(1971) 03 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 9 of 1966

Commissioner of Income Tax APPELLANT

Vs

Gian Chand RESPONDENT

Date of Decision : 22-03-1971

Acts Referred:
Income Tax Act, 1961 — Section 64

Citation : (1973) 87 ITR 288

Hon'ble Judges : Gopal Singh, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : D.N. Awasthy and B.S. Gupta, for the Appellant; Bal Raj Kohli and Ram Rang, for the Respondent

Judgement

March 22, 1971

1. By its order dated the 10th of December, 1965, the Income Tax Appellate Tribunal, Delhi Bench " B ", has referred the following question of law for our opinion:

" Whether interest earned by a minor on a sum deposited by him with a firm to the benefits of which he has been admitted and in which his father is a partner, is liable to be included in the income of his father by virtue of Section 64(ii) of the Income Tax Act, 1961 ? "

2. The facts giving rise to the question may now be stated. In order to appreciate the facts, a short genealogical table would be helpful. Gian Chand has three sons--Kishore Chand, major, Vir Vijay, minor, and Vaneet Raja, minor. The joint Hindu family of the father and sons had a share in the partnership known as Kishanchand Gianchand. The joint family was represented by the karta, Gianchand. The other partners of this firm were Kidarnath, Anant Ram and Randhir Kumar. All the three other partners, besides the Hindu undivided family, had one-fifth share. The share of the Hindu undivided family was four-fifths. On the 31st of March, 1958, a partial partition was effected amongst the members

of the Hindu undivided family. Each of the four members divided the four-fifths in equal shares. The very next day, on 1st of April, 1958, a fresh deed of partnership was executed. The three other partners, Kidarnath and others, along with Gianchand and Kishore Chand, constituted the partnership. The share of Kidarnath and others was one-fifth, of Gian Chand one-fifth and of Kishore Chand one-fifth. The two minor sons of Gian Chand, Vir Vijay and Vaneet Raja, were admitted to the benefit of the partnership and they were entitled to the profits of the partnership to the extent of one-fifth each. As a result of the partial partition the share of each of the two;minors was determined at Rs. 55,820.77. Admittedly, this amount remained in credit with the new partnership that came into being on 1st of April, 1958. In the assessment year 1962-63, the total interest on the amount that stood to the credit of the minors in the books of the firm amounted to Rs. 12,316. Rs. 6,698 was the interest which had accrued on the original amount standing to the credit of the minors. It was conceded by the assessee that this amount was liable to be taxed u/s 64(ii) of the Act, but a contention was raised that an amount of Rs. 5,618 was not liable to tax in his hands and, to that amount, Section 64(ii) had no application. This contention was rejected by the Income Tax Officer and the entire amount of Rs. 12,316 was included in the income of the assessee, Gian Chand. In the appeal taken to the Appellate Assistant Commissioner by Gian Chand, the contention raised was that the income of the minors by way of interest from the partnership firm could not be included in the income of the appellant. An alternative contention was raised that the interest on accretions in the accounts of the said minors could not be taxed in the hands of the assessee. The Appellate Assistant Commissioner, basing himself on the decision of the Madras High Court in S. Srinivasan Vs. Commissioner of Income Tax, Coimbatore, wherein the Madras High Court had dissented from the decision of the Bombay High Court in Bhogilal Laherchand Vs. Commissioner of Income Tax, Bombay City, rejected the appeal. The assessee prepared a further appeal to the Income Tax Appellate Tribunal, and the Tribunal, after stating the facts, observed as follows :

"The fact that the minors have not contributed any capital and the fact that the dispute relates to the interest earned on the aforesaid deposits in the accounts of the two minors on partial partition of the assessee-Hindu undivided family is undisputed. It is also an undisputed position that both these amounts represent deposits as distinct from capital. The position is also otherwise abundantly clear from the relevant clause of the partnership deed referred to above. The minors are under no obligation to contribute any capital and there is no evidence to suggest that they contributed any capital as such."

3. It was assumed, however, that the amount standing to the credit of the minors was either deposited by them with the firm or was advanced by them to the firm. There is no evidence on the record on which this finding can be supported. There is no dispute that if the amount was deposited by the minors with the firm, or was advanced by way of loan to the firm, the interest earned thereon would not be liable to tax in the hands of the asseseee u/s 64(ii) of the

Income Tax Act, 1961. The real question that the Tribunal had to determine was missed by them, namely, in what manner the monies that fell to the share of the minors after partial partition of the Hindu undivided family were dealt with. If those amounts were the consideration for their getting the benefit of the partnership that was constituted on 1st of April, 1958, the amounts would certainly be liable to tax in the hands of the assessee in view of the decision of the Supreme Court in S. Srinivasan Vs. Commissioner of Income Tax, Madras, . But, if those amounts were invested by the minors and had nothing to do with their being conferred benefits in the partnership constituted on 1st of April, 1958, the interest earned by those amounts would not be liable to tax in the hands of the assessee. There is no evidence on the record which would disclose the true nature of the transaction and, therefore, it is not possible for us to answer the question referred to us without having elucidation on this aspect of the matter. It is significant that the Tribunal treated part of the interest as having been earned on the investment made by the minors in the capital of the firm and part on account of accretions to that capital. It is not clear if the Tribunal was of the view that the accretions were, in fact, the deposits made by the minors and not accretions to the investment of the capital by the minors. This clarification would enable us to answer the question referred to us in a proper manner. The use of the word " deposit " in the question is rather unfortunate. In fact, the word " credit " should have really replaced the word " deposit ". For the reasons recorded above, we send back the case to the Tribunal for a better statement of the case in the light of the observations made above. The Tribunal should submit the case back to this court within a period of three months from the date it receives this order.

JUDGMENT

6th Augist. 1971

4. This order should be read in continuation of our order dated March 22, 1971, by which we called for a supplementary statement of the case. The Tribunal has sent a supplementary statement of the case and the relevant part of the same is as follows :

"There is no separate consolidated ''capital account'' as such in the books of accounts of the firm, M/s. Kishan Chand Gian Chand. We mean that there is no separate capital account called as such in the books as in the case of companies. The account of the partners as well as the minors admitted to the benefits of the partnership appear in the books of accounts as such. They are made of initial capital, subsequent accretions by way of profit and interest, withdrawals, minor deposits, etc. Their correct description would be capital-cum-current account.

The capital at the time of original setting of the business on April 1, 1953, recorded in the books of accounts as being the credit balances appearing in the accounts of Shri Vir Vijay, opens with a credit balance of Rs. 56,693. Similarly, on April 1, 1958, the account of Shri Vaneet Raja opens with a credit balance of Rs.

55,820.77. It appears that there is an agreement between the assessee and the revenue that the interest pertaining to this sum, viz., Rs. 55,820.77, would be includible in the income of Shri Gian Chand, their father, u/s 64 of the Income Tax Act."

5. After finding these facts the Tribunal recorded their findings as under:

" After carefully reading the books of account we are of the opinion that the closest word that would cover the sums would be '' accretions ''. By the word '' accretions'' we mean the profits, if any, and interest credited to the account of Shri Vir Vijay which opened with the sum of Rs. 56,963. Similarly, the expression '' accretion'' means the profits and interest, if any, credited to the account of Shri Vaneet Raja on the sum of Rs. 55,820.77 appearing on April 1, 1958. And, therefore, the question is whether accretion to capital is itself capital :

To sum up :--

(1) Vir Vijay:

(i) The sum of Rs. 56,693 on April 1, 1958, is the initial capital contribution of Vir Vijay.

(ii) The subsequent credits are '' accretions '' thereto.

(iii) There is no specific or written agreement on behalf of Vir Vijay and the partnership, M/s. Kishan Chand Gian Chand, as to whether they would be in the nature of capital or in the nature of credit-in-account.

(iv) They arise from the original capital contribution. It will not be strictly appropriate to call them as voluntary deposits. Similarly, it will not be strictly correct to call them as capital. The word ''accretion'' will properly reflect their true nature.

(2) Shri Vaneet Raja :

(i) The sum of Rs. 55,82077 on April 1, 1958, is the undisputed capital contribution of Shri Vaneet Raja.

(ii) The subsequent credits are '' accretions '' thereto.

(iii) There is no specific or written agreement on behalf of Shri Vaneet Raja and the partnership, M/s. Kishan Chand Gian Chand, as to whether they would be in the nature of capital or in the nature of credit-in-account.

(iv) They arise from the original contribution. It will not be strictly proper to call them as voluntary deposits. Similarly, it will not be strictly correct to call them as capital. The word '' accretions'' will properly reflect their true nature.

(v) The interest on accretions and the two accounts taken together amount to Rs. 5,618. This is the item in dispute."

6. Thus, from the supplementary statement of the case it is clear that the

interest on accretions on the undisputed capital amounting to Rs. 5,618 is neither the capital nor a loan by the minors to the partnership and fairly and squarely falls within Section 64(ii) of the Income Tax Act, 1961. The view we take of the matter finds ample support from the decision of the Supreme Court in S. Srinivasan v. Commissioner of Income Tax, which is as follows :

" Learned counsel appearing for the appellant mainly argued before us the second question and urged that though the profits earned from the partnership by the wife and the minor sons of the appellant were undoubtedly income arising to them directly from the partnership of the wife in the firm or the admission of the minors to the benefits of the partnership in the firm, the interest accruing on the accumulated profits should not be held to arise either directly or indirectly from the same source. The argument was that the accumulated profits belonging to the wife and the minor sons should be held to be in the nature of deposits made by them with the firm, or in the nature of loans advanced by them to the firm, and interest earned on such deposits or loans can have no relationship with the membership of the firm of the wife or the admission to the benefits of the partnership of the minor sons. It appears to us that these accumulated profits remaining in the Hands of the firm cannot, on any principle, be equated with deposits made or loans advanced. The profits accumulated to the credit of the wife and the minor sons, because they did not draw their share of profits when distribution of profits took place, and allowed these profits to remain with the firm ; but there is no suggestion at all that, at that stage, either the wife or the minor sons, or anyone on their behalf, purported to enter into an arrangement with the firm to keep these accumulated profits as deposits. Similarly, there was no such contract which could convert those accumulations into loans advanced to the firm by these persons, The facts and circumstances indicate that the wife and the minor sons had earned these profits because of their membership of the firm or because of their admission to the '' benefits '' of the firm, and having earned these profits in that capacity, they allowed the use of their profits to the firm without any specific arrangement as would naturally have been entered into if these funds had belonged to a stranger. They let the firm use funds of theirs because they had interest in the profits of the firm. These facts also show that the use of these moneys was allowed to the firm without asking for any interest, and it was only at a later stage that the three partners of the firm decided to give interest on these amounts. When the decision was taken to give interest, the nature of the funds did not change. They did not get converted into deposits or loans. They still remained accumulations belonging to a partner or persons admitted to the benefits of the partnership and allowed to be used by the firm. The interest also appears to have been allowed by the firm simply because these funds belonged either to a partner or the minors who had been admitted to the benefits of the partnership. It is thus clear that the interest at least indirectly arose and accrued to the wife and the minor sons because of their capacity mentioned in Section 16(3)(a)(i) and (ii) in the Income Tax Act."

7. Mr. Kohli, learned counsel for the assessee, in the first instance contended that

the minors were under no obligation to contribute any capital in the partnership. This contention is contrary to the true nature of the partnership agreement. The initial capital of the partnership consisted of the shares that had been allotted to the members of the joint family on a partial partition of the Hindu undivided family including the minors. What the partnership deed provided was that no further capital would be provided by the minors. In fact, the assessee''s case was that the initial capital had been provided by the minors. However, it was maintained that the interest and profits earned on that capital are in the nature of further capital contribution. But this is not so. There was no arrangement between the minors and the partners that any accretion on the original capital or the initial capital would be treated either as further capital contribution of or as loan from the minors to the firm. In the absence of this arrangement the observations of the Supreme Court in S. Srinivasan''s case would fully apply. On the better statement of the case by the Tribunal there is no escape from it.

8. Mr. Kohli then urged that the Tribunal was in error in taking additional evidence in the shape of entries from the account books and he bases himself on Commissioner of Income Tax v. Premji Bhimji. Even this contention is not correct. The Tribunal did not take any additional evidence. It merely made reference to the evidence that was before the Income Tax Officer. It cannot be disputed that the account books were before the Income Tax Officer and so also the partnership deed. The Tribunal merely asked those documents to be produced again to enable it to make a correct statement of the case. Therefore, this case does not fall within the rule laid down by the Supreme Court in Commissioner of Income Tax, West Bengal Vs. Premji Bhimji, .

No other contention has been advanced.

9. For the reasons recorded above, we answer the question referred to us in the affirmative, that is, in favour of the department and against the assessee. There will be no order as to costs.

