(2005) 01 AHC CK 0193

In the Allahabad High Court

Case No : IT Ref. No''s. 62 and 209 of 1988

Commissioner of Income Tax — APPELLANT

Vs

Jitendra Kumar (HUF) — RESPONDENT

Date of Decision : 06-01-2005

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 64
Wealth Tax Act, 1957 — Section 27(1)

Citation : (2006) 205 CTR 181

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

Bench : Division Bench

Advocate : Sambhu Chopra, for the Appellant; Shakeel Ahmad, for the Respondent

Final Decision : Dismissed

Judgement

1. In IT Ref. No. 62 of 1988, which relates to the asst. yrs. 1981-82 and 1982-83, the Tribunal has referred the following two questions of law u/s 256(1) of the IT Act, 1961, hereinafter referred to as the Act, for opinion to This court;

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the share income from the firm is not assessable in the hands of the assessee-HUF?

(2) Whether on the facts and in the circumstances of the case, the Hon''ble Tribunal was justified in holding that the share income from the firm M/s Ratan Cold Storage is assessable substantively in the hands of the individual?

2. In IT Ref. No. 209 of 1988, which relates to the asst. yr. 1983-84, the Tribunal has referred the following question of law u/s 256(1) of the Act for opinion to This court:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the share income from the firm is not assessable in the hands of the assessee-HUF?

Whereas in the WT Ref, No. 70 of 1988 the Tribunal, Allahabad, has referred the following question of law u/s 27(1) of the WT Act, 1957, hereinafter referred to as the WT Act, for opinion to This court. This reference relates to the asst. yrs. 1980-81 and 1981-82.

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the capital invested in M/s Ratan Cold Storage together with appreciated value of assets in the said firm was not assessable in the hands of the assessee in the status of HUF?

3. As all the three references relate to the same respondent/assessee and raise a common question of law, they have been heard together and are being decided by a common judgment.

4. Briefly stated, the facts giving rise to the present references are as follows:

The respondent/assessee was coparcener in the HUF, which was partitioned on 1st Dec, 1964. At that time Jitendra Kumar was a minor. He received a sum of Rs. 45,100 on account of partition in the HUF, which he invested in the firm M/s Ratan Cold Storage on which the firm had paid interest. He was also admitted to the benefits of the partnership firm with a share of 24 paise in a rupee in the profits. He attained the age of majority on 4th Dec, 1976, whereafter, he became full-fledged partner in the firm. He was married on 22nd Jan., 1980. Up till 22nd Jan., 1980, Jitendra Kumar was showing the entire income i.e., the share in the profit including its accretion and the other income received by him as also the interest on the amount of Rs. 45,100 invested by him in the firm as his individual income, During the period he was a minor the income earned by him from the firm was being subjected to tax u/s 64 of the Act at the hands of his father. After his marriage, Jitendra Kumar filed two separate returns of income and wealth. In the return filed in the status of individual he had disclosed the share of profit in the firm, the interest accrued on the amount of profit invested in the firm as also his other individual incomes. However, in the return filed in the status of HUF he had disclosed the amount of interest paid by the firm on the initial deposit of Rs. 45,100 and accretion thereof. The assessing authority while making assessment under the IT Act and WT Act, included the entire income and wealth disclosed by Jitendra Kumar in the status of individual to that belonging to HUF. He also made protective assessments in the status of individual as the returns of income and wealth have been filed in that status.

5. Feeling aggrieved, the assessee preferred separate appeals before the appellate authority, who upheld the claim and directed that the protective assessment made in the status of individual be converted into substantive assessment and deleted the additions made in the status of HUF which order has been upheld by the Tribunal.

6. We have heard Sri Shambhu Chopra, learned standing counsel for the Revenue, Sri Shakeel Ahmed has filed his appearance on behalf of the respondent/assessee and have perused the order of the Tribunal.

7. It is not in dispute that as a result of partition in the HUF, the HUF came to an end and Jitendra Kumar, while he was a minor was admitted to the benefits of partnership firm in his individual capacity as on that point of time there was no question of his representing his HUF. Even at the time when he became major on 4th Dec, 1976, and became full-fledged partner in the firm, he was representing his individual capacity and not his HUF as at that time no HUF was in existence. Thus, the share in profit which he earned from the firm and interest, etc. on the amount of profit reinvested by him in the firm was to be treated as his individual income and not that of a HUF. After his marriage on 22nd Jan., 1980, the HUF came into existence and, therefore, the initial deposit of Rs. 45,100 and all accretion thereof, which Jitendra Kumar had received at the time of partition of the HUF in the year 1964 became the HUF property and had rightly been taxed as income/wealth of the HUF.

8. In view of the foregoing discussions, we do not find any legal infirmity in the order of the Tribunal. We accordingly, answer the questions referred to us in the affirmative i.e., in favour of the and against the Revenue. There shall be no order as to costs.

