
(1993) 07 AHC CK 0045
In the Allahabad High Court
Case No : IT Application No. 297 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Haji Abdul Wajid

RESPONDENT

Date of Decision : 15-07-1993

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 64(1)(iv), 69

Citation : (1994) 72 TAXMAN 150

Hon'ble Judges : V.N. Khare, J; R.K. Gulati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Gulati, J.—This is an application u/s 256(2) of the income tax Act, 1961 ("the Act") filed at the instance of the Commissioner, Lucknow. The applicant seeks a direction to the Tribunal, Delhi Bench "A", Delhi to refer the following two questions for the opinion of this Hon"ble Court:

1. Whether, on the facts and in the circumstances of the case, the learned Tribunal was, in law, justified in confirming the deletion of addition of Rs. 18,000 by the Dy. Commissioner (Appeals) added by the Assessing Officer on account of income from other sources?
2. Whether, on the facts and in the circumstances of the case, the learned Tribunal was justified in law in upholding the deletion of addition of Rs. 55,000 by the Dy. CIT (A) assessed by the Assessing Officer on account of income from rent from house property ?

Having heard the learned counsels for the parties, we are not satisfied that the order of the Tribunal gives rise to any question of law. The amount of Rs. 18,000 referred to in the first question was brought to tax in the hands of the assessee u/s 69 of the Act under the head "Income from other sources". The said addition was deleted on the finding that the amount in question did not represent a fresh deposit, but on the contrary it was available to the assessee out of earlier

withdrawals made by him from a firm where he was one of the partners. The assessee explained that he had withdrawn three amounts of Rs. 18,000, Rs. 25,000 and Rs. 16,000 between December 1981 to March 1982 on three different dates. These amounts were given to certain persons for the construction of a house property by them. Out of the said advance a sum of Rs. 18,000 was returned to the assessee which he redeposited with the firm and for which his personal account was credited. In support of his case, the assessee filed affidavits of the persons to whom the advances were made. Those persons were also examined by the ITO, who acknowledged the fact of having received the aforesaid amount and stated that the sum of Rs. 18,000 was returned to the assessee. The Deputy Commissioner (Appeals), Moradabad, the first appellate authority, as well as the Tribunal on second appeal by the revenue, accepted the case of the assessee.

The finding recorded by the Tribunal that the amount in question is covered by the earlier withdrawals is essentially a question of fact and does not give rise to any question of law.

2. Now coming to the second question, the amount of Rs. 55,000 which represents the income from a house property earned by the wife of the assessee was brought to tax in the hands of the assessee on the allegation that the income in question in fact belonged to the assessee and his wife was only a "Benami" for him. Alternatively, it was also held that the amount was liable to be assessed in the hands of the assessee u/s 64(1)(iv) of the Act, being the income which accrued from the amounts indirectly transferred to the spouse and invested in the construction of the house in question.

3. The addition so made on both the grounds did not find favour with either of the two appellate authorities including the Tribunal.

4. The question whether a person is a "Benami" for another or not is essentially a question of fact. Likewise, on the appreciation of evidence, that was placed on record, the Tribunal has found as a fact that there was no transfer of any amount directly or indirectly by the assessee to his wife which may attract the application of section 64(1)(iv). Here again the finding recorded by the Tribunal is based on appreciation of evidence and does not give rise to any question of law.

5. Accordingly, the order of Tribunal is concluded by findings of fact and no question of law arises from its order. The application is without any merit and is accordingly, rejected with costs.