
(1989) 03 CAL CK 0092

In the Calcutta High Court

Case No : Income-tax Reference No. 134 of 1982

Commissioner of Income Tax

APPELLANT

Vs

K.J. Singh

RESPONDENT

Date of Decision : 01-03-1989

Acts Referred:

Income Tax Act, 1961 — Section 64(1)

Citation : (1990) 82 CTR 181 : (1990) 184 ITR 445 : (1989) 45 TAXMAN 387

Hon'ble Judges : Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

Bench : Division Bench

Advocate : N.K. Poddar, for the Appellant; S. Chakravorty, for the Respondent

Judgement

Suhas Chandra Sen, J.—The Tribunal has referred the following question of law to this court u/s 256(1) of the Income Tax Act, 1961 ("the Act"):

"Whether, on the facts and in the circumstances of the instant case, the Tribunal was justified in holding that the share of profit in the firm of Paris Dress Makers cannot be said to have arisen to the wife from the transfer of the assessee's 1/4th share in the assets of the partnership business to her, and in that view deleting the inclusion of Rs. 17,165 in the assessee's total income u/s 64(1)(iii) of the Income Tax Act, 1961 ?"

2. In this case, the assessment year involved is 1974-75 for which the relevant accounting year is the year ending on March 31, 1974.

3. The facts found by the Tribunal as contained in the statement of case are as under :

The assessee was the owner of the property at No. 97, Golf Links, New Delhi, and he himself and his sons were partners of a firm styled as Paris Dress Makers carrying on business at Calcutta, the share of the assessee in that partnership business being one-fourth. By a gift deed dated January 30, 1973, the assessee gifted his property at No. 97, Golf Links, and also his one-fourth interest in Paris

Dress Makers to his wife, Smt. Sushil Kaur. By another deed dated February 16, 1973, the firm styled as Paris Dress Makers was reconstituted in the sense that the assessee retired from the partnership and in his place his wife to whom the assessee had already gifted his one-fourth interest was inducted as a partner of the firm. It was stipulated in that document that the assets and liabilities of the retiring partner (assessee) shall absolutely belong to the newly inducted partner (assessee's wife) and the latter was under no obligation to contribute any further capital, though she might do so at her option.

4. In the assessment for the assessment year 1974-75 the Income Tax Officer included in the assessee's total income a sum of Rs. 11,145 being the income of his wife from the property at No. 97, Golf Links, and also her one-fourth share of profit (Rs. 17,165) from the business carried on by Paris Dress Makers u/s 64(1) (iii) of the Act. In the course of the assessment proceedings, the Income Tax Officer further noticed that in the relevant previous year the assessee's wife made a further introduction of Rs. 25,000 in her capital account in the firm of Paris Dress Makers. It was explained to the Income Tax Officer that this fresh introduction of Rs. 25,000 by her in her capital account came out of her savings from out of her past income. The Income Tax Officer rejected this explanation and held that the assessee was the real owner of this money introduced in his wife's capital account, she being his benamidar and that the amount of Rs. 25,000 represented the assessee's income from undisclosed sources and added that amount in the assessee's total income.

5. Being aggrieved by the aforesaid addition, the assessee preferred an appeal before the Appellate Assistant Commissioner. That appellate authority confirmed the inclusion of the amount of Rs. 11,145 being the income from the property at No. 97, Golf Links, in the assessee's total income. The addition is not disputed by the assessee. As regards the sum of Rs. 17,165 being the one-fourth share of profit of the assessee's wife from the business of Paris Dress Makers, the Appellate Assistant Commissioner held that there was no proximate connection between the transfer by the assessee of his one-fourth interest in the capital or assets of the firm to his wife and the accrual to the latter of a share of profit in that firm. In holding so, he followed the decision of the Supreme Court in the case of Commissioner of Income Tax, West Bengal, Calcutta Vs. Prem Bhai Parekh and Others, . In that view of the matter, he deleted the addition of Rs. 17,165 from the assessee's total income. The further addition of Rs. 25,000 was also deleted by the Appellate Assistant Commissioner.

6. On further appeal, the Tribunal held that the share of profit accruing to the wife of the assessee from Paris Dress Makers was attributable to her becoming a partner and the other partners' agreeing to take her as partner and also to the firm making a profit. Such share of profit could not be said to have arisen either directly or indirectly from the transfer to her by the assessee of the assessee's one-fourth interest in the assets of the partnership business. The Tribunal confirmed the action of the Appellate Assistant Commissioner in deleting, the

addition of Rs. 17,165.

7. The only question that falls for determination is whether the income earned by the assessee's wife as her share of profit from the partnership business of Paris Dress Makers is liable to be included in the assessee's own assessment by virtue of the provisions of Section 64(1)(iii) as it stood at that time which is as under :

"Income of individual to include income of spouse, minor child, etc.--...

(iii) subject to the provisions of Clause (i) of Section 27, 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;"

8. The contention of Mr. Poddar is, where the asset transferred is money or even a share in a partnership, but the income arises out of the business carried on by the partnership, then it cannot be said that any income has arisen directly or indirectly to the assessee from the asset transferred directly or indirectly to the spouse of the assessee.

9. There is no dispute in this case that a gift was made. The gift was made to the wife. The wife, in partnership with other partners, carried on the partnership business. It is the carrying on of the business that gave rise to profits of the firm and the profits were divided among the partners. The proximate cause of the making of profit was the business activity of the partnership firm of which the wife was a partner. If it was a case of mere payment of interest on the capital employed by the wife in the partnership, the case might have been different. But the finding of the Tribunal is that as a result of the business activity of the partnership, profits accrued and the profits were apportioned amongst the partners.

10. In the case of Commissioner of Income Tax, West Bengal, Calcutta Vs. Prem Bhai Parekh and Others, , it was observed that:

"Before any income of a minor child can be brought within the scope of Section 16(3)(a)(iv), it must be established that the said income arose directly or indirectly from assets transferred directly or indirectly by his father. There is no dispute that the assessee had transferred to each of his minor sons, a sum of Rs. 75,000. It may also be that the amount contributed by those minors as their share in the firm came from those amounts. But the question still remains whether it can be said that the income with which we are concerned in this case arises directly or indirectly from the assets transferred by the assessee to those minors. The connection between the gifts mentioned earlier and the income in question is a remote one. The income of the minors arose as a result of their admission to the benefits of the partnership. It is true that they were admitted to the benefits of the partnership because of the contribution made by them. But there is no nexus between the transfer of the assets and the income in question. It cannot be said that that income arose directly or indirectly from the transfer of

the assets referred to earlier. Section 16(3) of the Act created an artificial income. That section must receive strict construction as observed by this court in Commissioner of Income Tax, Gujarat Vs. Keshavlal Lallubhai Patel, . In our judgment, before an income can be held to come within the ambit of Section 16(3), it must be proved to have arisen--directly or indirectly--from a transfer of assets made by the assessee in favour of his wife or minor children. The connection between the transfer of assets and the income must be proximate. The income in question must arise as a result of the transfer and not in some manner connected with it."

11. In the instant case, the income has not arisen as a result of the transfer but as a result of the business activity pursuant to the transfer. The principle laid down by the Supreme Court in the aforesaid case was applied in the case of Prahladrai Agarwala Vs. Commissioner of Income Tax, . In this case, the wife invested some amount of money in a firm and became a partner. The wife received her share of profits of the firm. It was held by Sabyasachi Mukharji J. that such share of profits arose primarily because the partnership made a profit. That had connection with the gift but it did not arise as a result of the gift.

12. In that view of the matter, the question is answered in the affirmative and in favour of the assessee.

13. There will be no order as to costs.

Bhagabati Prasad Banerjee, J.

14. I agree.