
(1996) 05 RAJ CK 0041

In the Rajasthan High Court

Case No : Income Tax Reference Application No. 78 of 1995

Commissioner of Income Tax

APPELLANT

Vs

Bhanwarlal

RESPONDENT

Date of Decision : 03-05-1996

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2)

Citation : (1997) 225 ITR 870

Hon'ble Judges : B.R. Arora, J;A.S. Godara, J

Bench : Division Bench

Advocate : Sandeep Bhandawat, for the Appellant;

Judgement

B.R. Arora, J.—The Revenue has moved this application u/s 256(2) of the Income Tax Act, 1961, with a prayer that the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, may be directed to refer the following two questions of law for the opinion of the High Court in the case of assessee, Bhanwar Lal, for the assessment year 1985-86, which, according to the Revenue, arise out of the order dated April 30, 1993, passed by the Tribunal in Income Tax Appeal No. 1333/(JP) of 1989 :

" Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally justified in deleting the addition of Rs. 35,000 made on account of low-household expenses made on the basis of his statement recorded u/s 132(4) ?

(2) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally justified in deleting the addition of Rs. 15,000 made on account of understatement Of marriage expenses as per his admission in statement u/s 132(4) and which were confirmed by the learned Commissioner of Income Tax (Appeals) ?"

2. The brief facts of the case are that the assessee is an individual. A search was conducted at the residence of the assessee by the Income Tax Department u/s

132 of the Act on August 25, 1987, which continued up to August 31, 1987. During this raid, the statements of the assessee and his sons were recorded. The assessee, for the assessment year 1985-86, on February 23, 1988, filed the return of his income declaring the taxable income at Rs. 21,000 and agricultural income at Rs. 1,85,700. The taxable income of Rs. 21,000 shown in the return was later on revised to Rs. 36,694. The Income Tax Officer, Central Circle, Jodhpur, for the assessment year 1985-86, vide order dated February 21, 1988, completed the assessment on a total income of Rs. 26,81,476.

3. Aggrieved by the order dated February 21, 1988, passed by the Assistant Commissioner of Income Tax, Central Circle, Jodhpur, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), Jodhpur. The Commissioner of Income Tax (Appeals), Jodhpur, allowed the appeal in part, set aside the addition of Rs. 21,58,000 with the direction to the assessing authority to further examine the evidence, make further enquiry and to consider the sale transactions in the hands of the assessee only if the name of the assessee appears in any of the sale deeds. The Commissioner of Income Tax (Appeals) also set aside the addition of Rs. 2,32,717 with the direction to the assessing authority to make further enquiry regarding the applicability or otherwise of the agricultural income shown by the assessee. He also deleted the addition of Rs. 20,010 which was the amount of sale of plot of land by the major sons of the assessee, but, however, confirmed the addition of Rs. 15,000 which is the amount of estimated expenses on the marriage of the son of the assessee and Rs. 35,000 which is the amount of the difference of the household expenses.

4. The assessee, aggrieved by the order passed by the Commissioner of Income Tax (Appeals), Jodhpur, maintaining the addition of the amounts of Rs. 15,000 and Rs. 35,000 aforesaid, preferred an appeal before the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur. The Revenue also preferred an appeal challenging the deletion made by the Commissioner of Income Tax (Appeals), Jodhpur. The appeal filed by the Revenue was dismissed while the appeal filed by the assessee was partly allowed by the Tribunal.

5. Aggrieved by the order passed by the Tribunal, the Revenue moved an application u/s 256(1) of the Act before the Tribunal for referring the questions of law mentioned in paragraph 1 above. The Tribunal refused to refer the questions for the opinion of the High Court because the Tribunal was of the view that no question of law arises from the order of the Tribunal and it gives rise only to the questions of fact.

6. We have gone through the order passed by the Tribunal.

7. The Tribunal, while deciding the appeal filed by the assessee, after considering the facts and circumstances of the case and the evidence on record, in paragraph No. 14 of its judgment, decided these two questions with the following observations :

"We have carefully considered the rival submissions. However, after considering

all the facts and circumstances of the case and the evidence on record, we are unable to agree with the views of the lower authorities. We find that it is a case in which prolonged and detailed questions have been put to the assessee during the stress and strain of a search which started on August 25, 1987, and only one question each relevant to these issues was put on August 27, 1987, at pages 40-41 of the statement running on pages 3 to 52 of the paper book II filed by the assessee. Even then the assessee had given only an estimate of household expenses and had said that his monthly household expenses "are" about Rs. 5,000. From this, we agree with Shri Jain, it could not be concluded that his monthly household expenses in the financial year 1984-85 were Rs. 5,000 per month and neither less nor more. Taking into account the fact that he has agricultural lands and farms in his own name and in the names of all members of his family, meeting of household expenses from farm products cannot be ruled out. In fact he has stated in the same statement that he met his expenses from agricultural income. Moreover, if withdrawals of Prem Singh are considered, the total expenses work out to Rs. 41,000. Similarly, the marriage expenses incurred in 1984 were stated on an estimated basis in the circumstances mentioned above. We have also taken into account the argument of Shri Jain to the effect that it was a case where a prolonged search had taken place and the Revenue has not been able to find any evidence except the assessee's own statement given under stress and strain and only giving an estimate on the basis of memory regarding an event which occurred about three years back. Hence, in our view, there is no reasonable basis to uphold these additions. Both these additions of Rs. 35,000 and Rs. 15,000 are, therefore, directed to be deleted."

8. The decision of the Tribunal is, therefore, based upon the appreciation of the evidence and no question of law arises in the case. The Tribunal was, therefore, justified in refusing to refer the questions of law for the opinion of this court relying upon the ratio of the decision of this court in ADDITIONAL COMMISSIONER OF Income Tax, RAJASTHAN Vs. NOOR MOHD and CO. AND OTHERS.,

9. Thus, the questions raised by the Revenue are purely questions of fact and no question of law arises in this matter.

10. In the result, we do not find any merit in this application u/s 256(2) of the Income Tax Act and the same is hereby dismissed.