(1995) 01 RAJ CK 0002

In the Rajasthan High Court

Case No : Income Tax References No''s. 72 and 73 of 1982

COMMISSIONER OF Income Tax — APPELLANT

Vs

POONAMCHAND MANMAL. — RESPONDENT

Date of Decision : 11-01-1995

Acts Referred:
Income Tax Act, 1961 — Section 164, 256

Citation : (1995) 128 CTR 436 : (1995) 216 ITR 373

Hon'ble Judges : Y. R. Meena, J

Bench : Division Bench

Judgement

Y. R. MEENA J. - By these two applications, it is prayed that the Tribunal may be directed to draw up a statement of the case and refer the following questions for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of section 164(1) itself are not applicable and both the beneficiaries and their shares are known and determinate ?

2. Whether; on the facts and in the circumstances of the case, the Tribunal was justified in upholding the decision of the Appellate Assistant Commissioner about the charging of rate of tax by treating the assessee as an association of persons on the rates applicable to the income of such association ?"

Since common questions are involved, we dispose them of by this common order.

The assessee is a trust which was created by an instrument of deed dated June 22, 1977, by the trustees, Shri Manman Babel, Smt. Morat Kanwar Babel, Shri Nawal Kishore Babel and Shri Gautam Chand Babel, from out of the estate of the late Shri Poonam Chand Babel, who expired on January 25, 1976. During the assessment, the Income Tax Officer found that the beneficiaries under the trust were indeterminate and their interest was also contingent. Therefore, the assessee-trust is a discretionary trust and liable to tax at the rate of 65 per cent.

in terms of the provisions of section 164(1) of the Income Tax Act. The trust was taxed accordingly. In appeal, the Appellate Assistant Commissioner has taxed at the rate applicable in the case of the association of persons. That view has been upheld by the Tribunal. Thereafter, the Commissioner of Income Tax has moved an application u/s 256(1) requesting the Tribunal to refer the aforesaid questions for the opinion of this court. At the request of the Commissioner, the draft statement was prepared but no annexures were filed as required for sending the statement of the case to this court and finally the applications u/s 256(1) were rejected. Against that, the Department has filed applications u/s 256(2) before this court and prayed that the Tribunal be directed to refer the aforesaid questions.

Mr. Ranka, learned counsel for the assessee, has brought to our notice that an identical issue was considered by this court in the case of the same assessee wherein the view has been taken that an application u/s 256(2) of the Income Tax Act is not maintainable against the rejection order of the Tribunal passed on the application u/s 256(1).

In the case of Commissioner of Income Tax Vs. Poonam Chand Manmal Trust, while rejecting the application, this court has observed as under (at page 159) :

"Rule 45 of the Income Tax Appellate Tribunal Rules, 1963, is also of no avail to the Revenue. It has used the word may, i.e., it is the discretion of the Tribunal whether to forward the statement of the ease to the High Court without the annexures required to be sent along with the statement of the case. Moreover, we cannot examine the question whether the discretion was exercised judiciously and justly while exercising jurisdiction u/s 256(2) of the Income Tax Act : We could have examined this aspect only if the Revenue had filed a writ petition under article 226 of the Constitution of India."

We find no reason to depart from our earlier view taken on an identical issue in the case of the same assessee.

In the result, we hold that these applications are not maintainable u/s 256(2) of the Income Tax Act and are hereby dismissed. No order as to costs.