(2005) 08 RAJ CK 0058

In the Rajasthan High Court

Case No : IT Appeal No. 40 of 2004

Commissioner of Income Tax APPELLANT

Vs

Om Prakash Bhati RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Citation : (2005) 197 CTR 651 : (2006) 284 ITR 303

Hon'ble Judges : Rajesh Balia, J;Raghvendra S. Chauhan, J

Bench : Division Bench

Advocate : Sangeet Lodha, for the Appellant; Anjay Kothari, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal has been filed by the Revenue against the order of the Tribunal dt. 13th May, 2003, by which the appeal of the Revenue and cross-objection by the assessee relating to appeals arising out of asst. yrs. 1994-95, 1995-96 respectively have been decided by a common order.

2. So far as cross-objections were concerned, they were not pressed by the assessee before the Tribunal and so far as the appeals of the Revenue are concerned, they were dismissed by the Tribunal vide the judgment under appeal. As appears from the grounds of appeal and the question framed by the assessee, the only question which has been subject-matter of this appeal is the exclusion of income of Smt. Pushpa Bhati, wife of respondent-assessee, from the income of the respondent-assessee, Om Prakash Bhati.

3. The AO found that the assessee has not shown that she has any knowledge about the source of her income and investments and decided to club the income of the wife of the assessee with his income for the asst. yrs. 1994-95 and 1995-96.

4. The CIT(A) found that Smt. Pushpa Bhati, wife of the assessee, was an assessee in her own right since 1984-85 and she was not a new assessee. The

CIT(A) also noticed that not only that the assessee, Smt. Pushpa Bhati has been assessed since asst. yr. 1984-85, until the two assessment years in question, but later on is being assessed in her own right. It also noticed that the assessee had her own capital.

5. In view thereof, there was no reason for including income of Smt. Bhati in the income of Om Prakash Bhati. Hence, the clubbing of the income of Smt. Pushpa Bhati in the income of Om Prakash Bhati is deleted.

6. We may notice that while clubbing the income of Smt. Pushpa Bhati on protective basis the substantive assessment has been made in the name of Om Prakash Bhati.

7. As a result of the order of Tribunal, Smt. Pushpa Bhati was to be assessed substantively in respect of her income.

As a result of the aforesaid circumstance of the assessee, since Smt. Pushpa Bhati has been assessed since 1984-85 and she has continued to be assessee, except for the two assessment years in question, clubbing of the income in the income of Om Prakash Bhati was hot justified. This finding was affirmed by the Tribunal vide its judgment under appeal.

8. We are of the opinion that the aforesaid material provided relevant basis for deleting the clubbing of the income of Smt. Pushpa Bhati in the income of Om Prakash Bhati and considering the protective assessment to be substantive assessment in her own right. Really speaking, in the aforesaid circumstance, no question of law arises for consideration in this appeal.

9. Be that as it may, we are further informed that since the filing of this appeal, the assessee''s wife had made a declaration under KVSS, and which has been certified by the CIT. Therefore, the assessment in her favour became substantive assessment by her submitting an application under KVSS declaring the income her own income.

10. In view of aforesaid circumstance, we do not find any merit in this appeal and the same is hereby dismissed.

No order as to costs.