
(2001) 06 CAL CK 0026

In the Calcutta High Court

Case No : Income-tax Reference No. 62 of 1993

Commissioner of Income Tax

APPELLANT

Vs

Ajit Kumar Roy

RESPONDENT

Date of Decision : 28-06-2001

Acts Referred:

Income Tax Act, 1961 — Section 22, 256(2)

Citation : (2001) 170 CTR 187 : (2001) 252 ITR 468 : (2002) 121 TAXMAN 248

Hon'ble Judges : Y.R. Meena, J; Malay Kumar Basu, J

Bench : Division Bench

Judgement

1. In this application u/s 256(2) of the Income Tax Act, 1961, the Tribunal has referred the following questions for our opinion :

"1. Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that there was no material to hold that the wife of the assessee was only the benamidar of the assessee is based on any material evidence or arbitrary ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in deleting the income from house property or property standing in the name of the assessee's wife from the total income of the assessee ?"

2. The assessee is an individual. He filed the return for the assessment year 1981-82 on August 28, 1981, showing a total income of Rs. 32,360. During the course of assessment for the assessment year 1981-82, the Income Tax Officer found that the assessee's wife entered into an agreement for purchase of a flat at 12, Loudon Street, Calcutta, for a consideration of Rs. 79,850 and the aforesaid flat was occupied by the assessee in May, 1980. When the source of investment was enquired, the Assessing Officer further found that the assessee's wife was a housewife having no independent source of income. He, therefore, held that the investment of purchasing a flat in the name of the assessee's wife was made from the source of income of the assessee and his property. The source was explained by the assessee that Rs. 9,910 was given to his wife by the

assessee and interest free loan was given to the wife of the assessee and the balance amount paid on the sale of one of the flats on August 12, 1980, for a consideration of Rs. 63,000. When it was further enquired from where she invested the money in the flat sold on August 12, 1980, the assessee explained the source as under :

"1. On January 28, 1978, loan from his employer, J. L. Morison Son and Jones (I) Ltd., Bombay, Rs. 11,000 (adjusted against his salary).

2. On January 28, 1978 : salary from January 1978, Rs. 3,362.

3. On January 28, amounts transferred from his S. B. Account No. 2117 with the Union Bank of India, Borivili (West), Bombay, Rs. 7,000.

4. On January 28, amounts transferred from his personal savings accounts of Rs. 4,000.

5. On January 10, 1978, amounts transferred from his personal savings account Rs. 6,742.

6. On March 20, 1978 : P. F. from the above company (loan refundable) Rs. 15,000.

7. On June 15, 1978 : loan against F.D. from the Union Bank of India, Bombay (joint account) Rs. 13,000.

8. On January 5, 1979 : loan from the above company Rs. 10,000 (adjusted against his salary).

9. On May 2, 1980 : amounts transferred from the Union Bank of India, Borivili (West), Bombay, against proceeds of C. D. S. Accounts Nos. 1397 and 1484 of Rs. 14,000.

10. The amount received from J. L. Morison Son and Jones (I) Ltd., Bombay, towards his salary and leave encashment for the month of April, 1980, of Rs. 2,236."

3. The Income Tax Officer has taken the view that the money invested in the flat and occupied by the assessee is property of the assessee and whatever capital gain or income is derived from the flat upon purchase in 1973 is income of the assessee. In appeal before the Appellate Assistant Commissioner, the Appellate Assistant Commissioner allowed the appeal. In the appeal before the Tribunal, the Tribunal has also confirmed the view taken by the Appellate Assistant Commissioner mainly on the basis that the flat in question was allotted in the name of Gayatri Roy who was a member of the Hilton Co-operative Housing Society Ltd. The Tribunal has further taken the view that the Assessing Officer has not been able to place on record any material to hold that the wife is a benamidar of the assessee. He has confirmed the views taken by the Appellate Assistant Commissioner.

4. Heard learned counsel for the Revenue. None appears for the assessee though

the matter was listed for seven times.

5. Whether the wife is a benamidar of the assessee or not, though it is basically a question of fact but the Tribunal has considered only on the facts that the flat in question stands in the name of the wife of the assessee and the Assessing Officer has not brought any material on record to hold that the wife of the assessee is a benamidar.

6. A perusal of the assessment order reveals that the entire investment in the flat purchased in 1973 was by the assessee and not by his wife and there is a finding arrived at by the Assessing Officer that the assessee's wife is only a housewife and has no source of income. In such type of cases what type of materials are required to be considered that has not been spelt out by the Tribunal. Now the question remains as to when the flat is in the name of the wife of the assessee, can that be treated as flat of the assessee for the purpose of Income Tax ?

7. In Commissioner of Income Tax, Bombay etc. Vs. M/s. Podar Cement Pvt. Ltd. etc., , their Lordships have considered the question as to whether for the purpose of ownership registration is necessary to consider the income in the hands of the purchaser or the seller. At page 653, their Lordships observed as under : "We are conscious of the settled position that under the common law, "owner" means a person who has got valid title legally conveyed to him after complying with the requirements of law such as the Transfer of Property Act, Registration Act, etc. But in the context of Section 22 of the Income Tax Act, having regard to the ground realities and further having regard to the object of the Income Tax Act, namely, "to tax the income", we are of the view, "owner" is a person who is entitled to receive income from the property in his own right."

8. When their Lordships have taken the view that having regard to the ground realities and further having regard to the object of the Income Tax Act, namely, to tax the income in the hands of the real owner, their Lordships have taken the view that the owner is the person who is entitled to receive income from the property in his own right.

9. On the same analogy when the entire investment was made by the assessee, simply the flat is in the name of the wife of the assessee. In such a case, the income from that property should be taxed in the hands of the assessee and not in the hands of his wife.

10. In the result, we answer question No. 1 in the negative, i.e., in favour of the Revenue and against the assessee. The second question also we answer in the negative, i.e., in favour of the Revenue and against the assessee.

11. Reference so made stand disposed of accordingly.

12. Parties are to act on a signed copy of this dictated order on the usual undertaking.