(2003) 09 AHC CK 0113

In the Allahabad High Court

Case No : Income-tax Reference No. 194 of 1992

Commissioner of Income Tax APPELLANT

Vs

Major B.K. Kaul RESPONDENT

Date of Decision : 30-09-2003

Acts Referred:
Income Tax Act, 1961 — Section 64(1)

Citation : (2004) 265 ITR 345 : (2004) 136 TAXMAN 411

Hon'ble Judges : Umeshwar Pandey, J;M. Katju, J

Bench : Division Bench

Judgement

1. This is a reference u/s 256(1) of the Income Tax Act, 1961, in which the following question has been referred to us for our opinion :

"Whether, on the facts and in the circumstances of the case, the learned Tribunal was, in law, justified in holding that the payment of salary to the assessee''s wife, Smt. Lajja Kaul, was not covered by the provisions of section 64(1)(ii) of the Income Tax Act, 1961 ?"

2. The assessee is an individual and the relevant assessment years are 1982-83 and 1983-84. The assessee was a war hero, who lost both his hands, in the 1971 war. He was given a Vijay Scooter Agency so that he could earn his livelihood. While framing the assessment, the Income Tax Officer noticed that the assessee had paid a salary of Rs. 1,200 per month to his wife, Smt. Lajja Kaul. The Income Tax Officer asked the assessee to explain why this salary should not be added to his income. The assessee replied that he was handicapped and disabled ex-serviceman and had to get 24 hours constant attendant to look-after his day-to-day business activities. Instead of engaging any outsider, the assessee employed his wife who was said to be an efficient worker. Section 64(1) of the Income Tax Act states :

"(1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly,--. . . (ii) to the spouse of such individual by way of salary, commission, fees or any other form of remuneration whether in cash or in kind from a concern in which such individual has a substantial interest : Provided that nothing in this clause shall apply in relation to any income arising of the spouse where the spouse possesses technical or professional qualifications and the income is solely attributable to the application of his or her technical or professional knowledge and experience."

3. In the present case, the Tribunal has found that the requirements of the proviso to Clause (ii) of Section 64(1) of the Act are satisfied. The wife of the assessee is M.A. in Economics. Hence we find no infirmity in the Tribunal''s order.

4. The question referred to us is, therefore, answered in the affirmative, i.e., in favour of the assessee and against the Department.

