
(1993) 03 RAJ CK 0036

In the Rajasthan High Court

Case No : Income Tax Reference No. 106 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Dharma Chand

RESPONDENT

Date of Decision : 30-03-1993

Acts Referred:

Income Tax Act, 1961 — Section 64

Citation : (1993) 204 ITR 787

Hon'ble Judges : K.C. Agrawal, C.J;V.K. Singhal, J

Bench : Division Bench

Advocate : G.S. Bapna, for the Appellant;

Judgement

V.K. Singhal, J.—The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, has referred the following question of law arising out of its order dated September 9, 1980, in respect of the assessment year 1976-77 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order of the Appellate Assistant Commissioner deleting the share income of the minor sons assessed in the hands of the assessee u/s 64(1)(iii) of the Income Tax Act, 1961 ?"

2. The brief facts of the case are that the assessee, Dharam Chand, was a partner of Messrs. Jain Vastralaya, Bhawani Mandi, in the status of a Hindu undivided family (HUF). The assessment was completed u/s 143(1) on November 24, 1975, on a total income of Rs. 13,480. The Income Tax Officer found that the minor sons of the assessee, namely, Shri Rajesh Kumar and Sanjay Kumar, were admitted as partners in the firm, Messrs. Kanhaiyalal and Sons, to the benefits of the partnership with effect from November 14, 1974. The share of such minors was sought to be taxed on a protective basis in the hands of the father attracting the provisions of Section 64(1)(iii). It was also observed that the minors have received gifts from their grandparents after June 1, 1973, and that, therefore, the provisions of Section 64(1)(vi) were also applicable and hence the income was

taxed in the present case on a protective basis.

3. Against this order, an appeal was preferred to the Appellate Assistant Commissioner and the addition was deleted. The matter was challenged by the Income Tax Officer before the Income Tax Appellate Tribunal wherein it was held that the term "individual" is used in a restrictive sense and has been used for such individual who is capable of having a wife or minor child or both and, therefore, excludes from its purview a group of persons forming a unit or a corporation created by a statute and is confined only to human beings who, in the context, would be comprised within that category. The appeal preferred by the Department was dismissed.

4. The provisions of Section 64(1)(iii) provide that "in computing the total income of any individual, there shall be included all such income as arises directly or indirectly to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm." Learned standing counsel has submitted that, in view of the judgment of the Madras High Court in Commissioner of Income Tax, Tamil Nadu-I Vs. S. Balasubramaniam, the share income of the minor child has to be included in the total income of the father irrespective of the fact whether the father's share of income from the firm is assessed in his hands as that of an individual or as that of the Hindu undivided family. Reliance has also been placed on the decisions of the Allahabad High Court in the cases of Madho Prasad Vs. Commissioner of Income Tax, and Addl. Commissioner of Income Tax Vs. Yashwant Lal, and a Full Bench decision of the Allahabad High Court in Sahu Govind Prasad Vs. Commissioner of Income Tax, .

5. On the other hand, the following High Courts have taken the view that, when the father is a partner in a representative capacity as a "karta" and the minor child is also admitted to the benefits of partnership, then the minor's share income cannot be included in the income of the father in his individual capacity :

(1) Commissioner of Income Tax Vs. Sanka Sankaraiah, (2) Dinubhai Ishvarlal Patel Vs. K.D. Dixit, Income Tax Officer, Ahmedabad and Others, ; Dinubhai Ishvarlal Patel Vs. K.D. Dixit, Income Tax Officer, Ahmedabad and Others, Commissioner of Income Tax Vs. R.D. Sharma, Prayag Dass Rajgarhia Vs. Commissioner of Income Tax, Delhi, 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. Prakashchandra Basantlal, and (9) Commissioner of Income Tax Vs. C.L. Anand, .

6. So far as this court is concerned, the matter was examined in detail in Commissioner of Income Tax Vs. Abhay Kumar, and it was held that the karta of a Hindu undivided family has a dual capacity, i.e., an individual capacity and a representative capacity as karta of the Hindu undivided family and it is only in computing the total income as an individual and not in the other capacity as karta of the Hindu undivided family that the income of the minor child of that individual can be clubbed in accordance with Section 64(1)(iii) of the Income Tax

Act, 1961. In other words, where the minor child's parent is the assessee in a representative capacity as karta of the Hindu undivided family and not as an individual, Section 64(1)(iii) cannot be applied to club the income of the minor in computing the total income of the assessee-Hindu undivided family. The said decision was followed in Commissioner of Income Tax Vs. Bal Mukund, It is no doubt true that a few High Courts have taken the view in favour of the Revenue but the golden rule of interpretation is that the interpretation which is beneficial to the assessee has to be adopted and more particularly when most of the High Courts have taken the view which has been taken by this court and since no case has been made out to refer the said matter to a larger Bench, we are of the view that the Income Tax Appellate Tribunal was justified in upholding the order of the Appellate Assistant Commissioner deleting the share income of the minor sons assessed in the hands of the assessee u/s 64(1)(iii) of the Income Tax Act, 1961.

7. Accordingly, the reference is answered in favour of the assessee and against the Revenue. No orders as to costs.