(1987) 08 AP CK 0032

In the Andhra Pradesh High Court

Case No : Reference Case No. 38 of 1984

Commissioner of Income Tax — APPELLANT

Vs

C. Subrahmanyam — RESPONDENT

Date of Decision : 25-08-1987

Acts Referred:

Estate Duty Act, 1953 — Section 61
Income Tax Act, 1961 — Section 154, 256(1), 64, 64(1)(i)

Citation : (1988) 39 TAXMAN 275

Hon'ble Judges : Y.V. Anjaneyulu, J;G. Ramanujulu Naidu, J

Bench : Division Bench

Advocate : M.S.N. Murthy and Krishna Koundinya, for the Appellant;

Judgement

Y.V. Anjaneyulu, J.—This reference by the Tribunal, u/s 256(1) of the income tax Act, 1961 (''the Act'') relates to the assessment years 1973-74 and 1974-75. The question referred for consideration of this Court is: Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal is justified in holding that section 154 of the income tax Act, 1961, cannot be invoked to include the income of the spouse in the hands of the assessee u/s 64 of the income tax Act for the assessment years 1973-74 and 1974-75?

The assessee and his wife constituted themselves into a partnership firm under a deed of partnership dated 26-10-1965. There is no other person as a partner in the partnership firm. The firm''s assessments were completed and the assessments of the individual persons were also completed on the basis of the assessments made in the hands of the partnership firm. After the assessments were made, the ITO seems to have realised that an error was committed, in that the income of the wife arising from the partnership firm should have been taxed in the hands of the husband u/s 64(1)(i) of the Act. He accordingly initiated proceedings for rectification of mistake u/s 154 of the Act and eventually passed orders of rectification under which he included the income of the wife in the hands of her husband and made assessments. 2. The assessee questioned the rectification orders on two grounds. Firstly it was urged that the income is not includible on merits and the provisions of section 64 do not authorise the assessments of the wife to be made including her share income in the hands of her husband. It was next urged that in any event there was no patent mistake apparent from the assessee''s record and, consequently, the provisions of section 154 are inapplicable. The ITO rejected both the contentions. The matter was carried in appeal by the assessee. The AAC rejected the assessee''s appeals and confirmed the orders of rectification u/s 154. The assessee carried the matter to the Tribunal in further appeal. The Tribunal held that the provisions of section 64(1)(i) are clearly attracted in the present case and recorded its opinion that the income of the wife is liable to be included in the hands of the husband u/s 64(1)(i) in the present case. The Tribunal, however, accepted the second contention of the assessee, namely, that, in the facts and circumstances, it was not possible to say that there was any error apparent on the record of the assessee. The Tribunal also referred to the Explanation 1 to section 64(1)(i) stating that the individual whose total income is referred to in clause (i) shall be the husband or wife whose total income excluding the income from the firm is greater. The Tribunal observed that in order to determine whether there was a mistake or not, it was necessary to go into the effect of the Explanation and unless in terms of Explanation the husband''s income is found to be greater, the income of the wife is not liable to be included. In the opinion of the Tribunal, this renders the entire exercise debatable and, consequently, the provisions of section 154 will have no application. In that view of the matter, the rectification orders for the assessment years 1973-74 to 1975-76 were cancelled and the appeals by the assessee were allowed.

3. Being aggrieved by the Tribunal''s decision the revenue sought for and obtained a reference to this Court of the question already specified by us in paragraph 1. We have heard the learned standing counsel for the revenue. None is present on behalf of the respondent-assessee. Even so, the learned standing counsel has taken us through the relevant provisions in the Act and also invited our attention to the decisions bearing on the point. We are in entire agreement with the view expressed by the Tribunal that the provisions of section 64(1)(i) are clearly applicable in the present case, as a result of which, the income received by the wife from the partnership firm was liable to be assessed in the hands of the assessee. We are, however, unable to agree with the view expressed by the Tribunal on the second part of the issue, namely, that in terms of section 154 there is no mistake apparent from the record of the assessee. The above view of the Tribunal is largely based on the decision of the Supreme Court in the case of Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others, wherein the decision of the Mysore High Court in Ethel Rodrigues v. ACED [1963] 49 ITR (ED) 128 was referred and approved. The Tribunal thought that the principle enunciated by the Karnataka High Court and affirmed by the Supreme Court in the above case applies to the matter under consideration in the present case. In the Mysore High Court in Ethel

Rodrigues'' case (supra), on a perusal of the probate proceedings in the civil court certain error was, discovered in the estate duty assessment made and section 61 of the Estate Duty Act, 1953 (which corresponds to section 154 of the income tax Act) was invoked and the error rectified. The revenue contended that on a perusal of the probate record in the civil court it was clear that there was an apparent error in the estate duty assessment made and, consequently, the rectification proceedings were correctly taken. The Karnataka High Court rejected the revenue''s contention stating that the record of probate proceedings in a civil court is quite distinct and separate from the records maintained by the assessing authorities in the income tax Department and, consequently, it should be said that the discovery of an error with reference to probate proceedings in a civil court cannot be considered to be an error apparent on the record of the assessee for the purpose of estate duty. It was found that the record in the estate duty proceedings, by itself, did not reveal any error and it was only on a perusal of the record of probate proceedings in the civil court that an error was discovered. It was in these circumstances the contention of the revenue was rejected by the Karnataka High Court and the Supreme Court affirmed the said principle. We are afraid, this principle could have no application in a case like the present one. The tax affairs of wife in a partnership firm are entirely connected with the record of the partnership firm and also the record of the individual husband. The matters are so intermingled that in order to make an appropriate assessment in the hands of the individual husband and the wife, a perusal of the entire record relating to the firm, the husband and the wife is necessary. In that sense, it should be held that it is open to the ITO to look into the records of the firm, the husband and the wife and come to a conclusion regarding the existence of any error patent on the record falling within the terms of section 154. If only the ITO had looked into the records of the partnership firm it would have clearly indicated, by a perusal of the partnership deed, that the firm consisted of only two persons, namely, the wife and the husband and that would automatically bring in section 64 for consideration. It is obvious that the ITO failed to look into the records of the firm while making the assessments of the income in the hands of the husband and his wife. That was clearly an omission on the part of the ITO. It was only subsequently that a perusal of the record indicated that indisputably the partnership firm consisted of only the husband and the wife and, therefore, the provisions of section 64 were liable to be invoked to include the income of the wife in the hands of the husband. Thus, there was a mistake within the terms of section 154 and jurisdiction is conferred on the ITO to rectify such a mistake and accordingly the ITO initiated proceedings for rectification of the assessments already made in the hands of the individual husband. Once the provisions of section 64(1)(i) are rendered applicable, the extent of application of the Explanation to that section is a matter that could be automatically determined. There is no debate involved, inasmuch as the income of the wife is includible in the hands of the husband. We are unable to uphold the order of the Tribunal that, in the facts and circumstances of the case, the rectification of assessments for 1973-74 and 1974-75 is not called for. We accordingly answer the question referred in the negative, that is to say, in favour of the revenue and against the assessee. There shall be no order as to costs.

