(1982) 04 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 250 of 1979

Commissioner of Income Tax APPELLANT

Vs

Dhannamal RESPONDENT

Date of Decision : 17-04-1982

Acts Referred:

Income Tax Act, 1961 — Section 64

Citation : (1982) 29 CTR 340 : (1984) 148 ITR 141 : (1983) 12 TAXMAN 59

Hon'ble Judges : G.P. Singh, C.J;Faizanuddin, J

Bench : Division Bench

Advocate : B.K. Rawat, for the Appellant; H.S. Shrivastava, for the Respondent

Judgement

G.P. Singh, C.J.—This is a reference u/s 256(1) of the I.T. Act, 1961.

2. The questions of law referred by the Tribunal are as follows:

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in observing that as a result of partial partition in an HUF the share income from the firm constituted by the erstwhile members of the HUF will be the income of the HUF consisting of the karta and his wife and not the income of an individual ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in coming to the conclusion that the share income of the minors could not be included u/s 64 of the I.T. Act, 1961, in the case of Shri Dhannamal?"

3. The reference relates to the assessment years 1971-72 and 1973-74. On October 26, 1965, there was a partial partition of the HUF consisting of the assessee, Dhannamal, his two minor sons and wife in which equal shares were allotted. To be more specific, the wife was also allotted a share. After this partition, a partnership firm was constituted wherein equal share were given to each member of the family including the wife. Up to the assessment year

1969-70, Dhannamal filed his return in the status of an individual and the share income of his two minor sons from the partnership was included in the assessment u/s 64 of the Act. In the assessment year 1970-71, the return was originally filed in the status of an individual. Later on, the return was revised and the status was shown as HUF on the ground that after partial partition the assessee and his wife constituted an HUF. In the assessment year 1971-72, the assessee filed the return in the status of HUF showing himself and his wife as members of the HUF. In the assessment year 1973-74, again the return was filed in the status of HUF. The ITO did not accept the status of the assessee as HUF and the assessments were completed in the status of individual. The AAC cancelled the assessments and held that the proper status was that of an HUF and the share income of the minors could not be included u/s 64. The Tribunal took the same view.

4. Had the wife not been allotted any share in the partial partition, the matter was simple and there would have been no difficulty in holding that the assessee and his wife constituted an HUF (See Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore, ; N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, ; Controller of Estate Duty Vs. Smt. Rani Bahu, ; Ramratan Vs. Controller of Estate Duty, and Commissioner of Income Tax Vs. Krishna Kumar,). In the instant case, the wife was also allotted a share in the partial partition. We are only concerned with the income from the property which was the subject-matter of partial partition and which was invested in the partnership. It is impossible to hold that the assessee and his wife after the partial partition constituted a HUF in respect of this property. The point is concluded against the assessee by the decision of this court in Jeetmal Nagri Vs. Commissioner of Wealth-tax, . In our opinion, the ITO was right in assessing the assessee in the status of individual. It automatically follows that the ITO was also right in adding the income of the minors u/s 64 of the Act. For these reasons, we answer the questions as follows :

(1) The Appellate Tribunal was not justified in law in holding that the share income from the firm constituted by the erstwhile members of the HUF will be the income of the HUF consisting of the karta and his wife. The share income of the assessee from the firm was his individual income.

(2) The Appellate Tribunal was not justified in coming to the conclusion that the share income of the minors could not be included u/s 64 of the Act.

5. There will be no order as to costs of this reference.

