

(2001) 01 GUJ CK 0080

In the Gujarat High Court

Case No : IT Application No's. 9 to 12 of 2000 18 January 2001

Commissioner of Income Tax

APPELLANT

Vs

Dr. U.S. Navlekar

RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2)

Citation : (2001) 117 TAXMAN 514

Hon'ble Judges : M.S. Shah, J;J.M. Panchal, J

Bench : Full Bench

Advocate : Manish R. Bhatt, for the Revenue and R.K. Patel, for the Assessee, for the Appellant;

Judgement

Panchal, J.

By means of filing these applications u/s 256(2) of the Income Tax Act, 1961 Income Tax Act, (hereinafter referred to as the Act) the revenue has prayed to direct the Tribunal, Ahmedabad Bench "C", to raise and refer to this court three questions of law set out in Para 4 of the applications.

Facts

2. The assessee derives income from medical profession, interest, etc. The assessee is one of the trustees of Dr. Navlekar Family Trust. The trust was settled by Shri K.S. Thakkar who had contributed Rs. 2,000 towards the corpus of the trust. The trust had purchased leproscopic instrument and shown hire charges income from leproscopic instrument for family planning operations carried out by the assessee. The Income Tax Officer by his order dated 27-3-1986 for the assessment year 1983-84 in the case of the trust had held that the income declared in the case of the trust, in fact, belonged to the assessee. The Income Tax Officer had relied upon his own order in the case of the trust for the assessment year 1986-87 wherein the detailed reasons were given as to why income of the trust should be treated as that of the assessee. The objection

raised by the assessee that the income of the trust should not be treated as income of Dr. Navlekar was overruled by the Income Tax Officer mainly on the ground that the trust was not a genuine trust. In case of Dr. Navlekar the assessing officer concluded that the leproscopic instrument belonged to him and, therefore, income shown by the trust was included in his hands on substantive basis and on protective basis, in the hands of the trust. Thereupon, Dr. Navlekar and the trust had preferred appeals before Commissioner (Appeals), Rajkot. The Commissioner (Appeals) relied upon order No. CIT/R/120/86-87 passed for the assessment year 1983-84 and No. CIT/R/188/87-88 for the assessment year 1984-85, dated 17-7-1987, wherein it was held that the trust should be assessed on substantive basis. Relying upon the said order, the Commissioner (Appeals) directed the Income Tax Officer to delete clubbing of income of Rs. 2,31,900 and Rs. 1,66,440 for the respective assessment years. Thereupon, the revenue approached the Tribunal by way of appeals against Dr. Navlekar and the trust. The Tribunal by common order dated 9-1-1998 held that the trust was a genuine trust and, therefore, income of the trust could not have been treated as income of the assessee. In that view of the matter, the Tribunal confirmed the order passed by the Commissioner (Appeals) and dismissed the appeals filed by the revenue. The revenue thereafter filed applications u/s 256(1) requesting the Tribunal to refer questions of law for opinion of the High Court as stated in R.A. Nos. 44 to 48/Rjt/ 1998. The Tribunal has rejected the said applications by order dated 30-7-1999, which has given rise to present applications.

3. The learned counsel for the revenue submitted that the circumstances, namely, that (i) the trust was not maintaining proper records of its meetings and documents in form of resolutions were fabricated; (ii) the trust deed was drafted/ settled by settlor Shri Kakubhai Shamjibhai Thakker at the instance of Dr. U.G. Navlekar; (iii) the trust has claimed to be deriving rental income which is fabricated because no such leproscopic instrument was ever purchased by the trust; (iv) the machinery purchased by Dr. Navlekar Family Trust was the second machinery, as the old machinery had been sold away and that was purchased from Chimco Biomedical Engineering Company, and (v) the statement of the seller indicated that the leproscopic instrument was not sold to the trust, show that the trust is not a genuine trust and, therefore, the prayer made in the applications should be granted.

4. We have heard the learned counsels for the parties. On appreciation of facts, the Tribunal has held that only because the trust was settled by settlor Shri Kakubhai Shamjibhai Thakker or that the records of the meetings, etc., of the trust were not properly maintained, would not indicate that the trust is a bogus one. The Tribunal has further held that the evidence collected by the Income Tax Officer indicated that there were two other persons, who were also beneficiaries and the statement of the seller which was recorded behind the back of the assessee could not have been relied upon for the purpose of holding that the leproscopic instrument was not sold to the trust. The Tribunal found that rental income was not disproportionate to the cost of the instrument and that income of

the trust was separately subjected to tax which was proper. On going through the papers forming part of the present applications, we find that the above findings are pure findings of fact based on appraisal of relevant evidence. The revenue is not able to show that any material evidence was ignored by the Tribunal or any evidence not legally required to be considered was taken into consideration by the Tribunal. No misapplication of legal provisions is claimed. The finding of fact recorded by the Tribunal is also not shown to be vitiated in any other manner. In *K. Ravindranathan Nair v. CIT* (2001) 19 DTC 46 (SC) (Full Report): (2001) 247 ITR 178, the Supreme Court has ruled that it is the Tribunal which is the final fact-finding authority and a decision on facts of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal. In these reference applications, no such question is suggested by the applicant. Under the circumstances, in our view, no question of law as suggested in the applications arises for our consideration and, therefore, the direction claimed in the applications cannot be granted. We may state that in *Prem Family Private (Specific) Trust Vs. Commissioner of Income Tax*, the Supreme Court has held that when the Tribunal has passed an order regarding genuineness of trust, question involved in such order being purely a question of fact, the High Court should not allow the revenue's application u/s 256(2). On overall view of the matter, we are satisfied that the prayer made in the applications cannot be granted and the applications deserve to be rejected.

For the foregoing reasons, the applications fail and are rejected. Rule is discharged in each application, with no order with no order as to costs.