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(1989) 05 P&H CK 0100

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 60 of 1984

Commissioner of Income Tax APPELLANT

Vs

Mal Chand RESPONDENT

Date of Decision : 01-05-1989

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

Citation : (1990) 1 ILR (P&H) 359 : (1989) 180 ITR 379

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : L.K. Sood, for the Appellant; Hemant Kumar, for the Respondent

Judgement

Gokal Chand Mital, J.—Mal Chand was a partner in a firm, Ram Chand Mal Chand, as a representative of his Hindu undivided family. His three minor sons were admitted to the benefits of the partnership. The question arose as to whether the income of the minor sons was to be clubbed with the income of the father in his individual status for the assessment year 1979-80. In his individual status, the assessee had no income. Whatever profit the three minor sons got from the firm, was treated as the income of the father and was brought to tax by the Income Tax Officer. The Appellate Assistant Commissioner upheld the order but, on further appeal, the Income Tax Tribunal, Amritsar, held that Section 64(1)(iii) of the Income Tax Act, 1961 (hereinafter called "the Act"), will have no application when an individual has no income at all for the purpose of computing the total income as required by the opening lines of Section 64(1) of the Act. In these circumstances, the Tribunal has referred the following question for the opinion of this court, at the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the share of income arising to the three minor sons of the assessee who were admitted to the benefits of the partnership in the firm in which the assessee was also a partner cannot be included/assessed in the hands of the assessee in his individual capacity u/s

64(1)(iii) of the Income Tax Act, 1961 ?"

2. It is true that the decision of this court in CIT v. Anand Sarup [1980] 121 ITR 873, helps the assessee but that decision was rendered on the law as it stood before April 1, 1976. Section 64 was amended with effect from April 1, 1976, by the Taxation Laws (Amendment) Act, 1975. Before the amendment was brought about with effect from April 1, 1976, the relevant portion of Section 64 was as follows :

"64. Income of individual to include income of spouse, minor child, etc.--(1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly-

(i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner ;

(ii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm in which such individual is a partner."

3. With effect from April 1, 1976, the relevant portion of Section 64 reads as follows :

"64. Income of individual to include income of spouse, minor child, etc.--(1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly-

(i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner ;

(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 to 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 ;

(iii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm."

4. While for the spouse no change has been made in Clause (i), although a new Clause (ii) has been added in regard to the spouse ; and the minor child has been dealt with in Clause (iii) in the amended provision. While in the unamended provisions, it was necessary that the admission of a minor child to the benefits of the partnership in the firm in which such an asses-see was a partner, was a prerequisite for including the income of the minor child in the income of the father, under the amended provision it is no longer necessary. That means the income of the minor has to be considered as the income of the father. A similar point arose before the Andhra Pradesh High Court in Commissioner of Income

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Tax, Visakhapatnam Vs. G. Gopal Rao and Others, , and it was held that even if the assessee does not have any income in his individual status, yet, under the amended law, the income of the minor child is to be considered as his income. Following the reasons recorded therein, with which we are in agreement, we hold that the share income relating to the three minor sons of the assessee who were admitted to the benefits of partnership in the firm in which the assessee was a partner as karta of the Hindu undivided family has to be assessed in the hands of the assessee in his individual capacity u/s 64(1)(iii) of the Act.

5. For the reasons recorded above, we answer the referred question in favour of the Revenue, in the negative, with no order as to costs.

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