(1994) 01 SC CK 0014

In the Supreme Court Of India

Case No : CA No. 148 of 1993

Commissioner of Income Tax APPELLANT

Vs

Dharampal Ram Kumar RESPONDENT

Date of Decision : 05-01-1994

Acts Referred:
Income Tax Act, 1961 — Section 256(2), 64

Citation : (1994) 207 ITR 543

Hon'ble Judges : B.P. Jeevan Reddy Reddy, J;B. L. Hansaria, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is preferred against an order of the Bombay High Court rejecting an application u/s 256(2) of the income tax Act ("the Act") on the ground that the question raised herein is of mere academic! interest. The question which was sought to be referred at the instance of the Revenue reads thus :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the share of profit derived by Smt. Kiran Kumar, wife of the assessee, from the firm in which her husband is a partner as the karta of his Hindu undivided family, cannot be clubbed by applying the provisions of Section 64 in the individual assessment her husband in the status of an individual ?

2. Sri Murthy, learned senior counsel for the Revenue, submits that the question sought to be raised by the Revenue is not concluded by the decision of this Court in L. Hirday Narain v. ITO . According to him, it was a case where the income of the minor children was sought to be included in the assessment of a Hindu undivided family and not in the individual assessment of the karta. He also submits that this question has also not been gone into or decided on the merits by this Court in CIT, v. Harbhajan Lal . He points out that the decision in Harbhajan Lal's case , was in an appeal against an order dismissing an

application u/s 256(2) of the Act and that this Court did not deem it appropriate in the facts and circumstances of the case to go into the merits of the case. He further points out that that was a case relating to the inclusion of minor''s share income in the assessment of the father. He also submitted that Civil Appeals Nos. 5851-5853 of 1983 disposed of simultaneously did, no doubt, pertained to the inclusion of wife''s income in the income of the husband, but it too was disposed of following the decision in Harbhajan Lal's case and, therefore, not a decision on the merits. We are inclined to agree with Sri Murthy. We are of the opinion that the question sought to be raised herein ought to be examined on merits.

3. Accordingly, we allow this appeal and direct the Tribunal to state the aforesaid question for the opinion of the High Court u/s 256(2) the Act.

4. No costs.

