
(1996) 03 MP CK 0041

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No's. 219 to 221 of 1991

Commissioner of Income Tax

APPELLANT

Vs

J.P. Dubey

RESPONDENT

Date of Decision : 08-03-1996

Acts Referred:

Income Tax Act, 1961 — Section 256(2)

Citation : (1997) 140 CTR 235 : (1997) 223 ITR 451

Hon'ble Judges : N.K. Jain, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; G.M. Chaphekar and S.S. Samvatsar, for the Respondent

Judgement

N. K. Jain, J.—This order shall dispose of the Department's applications u/s 256(2) of the Income Tax Act, 1961 (for short, "the Act"), made in all the three aforesaid miscellaneous civil cases to direct the Income Tax Appellate Tribunal, Indore, to refer the undernoted three questions said to be of law to this court for its opinion arising out of its common order dated February 16, 1990, passed in I. T. A. Nos. 447, 448 and 449/(Ind) of 1986 and its refusal to refer the questions by order dated November 21, 1990, passed in R. As. Nos. 104, 105 and 106/(Ind) of 1990 :

" (i) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in deleting the addition of Rs. 78,000 on account of unexplained investment in the property in the name of the assessee's wife when it was clearly established that the gift by Shri Devkinandan Choubey to the assessee's wife was false as the said person had very limited means ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in coming to the conclusion that the assessee was not the owner of the property in question when the assessee's wife had no means to invest merely on the ground of alleged loan of Rs. 8,000 by the assessee and savings with her of Rs. 4,554 when the major amount of investment by her was not proved ?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the income from the said property was not assessable in the hands of the assessee when his wife was only a benami ?"

2. The assessee is a Sub-Divisional Officer of Irrigation Department of the Government of Madhya Pradesh. The assessment years involved are 1982-83, 1983-84 and 1984-85. In the course of assessment proceedings for the assessment year 1982-85, the Income Tax Officer made enquiries regarding house property which stood in the name of Smt. Kiran Dubey, the wife of the assessee, purchased from the Madhya Pradesh Housing Board, for a sum of Rs. 82,564. According to the assessee, the house was purchased by his wife and the source of investment was as under :

Rs.

(1)

Gift from Shri Devkinandan Choubey, uncle of Smt. Kiran Dubey

70,000

(2)

Loan from the assessee

8,000

(3)

Savings of Smt. Kiran Dubey

4,564

82,564

3. On enquiries the Income Tax Officer found that the alleged gift by Shri Devkinandan Choubey was not genuine inasmuch as the donor was not in a position to make such a gift. The Income Tax Officer came to the conclusion that the said house was purchased by the assessee himself benami in the name of his wife. He, therefore, added Rs. 78,000 and also Rs. 8,000, the alleged loan advance made by the assessee to his wife, to the income of the assessee in the assessment year 1982-83. In the subsequent assessment years 1983-84 and 1984-85, the rental income of the house was also added to the income of the assessee.

4. On appeal, the Appellate Assistant Commissioner vide his order dated February 2, 1986, sustained the addition of Rs. 78,000 only but deleted the addition of Rs. 8,000 and maintained the assessment of income from the said property. In second appeal, the Tribunal by its common order dated February 16, 1990, reversed the concurrent findings of the two authorities below about the ownership of the property, deleting all the aforesaid additions. The Tribunal also

rejected the Department's application u/s 256(1) of the Act for stating the case and referring the said questions of law for the opinion of this court.

5. The Department has, therefore, made these applications u/s 256(2) of the Act for directing the Tribunal to state the case and refer the questions to this court on the following grounds :

(1) That, the Tribunal erred in law in holding that the poverty stricken uncle could be held to have advanced money to the wife of the assessee, when he was unable to provide for his own children.

(2) That, the mere payment of gift-tax could not create funds either in the hands of the wife of the assessee or the alleged donor uncle and as such this fact did not entitle the Tribunal to quash the addition.

(3) That, the status and service of the assessee were sufficient to generate the income, out of which the property in the name of the wife was purchased. The Tribunal erroneously understood the doctrine of burden of proof and reversed the assessments duly made.

6. We have heard Shri D. D. Vyas, learned counsel for the applicant? Department, and Shri G. M. Chaphekar, learned senior counsel appearing with Shri S. S. Samvatsar, advocate, for the non-applicant/assessee.

7. The Tribunal's order is obviously based on appreciation of facts. There could be no dispute with the finding of the Tribunal that part of consideration, i.e., Rs. 4,564, was paid by the wife of the assessee and that Rs. 8,000 were advanced to her by the assessee himself. We find ourselves in full agreement with the Tribunal that the burden of proof was on the Department to show that the rest of the consideration amount was also paid by the assessee himself and that the wife was a mere benamidar for her husband. The Tribunal found that no attempt was made on behalf of the Department to lead evidence to show that the assessee-husband had any funds outside the known sources of his income from which he could have contributed the sum of Rs. 70,000 to his wife for purchasing the said house. The Tribunal relied upon the decision in the case of L. SHEO NARAIN LAL, IN RE., of the Allahabad High Court and held that merely because the Income Tax Officer did not consider the story of gift by the uncle to her niece to be believable, it was not enough to come to the conclusion that the rest of the sale consideration, i.e., Rs. 70,000 must have been contributed by the assessee-husband. All these findings of the Tribunal, in our opinion, are findings of fact based on appreciation of evidence and as such no referable question of law arises from the order of the Tribunal.

8. In Commissioner of Income Tax (Central), Calcutta Vs. Ashoka Marketing Ltd., , the Supreme Court has held (headnote) :

" That, on the facts, whether or not the assessee had concealed his income was a question to be decided on the facts of the case, and that since in this case the decision was based on the respondent's agreement with the D. J. and Co., which

the Tribunal accepted as true, no question of law arose from the order of the Tribunal."

9. Nothing substantial could be demonstrated before us so as to disclose that the findings arrived at by the Tribunal were perverse and not supported by the evidence on record. We are, therefore, satisfied that the order of the Tribunal is based on appreciation of facts and does not give rise to any referable question of law.

10. We thus dismiss the applications but without any order as to costs. Counsel fee is, however, fixed at Rs. 750 for each side, in each case, if certified.

11. This order be retained in Miscellaneous Civil Case No. 219 of 1991 and a copy of each be filed in Miscellaneous Civil Cases Nos. 220 of 1991 and 221 of 1991.