(2005) 04 AHC CK 0256

In the Allahabad High Court

Case No : IT Reference No. 120 of 1997

Commissioner of Income Tax APPELLANT

Vs

Brig. Kapil Mohan RESPONDENT

Date of Decision : 29-04-2005

Acts Referred:

Income Tax Act, 1961 — Section 256

Citation : (2007) 159 TAXMAN 380

Hon'ble Judges : Rajes Kumar, J;R.K. Agrawal, J

Bench : Division Bench

Judgement

1. The Income Tax Appellate Tribunal, New Delhi, has referred to following question of law u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) for opinion of this Court:

"whether, on the facts and circumstances of the case, the ITAT was legally right in upholding the order of the D.C. (Appeals), whereby a direction has been issued to make substantive assessment in the case ?"

The reference relates to the assessment years 1989-90 to 1992-93.

2. Briefly stated, the facts giving rise to the present reference are as follows:

4 Trusts were created by Brig. Kapil Mohan''s family in the following manner:

First son of Rakesh Mohan

Founder

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Brig. Kapil Mohan S/o Late Shri N.N. Mohan.

Trustee

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Smt. Puspa Mohan W/o Brig. Kapil Mohan.

Beneficiary

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Shri Siddartha Rattan Mohan S/o Shri Rakesh Mohan

Shri Rakesh Mohan is son of Late Col. V.R. Mohan.

First son of Hemand Mohan

1. Founder

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Smt. Comilla Mohan W/o Late Col. V.R. Mohan.

2. Trustee

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Brig. Kapil Mohan S/o Late Shri N.N. Mohan.

3. Beneficiaries

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First son of Hemand Mohan is son of Shri Sukhdev Mohan.

First son of Pankaj Mohan (Trust)

1. Founder

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Shri Rakesh Mohan S/o Late Col. V.R. Mohan.

2. Trustee

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Smt. Comilla Mohan W/o Late Col. V.R. Mohan.

3. Beneficiaries

-

First son of Pankaj Mohan. Pankaj Mohan is son of Late Col. V.R. Mohan.

First son of Vinay Mohan (Trust)

1. Founder

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Smt. Comilla Mohan W/o Late Col. V.R. Mohan.

2. Trustee

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Shri Rakesh Mohan S/o Late Col. V.R. Mohan.

3. Beneficiaries

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First son of Vinay Mohan, Shri Vinay Mohan is son of Shri Sukhdeo Mohan, S/o Late Shri N.N. Mohan.

The assessing officer found all these trusts invalid on the premise that at the time of their creation neither the sole beneficiary was in existence nor was he identifiable with a reasonable amount of certainty. He, therefore, made protective assessments.

3. During first appeal, the learned Dy. Commissioner (Appeals) following the view taken by him in respect of the assessment years 1987-88 and 1988-89 allowed the assessees plea with the directions that the trusts be treated as valid and consequently assessments be made on substantive basis on the ground that the appeals for those years were pending before the Tribunal. In the meantime, the Tribunal vide its order dated 22-3- 1994 in ITA Nos. 50-55 (All.)/1992 upheld the view taken during first appeal.

We have heard Sri A.N. Mahajan, learned standing counsel for the revenue. No body has appeared on behalf of the assessee.

4. It has been stated by Sri A.N. Mahajan that this Court in ITR No. 106 of 1993, decided on 15-3-2005, which relates to another member of the same family and involved similar question has upheld the validity of the trust. We are of the view that the Tribunal was justified in upholding the order of the Deputy Commissioner (Appeals) for making substantive assessment in the case.

5. Respectfully following the aforesaid decision, we answer the question referred to us in the affirmative, i.e., in favour of assessee and against the revenue. However, there shall be no order as to costs.

