
(1988) 08 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 183 of 1985

CHANDANMAL

APPELLANT

Vs

COMMISSIONER OF Income Tax.

RESPONDENT

Date of Decision : 03-08-1988

Acts Referred:

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

Citation : (1988) 73 CTR 197 : (1988) 174 ITR 731 : (1988) 40 TAXMAN 264

Hon'ble Judges : G. G. Sohani, Acting C.J.

Bench : Division Bench

Judgement

INDORE BENCH

G. G. SOHANI, ACTG. C.J. - By this reference u/s 256 (1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 3,028 earned by the minor on the capital invested by him in the partnership firm to the benefits of which he has been admitted is income which arises to the minor from his admission to the benefits of a partnership firm and was rightly included in the income of the assessee u/s 64(1)(iii) of the Income Tax Act, 1961 ?"

The material facts giving rise to this reference, briefly, are as follows :

While framing the assessment of the assessee for the assessment year 1976-77, the Income Tax Officer held that as the minor son of the assessee was admitted to the benefits of the partnership firm, Chandan Traders, a sum of Rs. 3,028 received by the minor as interest on the capital invested by him in the said firm, was liable to be clubbed with the income of the assessee in view of the provisions of section 64(1)(iii) of the ct. The appeals preferred by the assessee in that behalf before the Appellate Assistant Commissioner and the Tribunal were

dismissed. Aggrieved by the order passed by the Tribunal, the assessee sought a reference and it is at the instance of the assessee that the aforesaid question of law has been referred to this court for its opinion.

A similar question came up for consideration before this court in Commissioner of Income Tax Vs. Smt. Nirmala Devi, . It has been held in that case that the provisions of section 64(1)(iii) of the Act do not leave any room for doubt that if the income arising to a minor child of an assessee from a partnership firm is referable to the fact of the admission of that minor to the benefits of the said partnership firm, then such income is includible in the total income of the assessee. In view of this decision, the Tribunal, in our opinion, was right in holding that the sum of Rs. 3,028 earned by the minor son on the capital invested by him in the partnership firm, to the benefits of which he was admitted, was an income which arose to the minor due to his admission to the benefits of the partnership firm and was includible in the total income of the assessee u/s 64(1)(iii) of the Act.

Our answer to the question referred to this court is, therefore, in the affirmative and against the assessee. In the circumstances of the case, parties shall bear their own costs of this reference.