questions indicated above have been referred to this court.

6. We have heard Mr. A. K. Ray, learned standing counsel for the Department. In spite of notice, the assessee has not entered appearance.

7. The first question is whether the Tribunal was justified in coming to the conclusion that the assessee was in fact the owner of the house standing in the names of the two minor sons. The factual aspect has been elaborately dealt with by the Assessing Officer as indicated above and, endorsing the conclusions of the Assessing Officer as well as the first appellate authority, the Tribunal has come to hold that the assessee was the owner of the house because the investments had been made by him. The question whether the property standing in the names of the minor sons belongs to them or the assessee is one of fact. We, therefore, decline to answer the question.

8. So far as the second question is concerned, we find that there was no finding recorded by the Tribunal that the actual title to the house property in question vests in the assessee's sons. On the contrary, the Tribunal held that the assessee was the real owner. As a hypothetical proposition, it was observed that, even if for the sake of argument, it was accepted that title vests with the minor sons, Section 64(1)(v) had application. There being no finding recorded by the Tribunal that the actual title to the property vests in the assessee's sons, the question is merely academic and, in view of the determination factually made by the Assessing Officer and affirmed by the appellate authorities that the assessee was the real owner of the house in question, the second question is academic and does not flow from the order of the Tribunal. In that view of the matter, we decline to answer the second question also.

9. The references are, accordingly, disposed of. No costs.

S. K. Mohanty, J. 10. I agree.