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(1993) 07 GUJ CK 0003

In the Gujarat High Court

Case No : IT. Reference No. 293 of 1980

Commissioner of Income Tax — APPELLANT

Vs

Parmanandas Mohanlal — RESPONDENT

Date of Decision : 28-07-1993

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

Citation : (1994) 208 ITR 35

Hon'ble Judges : Y.B. Bhatt, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : B.J. Shelat, for the Appellant;

Judgement

Y.B. Bhatt J.

1. This reference u/s 256(1) of the income tax Act, 1961, raises the following three questions for our consideration:

1.Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal was right in law in holding that the correct status of the assessee for the assessment year 1974-75 was rightly taken by the Appellate Assistant Commissioner as a Hindu undivided family?

2.Whether the conclusion of the income tax Appellate Tribunal in confirming the order of the Appellate Assistant Commissioner in taking the status of the assessee for the assessment year 1974-75 as that of Hindu undivided family is correct in law and sustainable from the material on record?

3.Whether, on the facts and m the circumstances of the case, the income tax Appellate Tribunal rightly came to the conclusion in law that the status of the assessee was not as individual but was that of Hindu undivided family and consequently the provisions of section 64(1)(ii) of the income tax Act, 1961, had no application for clubbing the share income of the wife of the assessee with that of the assessee?

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The relevant year is the assessment year 1974-75. For this assessment year, the income tax Officer had taken the status of the assessee as an individual. This was challenged by the assessee by way of appeal in which the Appellate Assistant Commissioner reversed the finding of the income tax Officer and held that the correct status of the assessee would be Hindu undivided family.

2. This decision of the Appellate Assistant Commissioner was challenged by the Revenue by way of second appeal before the income tax Appellate Tribunal which came to a similar conclusion.

3. On the facts of the case, it is clear that there was a partial partition of the bigger Hindu undivided family in Samvat year 2021 (assessment year 1968-69), which partial partition was granted by the income tax Officer by order dated January 16, 1967. On this partial partition of the bigger Hindu undivided family being accepted by the Revenue, the assessee became the karta of the smaller Hindu undivided family consisting of himself, his wife and unmarried daughter.

4. The income tax Officer, in respect of the assessment year presently in question, declined to consider and accept the claim of the assessee for the status of a Hindu undivided family simply on the ground that his predecessor, while making an assessment in an earlier year, had declined to accept the claim of the assessee and held that the assessee was an individual and not a Hindu undivided family. The income tax Officer, therefore, held that he could not form any contrary opinion in regard to this fact. Obviously, this view is not sustainable and the Tribunal has rightly held both on facts and in law that such a decision of the income tax Officer is not sustainable.

5. The Tribunal has also found the status of the assessee to be a Hindu undivided family continuously from the assessment years 1970-71 to 1973-74, i.e., till the assessment year immediately preceding the assessment year in question.

6. The material aspect which must be borne in mind is that on the partial partition of the bigger Hindu undivided family, what devolved upon the assessee, his wife and unmarried daughter, was an undivided share. Thus, the wife of the assessee as also the unmarried daughter of the assessee also have a share in the result of the partial partition of the bigger Hindu undivided family. There cannot, therefore, be any doubt that what the assessee acquired was the nucleus of what may be termed to be the corpus of the smaller Hindu undivided family, of which the assessee became a karta (being the only male member at the relevant time).

7. In the premises aforesaid, the only conclusion we can draw on the stated facts, there being no material to the contrary, is that the Tribunal was correct in holding that the correct status of the assessee is that of a Hindu undivided family, as claimed by him. In view of the above position, questions Nos. 1, 2 and 3 are answered in the affirmative, i.e., against the Revenue and in favour of the assessee. The reference stands disposed of accordingly with no order as to costs.

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