(1984) 03 MP CK 0017

In the Madhya Pradesh High Court

Case No : M.C.C. No. 280 of 1982

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

DEVI AHILYABAI HOLKAR EDUCATIONAL TRUST. — RESPONDENT

Date of Decision : 03-03-1984

Acts Referred:
Income Tax Act, 1961 — Section 256(2)

Citation : (1985) 44 CTR 309

Hon'ble Judges : P. D. Muley, J

Bench : Division Bench

Judgement

P. D. Muley, J. - The petitioner, namely the CIT, M.P. has filed this petition u/s. 256(2) of the IT Act, 1961 for direction to the ITAT, Bench Indore, to submit the statment of the case requiring it to refer the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case the Tribunal rightly vacated the protective assessment made by the ITO ?"

2. The facts giving rise to this petition as per the statment of the case may be stated, in brief thus : The relevant assessment year in the case of the respondent, namely Devi Ahilyabai Holkar Educational Trust, Indore relates to 1975-76. The assessment made in the case of the respondent Trust is on protective basis, while the substantive assessment has been made in the case of Princess Usha Raje Trust, Indore.

That the Late Maharaja Yeshwant Rao Holkar constituted a trust on 20-4-1950 which was in the nature of settlement in his favour for life time and after his death, in favour of his daughter princess Usha Raje for her life-time, and thereafter, in favour of her children.

Smt. Usha Raje, the sole beneficiary after the death of her father enjoyed the Trust properties as per the provisions of the Trust deed. She has two children who were minors during the assessment year under consideration.

That Smt. Usha Raje on behalf of herself and on behalf of her children created a new Trust, namely Devi Ahilyabai Holkar Educational Trust, "Indore" and transferred her beneficial interest in the Trust Properties vide Deed dt. 18-12-1973.

According to cl. 3(B) of the Trust Deed, Smt. Princess Vijaya Raje was given absolute rights over the trust properties for her life time, and the beneficial interest of her children was to start upon her death.

That the ITO held that Smt. Princess Usha Raje had no right to transfer or settle her sole beneficial interest in favour of the Second Trust respondent. The ITo, therefore, assessed the income of the respondent Trust in the hands of Princess Usha Raje Trust and made protective assessment in the case of the respondent Trust.

That on appeal by the respondent, the CIT (Appeal), Indore, held that the creation of the New Trust was legal and reversed the finding of the ITO.

The department preferred an appeal to the ITAT, Indore, which held that the Trust princess Usha Raje could not have legally transferred the beneficial to the newly created Trust respondent and, therefore, its income was assessable in the hands of the Trust Princess Usha Raje. The Tribunal further held that as the income of the new Trust respondent was assessable in the hands of Princess Usha Raje Trust, the protective assessment in this case is not called for. Accordingly the protective assessment in the case was vacated.

That the assessee had already filed reference application against the order of the ITAT, Indore in the case of Princess Usha Raje Trust, including income earned by the Devi Ahilyabai Holkar Educational Trust, Indore.

That the department made an application u/s. 256(1) of the IT Act, 1961 to the ITAT, Bench Indore to refer the question of law mentioned above to this court for its opinion but the same was rejected. Hence this petition.

3. After hearing the ld. counsel, we are of opinion, that considering the facts and circumstances of the case. This is not a fit case to require the Appellate Tribunal to state the case and to refer the question of law as proposed by the revenue.

4. The ld. counsel for the revenue did not dispute that the refernece made by the Princess Usha Raje Trust to this court on the questions of law referred to therein have been answered in favour of the assessee Princess Usha Raje Trust which decision has been reported as Princess Usha Trust Vs. Commissioner of Income Tax, . However, the ld. counsel for the revenue submitted that the proposed question does arise, being a question of law. However, we are of opinion, that in view of the decision referred to above the proposed question is now of academic nature and it is not necessary to direct the Tribunal to make the reference as prosed by the revenue.

5. In the result this petition fails and is dismissed with no order as to costs.