
(2005) 02 AHC CK 0070

In the Allahabad High Court

Case No : Income-tax Reference No. 262 of 1991

Commissioner of Income Tax

APPELLANT

Vs

H.K. Anand

RESPONDENT

Date of Decision : 02-02-2005

Acts Referred:

Income Tax Act, 1961 — Section 147, 256(1), 64
Taxation Laws (Amendment) Act, 1975 — Section 64

Citation : (2005) 276 ITR 296 : (2006) 150 TAXMAN 15

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; None, for the Respondent

Judgement

1. The Income Tax Appellate Tribunal, Delhi, has referred the following question of law u/s 256(1) of the Income Tax Act, 1961 hereinafter referred to as "the Act", for the opinion to this court :

"Whether, on the facts and in the circumstances of the case, the hon"ble Tribunal was legally correct to hold that there was no obligation on the assessee to disclose the income which arose to his wife and so the assessments could not be reopened u/s 147(a) of the Income Tax Act, 1961 ?"

The reference relates to the assessment years 1978-79, 1980-81 to 1982-83.

Briefly stated the facts giving rise to the present reference are as follows :

The respondent-assessee is assessed under the Income Tax Act in the status of an individual. He was a partner in the firm--M/ Sarang Products, representing his Hindu undivided family as its karta. His wife, Smt. Prabha Anand was also a partner in that firm. In the return of income filed by the respondent he had not declared the share income of his wife. In the assessments the share income arising to the wife of the respondent from the firm--M/s. Sarang Products was not included in the total income of the respondent. Subsequently, proceeding u/s 147(a) of the Act was initiated and the assessment was reopened by the Income

Tax Officer on the ground that the share income arising to the wife from the firm--M/s. Sarang Products which was liable to be included in the total income of the respondent under the provisions of Section 64(1)(i) of the Act had escaped assessment. In the reassessment proceedings the Income Tax Officer while passing the order included the share income of the wife in the total income of the respondent. Feeling aggrieved the respondent preferred separate appeal before the Appellate Assistant Commissioner. The validity of the reopening of the assessment u/s 147(a) of the Act was also challenged on the ground that the condition precedent for taking action under the aforesaid section was not satisfied in the facts of the case. It was contended on behalf of the respondent that all the material facts necessary for his assessment were available with the Income Tax Officer at the time of making original assessment and, therefore, reopening of the assessment u/s 147(a) of the Act was bad in law. The Appellate Assistant Commissioner has upheld the validity of the action u/s 147(a) of the Act on the following grounds :

"I have carefully considered the submissions made by learned counsel for the appellant. I do not agree with him because the position regarding the clubbing of income in such type of cases has been settled down by the hon"ble Allahabad High Court in Madho Prasad Vs. Commissioner of Income Tax, and since such clubbing was not done by the Income Tax Officer. I am of the opinion that the action u/s 147(a) was rightly initiated by him. The appeal on this point is, therefore, rejected."

Feeling aggrieved the respondent preferred second appeal before the Tribunal. The Tribunal after taking into consideration the materials on record and also the provisions of Section 64(1)(i) of the Act was of the view that there was no obligation on the respondent to disclose the share income arising to his wife and, as such, the respondent's not disclosing the share income of his wife would not entitle the Department to take action u/s 147(a) of the Act. The orders of the reassessment as also the Appellate Assistant Commissioner were set aside.

We have heard Sri A. N. Mahajan, learned standing counsel for the Revenue. Nobody has appeared on behalf of the respondent.

We find that during the relevant period Section 64(1)(i) of the Act stood as under :

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

(i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner."

It may be mentioned here that Clause (ii) of Sub-section (1) of Section 64 prior to its amendment by the Taxation Laws (Amendment) Act, 1975, with effect from April 1, 1976, stood as follows :

"(ii) to a minor child of such individual from the admission of the minor to the

benefits of partnership in a firm in which such individual is a partner."

Clauses (i) and (ii) of Sub-section (1) of Section 64 are similarly worded. Clause (ii) to the above section came up for consideration before the apex court in the case of Commissioner of Income Tax, Ludhiana, etc.etc. Vs. Shri Om Prakash, etc.etc., in which the apex court has held that where a person is a partner in a partnership firm not in his individual capacity but as the karta of the Hindu undivided family, neither the income accruing to his wife on account of her being a partner in the same partnership firm nor the income accruing to his minor children on account of their being admitted to the benefits of such partnership firm, can be included in the total income of such person neither in his individual assessment nor in the assessment of the Hindu undivided family.

In view of the principle laid down by the apex court we are of the considered opinion that it was not required by the respondent-assessee to disclose the income which arose to his wife in the partnership firm in his return. It may be mentioned here that in the Income Tax Act the husband and wife are treated to be separate taxable personalities subject to the provisions of the Act, as such the provisions of Section 64(1)(i) of the Act are not applicable. There was no question of inclusion of the income of the wife at the hands of the husband. In view of the foregoing discussions, we are of the considered opinion that the proceeding u/s 147(a) of the Act cannot be reopened by the assessing authority.

We, accordingly, answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. However, there shall be no order as to costs.