
(1997) 03 RAJ CK 0027

In the Rajasthan High Court

Case No : Income-tax Reference No. 29 of 1988

Commissioner of Income Tax

APPELLANT

Vs

Dr. Sohanlal

RESPONDENT

Date of Decision : 06-03-1997

Acts Referred:

Income Tax Act, 1961 — Section 144

Citation : (1998) 234 ITR 581

Hon'ble Judges : B.J. Shethna, J;Amaresh Kumar Singh, J

Bench : Division Bench

Advocate : Sandeep Bhandawat, for D.S. Shishodia, for the Appellant;

Judgement

1. At the instance of the Revenue Department, the Tribunal referred the following question u/s 256(1) of the Income Tax Act, 1961 (for short "the Act"), for our opinion :

"Whether under the facts and circumstances of the case, the finding of the Income Tax Appellate Tribunal in holding that the property in question was purchased by the minor sons of the assessee and as such the income of this property could not be assessed in his hands, is perverse ?"

2. This reference relates to the assessment years 1973-74 and 1974-75. The assessee is a doctor. He submitted his return of income for the assessment year 1973-74 declaring income of Rs. 17,303 inclusive of salary, private practice, property income and income from interest from his minor sons. The Income Tax Officer found that the assessee had purchased immovable property Rs. 60,000 in the names of his minor sons, Arun Kumar and Anil Kumar, during the accounting years relevant to the assessment years of 1973-74 and 1974-75. The assessee explained to the Income Tax Officer by his letter dated March 3, 1976, that the house was purchased by the assessee's sons. He also declared the source of their income as under ;

Loan borrowed by S/Shri Arun Kumar and

Anil Kumar Arun Kumar

(Rs.) Anil Kumar

(Rs.)

Loan from assessee Dr. Sohanlal Sankhla 12,000 12,000

Loan from wife of assessee 8,500 3,500

Loan from M/s. Bharat Motors 7,500 7,500

Loan from Shri Mam Raj 5,000

Loan from Jaimal Singh ... 10,000

Total 33,000 33,000

3. The Income Tax Officer did not accept the explanation offered by the assessee and passed order u/s 144 of the Act on March 23, 1976, and added Rs. 43,627 as unexplained investment made for purchase of the said house and also made an addition of Rs. 5,000 as an estimated rental income from the house purchased by him in the names of his minor sons. That order passed u/s 144 was cancelled by the Income Tax Officer u/s 146 and assessment proceedings were reopened. Once again the assessee explained that he was not the real owner of the house in question by letter dated August 9, 1976. The same was not accepted by the Income Tax Officer as according to him the assessee was the real owner of the house and not his sons. They were benamidars of the assessee. Aggrieved by that the assessee carried the matter further before the Appellate Assistant Commissioner, who by his order dated March 5, 1977, upheld the order passed by the Income Tax Officer. Second appeal was filed by the assessee against the said order before the Tribunal which accepted the claim of the assessee and held that :

"16. In my opinion, the contention of the assessee must be accepted. The sale deed is in the names of both the minors. The copy of the sale deed is on the paper book. For purchasing the property in question, loans were raised from third parties. It is not the case of the Department that the loans were bogus. These loans were given by third parties to Shri Anil Kumar and Shri Arun Kumar. Rs. 13,000 were advanced by the mother of the minors. Similarly, Rs. 24,000 were given on loan by the assessee to the minor sons. The Income Tax Officer did not add Rs. 60,000 or any amount in the hands of the assessee as unexplained investment. As a matter of fact, the learned Income Tax Officer did not dispute the advancement of loans in question. He also did not say that the said persons did not have the capacity to advance the loans. It means the theory of loans was accepted by the Department. If the Department was not satisfied with the explanation of the assessee, the assessee, his wife and the minor should have been examined. They were never examined. So apparently it is clear that the property in question was purchased by the minor sons of the assessee after taking loans from different persons as discussed above, Apparently, there is no

material on record to show that in reality the assessee is the owner of the property and the entire investment was made by him. I may point out that it is not the case of the Department that the whole transaction is a sham one. The Department proceeded on the premise that both the minor sons were benamidars for their father. As a matter of fact, at the time of purchase of the property, one of the sons was on the verge of attaining majority and the other son was younger by two to three years. In the absence of any other material on record it could not be said that the minors were not in a position to make arrangements for purchasing the property in question. If their parents helped them in purchasing the property in question, there is nothing wrong in it.

In view of the aforesaid discussions, it is clear that the property in question was purchased by the minor sons of the assessee. The property income of this property could not be assessed in the hands of the assessee. So, the property income added in the hands of the assessee in both the years under consideration shall be excluded from the computation of his income."

4. The Revenue filed two reference applications u/s 256(1) of the Act before the Tribunal requesting it to refer the abovementioned common question to this court. The said reference applications were rejected by the Tribunal. Thereafter, the Commissioner of Income Tax approached this court u/s 256(2) of the Act. This court directed the Tribunal to refer the abovementioned question along with the statement of case for its opinion. Accordingly, the Tribunal referred the abovementioned question to this court for its opinion.

5. Learned counsel Shri Bhandawat, for the Department, submitted that it was a benami transaction and the Income Tax Officer as well as the Appellate Assistant Commissioner both have rightly found that the real owner of the house was the assessee and not his minor sons because the source of income of minors was not disclosed and the minors were unable to earn. He submitted that the Tribunal has, therefore, committed error in allowing the appeal of the assessee in part.

6. This submission of Mr. Bhandawat cannot be accepted for the simple reason that the assessee had pointed out the source of income of his minor sons. Arun Kumar and Anil Kumar, both minor sons of the assessee, got loans from the assessee and his wife. Not only that, they got the loans from three other independent persons also. This was on record and this fact could not be disputed. That apart, the sale deed of the property was in the names of the minors and not in the name of the assessee. Therefore, in our opinion, the learned Tribunal was right in holding that the evidence on record shows that the property was purchased by the minors and it belongs to them and the property income of the minors could not be added in the hands of the assessee.

7. Mr. Bhandawat next contended that the learned Tribunal committed a grave error in holding that if the Department was not satisfied with the explanation of the assessee then it should have examined the assessee, his wife and his minor sons but they were never examined. He submitted that all of them were

examined. Their evidence was already on record.

8. There is some substance in what Mr. Bhandawat has submitted. But, in our opinion, nothing would turn out from it whether they were examined or not particularly when there was clear documentary evidence on record which goes to show that the minors received the loans from which they constructed the house. That apart, the registered sale deed was also very much there on record which was not in the name of the assessee but in the names of his minor sons.

9. At this stage, we must point out that it was never the case of the Department that the whole transaction was a sham and bogus one. The case of the Department was on the premise that both the minor sons of the assessee were benamidars for their father. In fact, one of the minor sons was on the verge of attaining majority and the other younger son was about to attain majority within 2-3 years. We fully agree with the view taken by the Tribunal that if the parents helped in purchasing the property for their minor sons, there was nothing wrong in it.

10. In the above view of the matter, the question referred to us at the instance of the Revenue Department for the assessment years 1973-74 and 1974-75 is answered against the Department. There shall be no order as to costs.