(1990) 01 DEL CK 0024

In the Delhi High Court

Case No : Income-tax Case No. 195 of 1987

Commissioner of Income Tax APPELLANT

Vs

K.L. Bhatia RESPONDENT

Date of Decision : 10-01-1990

Acts Referred:

Citation : (1990) 84 CTR 152 : (1991) 187 ITR 644

Hon'ble Judges : C.L. Choudhary, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : D.K. Jain, for the Appellant;

Judgement

Kirpal, J.—The petitioner seeks reference of the following questions of law to this court :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has misdirected itself and acted against law in reversing its judgment given by it in its order dated June 27, 1985, in ITA No. 917/Delhi/83, when the entire material and evidence from its following observations in part 6 of the said order ?

We have considered the oral submission and perused the entire material on record including the paper book filed by the assessed''s.

2. Whether, on the facts and in the circumstances of the case, there was evidence for the Income Tax Appellate Tribunal to have come to a view different than that which was taken in order dated June 27, 1986, in ITA No. 917/Delhi/83 and for discarding the view taken in that order ?

3. Whether, on the facts and in the circumstances of the case, Tribunal has misdirected itself and erred in law in upholding the order of the Commissioner of Income Tax (Appeals) ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal has misdirected itself and acted against law in ignoring the material duly considered

by it earlier and in giving consideration to matters irrelevant for determination of the question and then holding that the assessed''s was not the real owner of the property No. E-73, Kalkaji, New Delhi ?

5. Whether, on the facts and in the circumstances of the case, Tribunal has misdirected itself and erred in law in ignoring the material duly considered by it earlier and in giving consideration to matters irrelevant for determination of the question and then holding that the investment in property No. E-73. Kalakji, New Delhi, falls to be considered in the hands of the assessed''s wife"

2. In respect of the assessment year 1976-77, the Income Tax Officer had come to the conclusion that property No. E-73, Kalkaji, New Delhi, in fact, belonged to the respondent and not to his wife. The Commissioner of Income Tax, in appeal, held that it is the wife who the owner of the property and the addition of the income in the hands of the respondent was deleted. An appeal was filed by the Revenue and, vide order date January 27, 1985, the appeal was allowed and it was held that the wife was the benamidar of the respondent. Against this, a miscellaneous application was filed by by the assessed''s and, by order dated January 30, 1986, the Tribunal recalled its earlier order dated June 27, 1985. Against the order of January 30, 1985, an application u/s 256(1) was filed which was dismissed. Thereafter an application u/s 256(2) was filed being I.T.C. No. 134 of 1987 (Commissioner of Income Tax Vs. K.L. Bhatia, . By order dated August 3, 1989, I.T.C. No. 134 of 1987 (Commissioner of Income Tax Vs. K.L. Bhatia, was allowed and the Tribunal was directed to sate the case and refer the question of law.

3. Pursuant to the order dated January 30, 1986, the Tribunal reheard to appeal and the passed a fresh order dated June 12, 1986. It is against this order that an application u/s 256(1) was filed which was dismissed and the present application u/s 256(2) has been filed. It is evident that the present proceedings are clearly connected with the reference which has been called for in I.T.C. No. 134 of 1987 (Commissioner of Income Tax Vs. K.L. Bhatia, . In view of our order in ITC No. 134 of 1987 (Commissioner of Income Tax Vs. K.L. Bhatia, , we direct the Tribunal to state the case and refer the following question of law to this court :

"Whether the Tribunal has misdirected itself and erred in upholding the order of the Commissioner of Income Tax (Appeals)"

4. According to learned counsel for the petitioner, the aforesaid question will cover all the points in issue. The petition is disposed of accordingly. There will be no order as to costs.