(1989) 12 DEL CK 0013

In the Delhi High Court

Case No : Income-tax Case No. 92 of 1987

Commissioner of Income Tax APPELLANT

Vs

B.N. Mathur RESPONDENT

Date of Decision : 12-12-1989

Acts Referred:

Citation : (1990) 184 ITR 402

Hon'ble Judges : C.L. Choudhary, J;B.N. Kirpal, J

Bench : Division Bench

Judgement

Kirpal, J.—In respect of the assessment year 1981-82, the petition seeks a direction to the Tribunal to state the case and refer the following two question of law to this court :

"(1) whether, on the facts and in the circumstances of the case, the Income Tax appellate; late Tribunal was justified in law in holding that a valid trust had come into existence and the assessment should have been make in accordance with section 161 of the Income Tax in respect of trust ?

(2) Whether, on the fact and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the income of the M.K.S. Maintenance Trust was not the income of the assessed ?"

2. As in evident from a regarding of the foresaid question, the point in issue pertains to the validity of a trust deed stated to have been executed by one Shri P. N. Mathur who was the brother of the respondent. This trust deed in alleged, by the respondent to have been executed by Shri P. N. Mathur for the maintenance of the daughter to the respondent under D.M.K.S. Maintenance Trust According to the deed, the corpus of the trust was to be Rs. 10,000.

3. It appears that the Income Tax Officer did not accept the genuineness of the trust deed. He relied upon a letter written by Shri P. N. Mathur and came to the conclusion that it is the respondent who was the person behind the said

document and that the income should be taxed in his hands.

4. The foresaid question regarding the genuineness of the trust arose for the first time in the previous year relevant to the assessment year 1975-76. The respondent filed an appeal and the appellate authority held that the trust was genuine and decided the case against the Revenue. thereafter. For the assessment year 1975-76, second appeal was filed to the Tribunal. The Tribunal, vide its order dated November 29, 1985, dealt with all the contention and came to the conclusion that, on the material on record. A valid trust had been created, vide document dated February 23, 1974. The order of the Tribunal in respect of the assessment year 1975-76 has become final because when no reference was ordered by the Tribunal. An application u/s 256(2) of the Income Tax Act was filed, but the same was dismissed on account of its being barred by time.

5. In respect of the assessment year 1981-82 with which we are concerned in this case, the Income Tax Officer followed his own earlier order for 1975-76 and did not recognise the trust. An appeal was filed to the commissioner of Income Tax (Appeal) but the same was dismissed. A second appeal was filed before the Tribunal who followed their decision for the year 1975-76 and allowed the appeal holding that the income from trust was not to be included in the hands of the respondent.

6. The petitioner then filed an application u/s 256(1) and after the same was dismissed by the Tribunal, the present application u/s 256(2) has been filed.

7. In our opinion, no question of law arises in the present case, the only question which arises is whether a valid trust deed had been executed or not. The tribunal has referred to all the evidence which was adduced before it and has chosen not to accept as truthful, the subsequent advertisements of Shri P. N. Mathur, who, vide his letter written to the Income Tax Officer, sought to throw a doubt on the validity and legality of the trust. The Tribunal held that Shri P. N. Mathur were probably estranged and Shri P. N. Mathur had his own axe to grind. The Tribunal also noted the Shri P. N. Mathur had admitted the execution of a trust deed which mentioned a sum of Rs. 4,000. After taking all the facts and circumstances into consideration and also the evidence of one Dr. Dayal and one Shri. I. C. Mathur who had supported the case of the assessed with regard to the execution of the trust deed, the Tribunal found as a fact that a valid trust deed had been executed by Shri P. N. Mathur. We are unable to come to the conclusion that the finding of the Tribunal was, in any way, in any way, perverse or was arrived at by ignoring relevant and material facts. The Tribunal itself has observed that the finding is one of fact and, in our opinion, no question of law arises.

8. The petition is dismissed. There will be no order as to costs.