

(1996) 04 MP CK 0046

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 544 of 1990

Commissioner of Income Tax

APPELLANT

Vs

Harkeshdas

RESPONDENT

Date of Decision : 03-04-1996

Acts Referred:

Income Tax Act, 1961 — Section 64(1)

Citation : (1997) 228 ITR 289

Hon'ble Judges : A.K. Mathur, C.J.; S.K. Kulshrestha, J

Bench : Division Bench

Advocate : Abhay Sapre, for the Appellant; B.L. Nema, for the Respondent

Judgement

S.K. Kulshrestha, J.—The Income Tax Appellate Tribunal, Nagpur Bench, Nagpur, has referred the following question of law for the opinion of this court, on an application u/s 256(1) of the Income Tax Act, 1961, made by the Revenue, as arising out of order dated October 15, 1987, of the Tribunal in I. T. A. No. 599/ Nag of 1984 :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the spouse's income is not assessable in the hands of the assessee even after the Taxation Laws (Amendment) Act, 1975, adopting the same principles as were laid down by the Supreme Court in the case of Commissioner of Income Tax, West Bengal, Calcutta Vs. Prem Bhai Parekh and Others, ?"

2. The assessee is an individual, who was assessed for the assessment year 1978-79. On November 22, 1969, the assessee gifted a sum of Rs. 72,000 to his wife, Smt. Ramkalidevi, who on August 25, 1974, invested the amount in the firm of Satyanarayana Ashokkumar. Later, a sum of Rs. 45,000 was withdrawn by her from the said firm and invested in the firm of Santosh Rice and Dal Mills, of which he became a partner having a 20 per cent. share.

3. The Income Tax Officer brought to charge the income accruing to the spouse

of the assessee, in the hands of the assessee u/s 64(1) as amended by the Taxation Laws (Amendment) Act, 1975. The assessee was unsuccessful in the appeal before the Appellate Assistant Commissioner but on appeal having been filed before the Tribunal, the Tribunal held that Explanation 3 to Section 64(1) of the Act did not alter the position of law and allowed the assessee's appeal. The Revenue thereafter filed an application u/s 256(1) of the Act, for reference of the question arising out of the order of the Tribunal and, hence, the said question has been referred.

4. We have heard learned counsel for the parties and perused the record.

5. The relevant provisions of Section 64(1) of the Act, during the period in question, read as under :

" 64. (1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly

(iv) subject to the provisions of Clause (i) of Section 27, in a case not falling under Clause (i) of this sub-section, to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart ;

(v) subject to the provisions of Clause (i) of Section 27, in a case not falling under Clause (iii) of this sub-section, to a minor child (not being a married daughter) of such individual, from assets transferred directly or indirectly to the minor child by such individual otherwise than for adequate consideration. . . . ;

Explanation 3. -- For the purposes of Clauses (iv) and (v), where the assets transferred directly or indirectly by an individual to his spouse or minor child are invested by the spouse or minor child in any business, that part of the income arising out of the business to the spouse or minor child in any previous year, which bears the same proportion to the income of the spouse or minor child from the business as the value of the assets aforesaid as on the first day of the previous year bears to the total investment in the business by the spouse or the minor child as on the said day, shall be included in the total income of the individual in that previous year."

6. The above provisions very clearly lay down that where the assets transferred directly or indirectly by an individual to his spouse are invested by the spouse in any business, the income arising out of the business to the spouse in any previous year bearing proportion to the value of the assets so invested as on the first day of the previous year, shall be included in the total income of the individual in that previous year who has transferred the assets to the spouse. The excepted category of assets are those which have been transferred for adequate consideration or in connection with an agreement to live apart. It is clear from the statement of the case that the assets were neither transferred for any consideration nor in connection with an agreement to live apart and, therefore, the income arising out of the investment of such assets to the spouse

was taxable in the hands of the assessee only. The Tribunal has not properly appreciated the legal position emerging from the plain reading of the provision made in Section 64 and the Tribunal was, therefore, wrong in holding that the income of the spouse was not assessable in the hands of the assessee. The ratio of the case of Commissioner of Income Tax, West Bengal, Calcutta Vs. Prem Bhai Parekh and Others, , in our opinion, did not alter the position in any manner where the facts clearly established the income from the assets transferred and attracted the applicability of Section 64(1), read in conjunction with its Explanation 3.

7. In this view of the matter, the question referred to us is answered in favour of the Revenue and against the assessee.