(2006) 07 AHC CK 0036

In the Allahabad High Court

Commissioner of Income Tax — APPELLANT

Vs

Navneet Priya Das — RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 64(1)(ii)

Citation : (2006) 07 AHC CK 0036

Hon'ble Judges : Vikram Nath, J;R.K. Agrawal, J

Bench : Division Bench

Judgement

1. The Income Tax Appellate Tribunal has raised the following question of law, u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as ''the Act'') for opinion to this Court. The question is as follows:

Whether on the facts and in the circumstances of the case, the Appellate Tribunal, was justified in law in holding that the assessee''s claim for the remuneration of Rs. 12,300 paid to his wife Smt. Indu Agarwal was allowable and was not to be clubbed in the hands of the assessee, u/s 64(l)(ii) of the Income Tax Act, 1961?

2. The assessee is an individual. For the assessment year 1977-78, in question he returned an income of Rs. 26,130 besides agricultural income of Rs. 5,000. The assessee paid Rs. 12,300 as salary to his wife Smt. Indu Agarwal at the rate of Rs. 1,025 per month in view of her professional knowledge and experience. However, it was disallowed by the Income Tax Officer u/s 64(l)(ii) and Section 40A(2). The assessment was completed by the Income Tax Officer accordingly by disallowing Rs. 1,704 out of car expenses, Rs. 5,000 out of miscellaneous expenses, Rs. 801 paid to various associations and clubs and Rs. 675 as subscriptions and donations. The agricultural income was also enhanced to Rs. 17,500.

3. In appeal, the Appellate Assistant Commissioner directed the Income Tax Officer to examine the order dated 12-12-1977 of the District Judge, Gorakhpur

in the Ceiling Case (Miscellaneous Civil Appeal No. 73 of 1977) and to ascertain the facts regarding the land actually held by the assessee. He set aside the assessment to be made afresh after considering the objections raised on behalf of the assessee in the grounds of appeal.

4. The assessee, being still aggrieved, came up in further appeal before the Appellate Tribunal. The Appellate Tribunal found that based on its decision for the assessment year 1972-73, the assessee''s claim for remuneration paid to his wife Smt. Indu Agarwal was upheld for the assessment year 1976-77 vide Order dated 15-1-1980. The Appellate Tribunal noticed that order stood passed before the Income Tax Officer passed the assessment order on 28-3-1980. It, therefore, took the view that though the Appellate Assistant Commissioner was justified in setting aside the assessment order of the Income Tax Officer in other respects for framing it afresh, he was not justified in remitting the claim as to remuneration paid to Smt. Indu Agarwal which he could himself decide without any further enquiry. Thus, the Appellate Tribunal modified the order of the Appellate Assistant Commissioner to this limited extent while confirming his order in other respects.

5. From the perusal of the order of the Tribunal, we find that the wife of the respondent-assessee had professional knowledge and experience and was paid salary on account of her having professional knowledge and experience. This court in the case of Commissioner of Income Tax Vs. Major B.K. Kaul, has held that the provisions of the Section 64(1) of the Act could not be made applicable in a case where the spouse, who was working in the concerned office in which the individual had substantial qualifications.

6. With respect, following the aforesaid decision, we do not find any illegality in the order of the Tribunal. The Tribunal has rightly allowed the remuneration of Rs. 12,300 paid to the assessee''s wife Smt. Indu Agarwal and held that it was not liable to be clubbed in the case of assessee u/s 64(1)(ii) of the Act. We, accordingly, answer the question of law referred to us in the affirmative, i.e., in favour of the assessee and against the revenue.

7. In the facts and circumstances of the case, there would be no order as to costs.