

(1988) 05 RAJ CK 0044

In the Rajasthan High Court

Case No : Income-tax Reference No. 12 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Abhay Kumar

RESPONDENT

Date of Decision : 13-05-1988

Acts Referred:

Income Tax Act, 1961 — Section 2(31), 64(1)

Citation : (1988) 70 CTR 193 : (1989) 179 ITR 363 : (1988) 1 RLW 533 : (1988) 2 WLN 40

Hon'ble Judges : J.S. Verma, C.J.; I.S. Israni, J

Bench : Division Bench

Advocate : V.K. Singhal, for the Appellant; None, for the Respondent

Judgement

J.S. Verma, C.J.—This reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the Revenue is to answer the following question of law, namely :

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in upholding the order of the Appellate Assistant Commissioner that the clubbing of the share income of Shri Nitesh Kumar, minor, in the hands of assessee-Hindu undivided family is not sustainable ?"

2. The relevant assessment year is 1976-77. The assessee is the Hindu undivided family represented by its karta, Abhay Kumar. Nitesh Kumar, minor son of the said Abhay Kumar, was admitted to the benefits of the partnership in a firm during the relevant period. The question was whether the share income of a minor, Nitesh Kumar, could be clubbed with the income of the assessee-Hindu undivided family represented by Abhay Kumar as karta for the purpose of computing the total income of the assessee-Hindu undivided family in accordance with Section 64(I)(iii) of the Act. It is not for the purpose of clubbing the share income of the minor, Nitesh Kumar, with the income of his father, Abhay Kumar, as an individual, that Section 64(I)(iii) of the Act was relied on. The assessee contended that Section 64(I)(iii) was not attracted since the assessee was the Hindu undivided family represented by its karta, Abhay Kumar, and not by Abhay

Kumar as an individual. The Income Tax Officer rejected this contention. However, the Appellate Assistant Commissioner, on appeal, accepted the assessee's contention and held that the share income earned by the minor could not be clubbed in the hands of the assessee-Hindu undivided family. The Tribunal has affirmed that view. Hence, this reference at the instance of the Revenue.

3. The relevant part of Section 64 is as under :

"64. Income of individual to include income of spouse, minor child, etc.--(1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly-- ...

(iii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm."

4. The significant words in the above provision are the opening words "in computing the total income of any individual" in Sub-section (1) and "to a minor child of such individual" in Clause (iii) thereof. A plain construction of these words clearly indicates that the word "individual" here means a parent of the minor child and, therefore, this provision applies only where a parent of the minor child is the assessee in individual capacity. The definition of "person" in Section 2(31) of the Act also indicates that an "individual" and Hindu undivided family are distinct persons or distinct units for the purpose of assessment under the Act. Unless the context otherwise requires, the meaning given in this definition is to be applied to the word "individual" used in Section 64. In our opinion, there is nothing in the context requiring departure from the ordinary meaning of the word "individual" and the words "minor child of such individual" occurring in Clause (iii) reinforce the conclusion that the word "individual" used in Sub-section (1) and Clause (iii) thereof mean only a parent of the minor child whose income is to be clubbed. In our opinion, the plain words of this provision do not admit of any ambiguity and it is clear that the provision can apply only when the assessee is a parent of the minor child ; or, in other words, the parent, in individual capacity, is the assessee and not in the representative capacity as karta of a Hindu undivided family. This conclusion reached by us is also supported by the Explanations in Sub-section (1) which are merely clarificatory and perform the normal role of an Explanation to explain something which is already contained in the main enacting part.

5. In this view of the matter, we are of the opinion that Section 64(I)(iii) applies only "in computing the total income of an individual" for the purpose of clubbing the share income of "a minor child of such individual" or, in other words, where the assessee is an individual assessed in that status and not in the representative capacity of a karta of a Hindu undivided family. We shall now refer to the decisions cited at the Bar on this point.

6. We may first refer to the two decisions of the Supreme Court which support the conclusion we have reached. The first decision is The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi, , where the question

was about the meaning to be given to the word "individual" in Section 16(3) which was the corresponding provision in the Indian Income Tax Act, 1922. It was held that the word "individual" occurring in Section 16(3) was restricted in its connotation and necessarily excluded from its purview a group of persons forming a unit of assessment. We are here not concerned with the change made in Section 64(1) of the Income Tax Act, 1961, by substitution of the word "spouse" for the word "wife" occurring in Section 16(3) of the Indian Income Tax Act, 1922, which had given rise to the controversy in *The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi*, , whether the word "individual" meant only the male and not also the female. However, substitution of the word "spouse" for the word "wife" has put the matter beyond controversy by indicating that the "individual" contemplated in Section 64(1) of the 1961 Act can be either a male or a female. The other decision of the Supreme Court is in *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, . It was held therein that Section 16(3)(a)(ii), which is the corresponding provision in the 1922 Act, did not apply for clubbing the income of the minor children of "H" with the income of "H" assessed as a Hindu undivided family. In our opinion, both these decisions support the construction of Section 64(I)(iii) made by us.

7. We also find that the High Courts of Andhra Pradesh, Bombay, Delhi, Gujarat, Punjab and Haryana and Karnataka have taken the same view and made a similar construction of Section 64(I)(iii) of the Income Tax Act, 1961. These decisions are *Commissioner of Income Tax Vs. Sanka Sankaraiah*, , *Dinubhai Ishvarlal Patel Vs. K.D. Dixit, Income Tax Officer, Ahmedabad and Others*, , *CIT v. Anand Sarup* [1980] 121 ITR 873 , *Commissioner of Income Tax Vs. N.P. Khedkar*, , *Prayag Dass Rajgarhia Vs. Commissioner of Income Tax, Delhi*, and *C. Arunachalam Vs. Commissioner of Income Tax, Karnataka, Bangalore*, . The decision of the Karnataka High Court is by a Full Bench and it is sufficient to refer to that alone since it considers this question at considerable length referring also to the change made in the 1961 Act as compared with the corresponding provision in the 1922 Act. Moreover, the Karnataka decision also considers the Full Bench decision of the Allahabad High Court in *Sahu Govind Prasad Vs. Commissioner of Income Tax*, , which was relied on to support the contrary view. With respect, we find ourselves in agreement with the conclusion as well as the reasons on which that conclusion is based in the Karnataka decision. Accordingly, we do not find it necessary to reiterate the same here. We may, however, add that the decision of the Full Bench of the Allahabad High Court in *Sahu Govind Prasad Vs. Commissioner of Income Tax*, , itself accepts the dual capacity of the "individual" and it also indicates that it is in the karta's assessment as an "individual" and not in his representative capacity on behalf of the Hindu undivided family that the minor's income is to be clubbed. With respect, these observations in the Allahabad decision also support the construction we have made of Section 64(I)(iii) which is in accord with the view of the other High Courts as already indicated by us.

8. As a result of the above discussion, we are of the opinion that the karta of the

Hindu undivided family has a dual capacity, i.e., as an individual and in a representative capacity as karta of the Hindu undivided family ; and it is only in computing the total income as an "individual" and not in the other capacity as karta of the Hindu undivided family that the income of the minor child of that "individual" can be clubbed in accordance with Section 64(I)(iii) of the Income Tax Act, 1961. In other words, where the minor child's parent is the assessee in a representative capacity as karta of the Hindu undivided family and not as an individual, Section 64(I)(iii) cannot be applied to club the income of the minor in computing the total income of the assessee-Hindu undivided family. The same being the view of the Tribunal, it has to be upheld.

9. Consequently, the reference is answered in the affirmative against the Revenue and in favour of the assessee by holding that the Tribunal was justified in its view that clubbing of the share income of the minor, "Nitesh Kumar, in the hands of the assessee-Hindu undivided family is not sustainable.

10. No costs.