

(1989) 03 KL CK 0064

In the High Court Of Kerala

Case No : Income-tax Reference No's. 366 of 1982 and 4 of 1983

Commissioner of Income Tax

APPELLANT

Vs

C.L. Anand

RESPONDENT

Date of Decision : 08-03-1989

Acts Referred:

Income Tax Act, 1961 — Section 139, 147, 64(1)

Citation : (1989) 78 CTR 25 : (1989) 179 ITR 4

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; Chacko George, for the Respondent

Judgement

K.A. Nayar, J.—Income Tax Reference No. 366 of 1982 is from R. A. No. 244 (Coch)/1982 arising out of I. T. A. No. 440 (Coch) of 1980 and Income Tax Reference No. 4 of 1983 is from R. A. No. 365 (Coch)/1982 arising out of I. T. A. No. 67 (Coch) of 1981. The assessee is the same in both the Income Tax references but the assessment year is 1972-73 in Income Tax Reference No. 366 of 1982 and 1970-71 in Income Tax Reference No. 4 of 1983.

2. The assessee is an individual deriving income by way of salary as managing director of the company, Toshiba Anand Batteries Ltd. The original assessment for the year 1970-71 was completed on May 30, 1972, and for the year 1972-73 was completed on October 19, 1972. When the relevant returns were submitted, the assessee was a partner of the firm, Anand Water Metre Manufacturing Co., Kapurthala, as the karta of a Hindu undivided family. His wife, Smt. Sheela Rani Anand, was also a partner of the said firm and both the Hindu undivided family and Smt. Sheela Rani Anand were assessed to Income Tax at Jullundur. During the previous years relevant to the assessment years 1970-71 and 1972-73, the share income of the assessee's wife was not included in the individual assessment of the assessee and it was the assessee's contention that he was a partner in the firm at Kapurthala in his capacity as the karta of the Hindu undivided family and, therefore, Section 64(1) did not apply to him in respect of

the share income of his wife from that firm. The Income Tax Officer reopened the assessments completed on May 30, 1972, and October 19, 1972, for the assessment years 1970-71 and 1972-73 u/s 147(a) and brought to tax the share income of the assessee's wife from the firm. The assessee filed appeals before the Commissioner of Income Tax (Appeals) objecting to the reopening and inclusion of the share income of the wife. The Commissioner of Income Tax (Appeals) held that the assessee did not have any obligation under law to declare the income of his wife as part of his total income and there was no omission or failure on his part to disclose material facts to enable the Income Tax Officer to initiate action u/s 147(a). He also held that Section 64 applies only to a case where the individual and his spouse have income from the same firm and not to cases where the share income accrues to the Hindu undivided family represented by the individual who is assessed. In that view of the matter, he held that the assessee had no obligation to declare the income of his wife and the Income Tax Officer had no jurisdiction to reopen the assessment: The Commissioner of Income Tax (Appeals), accordingly, cancelled the reassessments.

3. The Revenue filed appeals against the decisions of the Commissioner of Income Tax (Appeals) for the two years in question which were dismissed by the Tribunal. After adverting to the decisions reported in *Madho Prasad Vs. Commissioner of Income Tax*, *Addl. Commissioner of Income Tax Vs. Yashwant Lal*, *Commissioner of Income Tax Vs. Sanka Sankaraiah*, and *CIT v. Anand Sarup* [1980] 121 ITR 873, the Tribunal held that in view of the conflicting views on the interpretation of Section 64(1), the assessee did not have the obligation to declare the income of his wife in the return of income originally filed and the failure to disclose the income in the circumstances did not amount to omission or failure on the part of the assessee in order to give jurisdiction to the Income Tax Officer to initiate action u/s 147(a). The Tribunal also followed the view expressed by the Andhra Pradesh High Court in *Commissioner of Income Tax Vs. Sanka Sankaraiah*, and the Punjab and Haryana High Court in *CIT v. Anand Sarup* [1980] 121 ITR 873 in preference to that of the Allahabad High Court in *Madho Prasad Vs. Commissioner of Income Tax*, in holding that the share income of the assessee's wife cannot be included in the total income of the assessee who had been a partner in the firm only as the representative of the Hindu undivided family. The Revenue thereafter filed petitions u/s 256(1) to refer to the High Court two questions of law arising out of the orders of the Appellate Tribunal for the two years in question and, accordingly, the Tribunal referred the following questions of law to this court for our opinion ;

"(1) Whether, on the facts and in the circumstances of the case, the reopening of the assessment is valid ?

"(2) Whether, on the facts and in the circumstances of the case, the share income of the wife is to be included in the total income of the assessee ?"

4. Admittedly, concluded assessments can be reopened u/s 147(a) of the Income Tax Act, only if the Income Tax Officer has reason to believe that, by reason of

the omission or failure on the part of an assessee to make a return u/s 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year. In the case in question, there is no omission or failure to make any return. The only case is that the assessee omitted or failed to disclose fully and truly all material facts necessary for the assessment for that year. The question whether the share income of the assessee's wife should be included in the total income of the assessee who had been a partner of the firm only as the representative of a Hindu undivided family is a debatable one and has not been settled. There are a large number of decisions which say that the assessee need not include such income, viz., Prayag Dass Rajgarhia Vs. Commissioner of Income Tax, Delhi, , Commissioner of Income Tax (Central) Vs. Shiv Parshad, ; Commissioner of Income Tax Vs. Shri Amar Nath Bhatia, ; C. Arunachalam Vs. Commissioner of Income Tax, Karnataka, Bangalore, , Commissioner of Income Tax, Bombay City-I Vs. S.K. Thakkar, , Commissioner of Income Tax Vs. N.P. Khedkar, . As against this, there are a few decisions taking the opposite view in favour of the Revenue, viz., Commissioner of Income Tax Vs. Prakashchandra Basantilal, , Smt. Rukmani Agrawal Vs. Commissioner of Income Tax, , Commissioner of Income Tax, Tamil Nadu-I Vs. S. Balasubramaniam, , Sahu Govind Prasad Vs. Commissioner of Income Tax, , Madho Prasad Vs. Commissioner of Income Tax, and Addl. Commissioner of Income Tax Vs. Yashwant Lal, . Therefore, it cannot be stated that the assessee did have the minimum obligation under the law to declare the income of his wife as part of his total income in the case in question, and there is no omission or failure to disclose the material facts on his part. The ratio of the Supreme Court decisions reported in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, , Gemini Leather Stores Vs. The Income Tax Officer B Ward, Agra and Others, , Commissioner of Income Tax, West Bengal, and Another Vs. Hemchandra Kar and Others, , Commissioner of Income Tax, Gujarat Vs. Bhanji Lavji, Porbandar, , The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., etc., would apply directly so as totally to preclude the jurisdiction of the Income Tax Officer to reopen the assessment. Hence, we hold that the order of the Commissioner of Income Tax (Appeals) and the Tribunal in both the years in question holding that the reopening of the assessments are invalid are justified. Since we are holding that the reopening of the assessments are invalid, it is not necessary to consider whether the share income of the wife has to be included in the total income of the assessee. We, therefore, answer question No. 1 in both Income Tax references in the negative, i.e., against the Revenue and in favour of the assessee.

5. A copy of this judgment shall be sent under the seal of the court and the signature of the Registrar to the Appellate Tribunal, Cochin Bench.