
(1981) 03 DEL CK 0030

In the Delhi High Court

Case No : Income-tax Reference No. 51 of 1970

Commissioner of Income Tax

APPELLANT

Vs

Baburam

RESPONDENT

Date of Decision : 19-03-1981

Acts Referred:

Citation : (1982) 138 ITR 311

Hon'ble Judges : N.N. Goswamy, J;D.K. Kapur, J

Bench : Division Bench

Judgement

D.K. Kapur, J.—The question referred to us in the present case is :

"Whether, on the facts and in the circumstances of the case, the sum of Rs. 3,636.50 constitutes a proper deduction from the assessed's share income from M/s. Northern Steel & General Mills in which the assessed was a partner under the provisions of the Indian Income Tax Act, 1922 ?"

2. The facts of the case show that the assessment year in question was 1959-60. The assessed, who was a partner in the firm, Northern Steel and General Mills, had entered into an agreement with his own son, Pran Nath, by which the son was to receive a salary of Rs. 250 and certain other amounts for looking after the interests of the assessed in the firm. The reason for this agreement was that the assessed was physically not capable of rendering services, as could be expected of him, to the partnership and he had to engage somebody else to render those services. The amount which was paid to the son out of the assessed's share in the partnership business was claimed as a deduction from the taxable income. It was disallowed by the ITO on the ground that the payment was made for extra-commercial considerations. The total sum which was claimed as a deduction was Rs. 7,262. On appeal to the AAC, the entire sum was allowed. The ITO appealed to the Appellate Tribunal which came to the conclusion that there were two aspects of the payment received (to be considered) : (1) the son was looking after the interests of the father in the partnership business, and (2) the son was doing something in the partnership firm on behalf of the assessed. The Tribunal

had been referred to a judgment of the Madras High Court in *Basantlal Gupta Vs. Commissioner of Income Tax, Madras*, , where a similar deduction had been completely disallowed and stated that, in their view, as there were two aspects of the payment received by the assessed's son, they would, on an estimate basis, allow half the amount. That is how the question framed and referred to us states that Rs. 3,636.50 has been deducted from the assessed's share income.

3. Before dealing with the facts of this case, it may be mentioned that the case of the assessed has since been transferred to Bombay and the petitioner before us is the Commissioner of Income Tax, Bombay City III, though originally it was the Commissioner of Income Tax, Delhi. The Tribunal referred the matter to us on the assumption that the High Court had to be determined in accordance with the initial situation. We have decided to deal with the reference on the basis that the reference is correct.

4. Turning now to the question referred to us, it has been urged by learned counsel for the Commissioner that the Tribunal was wrong in allowing even half the amount claimed as a deduction. The contention is that the entire amount was paid to the assessed's son for rendering services to the partnership business, and, Therefore, it was not an allowable deduction as far as the assessed was concerned. Reliance is placed on the judgment of the Supreme Court in *Jitmal Bhuramal Vs. Commissioner of Income Tax, Bihar and Orissa*, , which is a case in which an HUF was represented in a partnership through its karta and some junior members had been engaged by the karta to render services on behalf of the family in the partnership firm. It was held that the deduction was not allowable as services were not being rendered to the HUF but to the partnership firm in which the HUF was represented through its karta. We find that the said judgment is not to be applied to the facts of the present case where the assessed himself was incapacitated and had to get somebody to represent him. The present case is covered by a series of other decisions including some rendered by this High Court showing that the expenses incurred by a partner in earning his income from the partnership business are allowable deductions. There are also lots of other cases in which other types of deductions have been upheld by the courts in accordance with the partnership interest of an individual partner being treated as a business asset in his own hands. We now proceed to mention those cases wherein similar deductions have been allowed as claimed by the assessed in the present case. Those cases are : *Commissioner of Income Tax, Bihar Vs. Ramniklal Kothari*, , decided by the Supreme Court, *CIT v. Ganpat Rai Jaggi and Co.* [1972] 86 ITR 363 (Delhi) and *Commissioner of Income Tax Vs. Sohan Lal Nayyar*, , decided by this High Court and *Commissioner of Income Tax Vs. A.M. Kaithan*, , decided by the Madras High Court. In view of the fact that it is well settled that allowances normally allowed against business income can also be claimed against the share of a partner from a partnership business, it only remains to be seen whether, in the present case, there is a distinction between the facts of this case and the facts of the Madras case relied upon by the Tribunal.

5. The Madras case in question is Basantlal Gupta Vs. Commissioner of Income Tax, Madras, . In that case the partner had engaged a person to look after his interest in the firm, but it was found that the terms on which he was appointed were set out in a letter appearing with the statement of the case which showed that he was not rendering services to the assessed, but to the firm itself. The passage stated in the judgment is (p. 547) :

"He was in charge of the keys of the shop and the safe. He was employed in making purchases for the shop in the wholesale market, in checking the incoming goods and supervising the work of the salesman and other workers of the shop and checking the credit facilities granted to customers. He was also in charge of the cash of the firm. A perusal of this letter clearly indicates that this person was employed to render services to the firm rather than to the individual partner."

6. This case is, Therefore, distinguishable on facts. In the said judgment of the Madras High Court, there is a reference to several earlier cases in which deductions were permitted for expenses incurred in employing persons to look after a partner's interests and also cases in which other deductions such as interest, etc., had been allowed on the share income. It, Therefore, appears to use that possibly the entire amount could have been allowed as a deduction in the present case as was done by the AAC. At least, the Tribunal was not wrong in allowing half the amount and the assessed had not contested the matter any further. So, we would uphold the decision of the Tribunal and, accordingly, we would answer the question referred to us in the affirmative, in favor of the assessed and against the department. The assessed will get the costs. Counsel fee Rs. 250.