(1982) 03 MP CK 0036

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 105 of 1980

Commissioner of Income Tax — APPELLANT

Vs

Prakashchandra Agrawal — RESPONDENT

Date of Decision : 22-03-1982

Acts Referred:

Income Tax Act, 1922 — Section 10(2)
Income Tax Act, 1961 — Section 256(1)

Citation : (1985) 152 ITR 14

Hon'ble Judges : K.N. Shukla, J;G.G. Sohani, J

Bench : Division Bench

Judgement

Sohani, J.—By this reference u/s 256(1) of the I.T. Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, Indore, has referred the following question of law to this court for its opinion :

"Whether, on the facts and in the circumstances of the case, the remuneration of Rs. 18,000 paid to Shri Prakashchandra Agrawal, karta, was a permissible deduction from the income of the assesscc-HUF received from the two firms, namely, M/s. Nemar Construction Co., Khalghat, and M/s. Preconco, Indore, during the assessment year 1975-76 ? "

2. The material facts giving rise to this reference, as set out in the statement of the case, are as follows ;

3. The assessee is a HUF of which Prakashchandra Agrawal is the karta. The assessment year in question is 1975-76. During that year, the assessee-HUF claimed deduction of a sum of Rs. 18,000 on account of salary paid to Prakashchandra Agrawal for the services rendered by him to the HUF for looking after the interests of the family in the two registered firms, viz., M/s. Nemar Construction Co., Khalghat and M/s. Preconco, Indore, of which the assessee-HUF was a partner through its karta. The ITO did not allow the deduction of Rs. 18,000. The appeal preferred by the assessee was dismissed. On further appeal, the Tribunal held that the remuneration paid to the karta of a HUF was an

allowable deduction if it was found that the remuneration was paid to him for the services rendered by him to the family. The Tribunal further found that Prakashchandra Agrawal, in his capacity as the karta of HUF, was looking after the interests of the family in the aforesaid two firms and it was only through his efforts that the family was in a position to earn profits in the two firms. The Tribunal, therefore, allowed deduction of Rs. 18,000 paid by the assessee to Prakashchandra Agrawal as his salary. Aggrieved by the order passed by the Tribunal, the Department sought reference and it is at the instance of the Department that the aforesaid question of law has been referred to this court for its opinion.

4. The short question for consideration is whether remuneration paid to the karta of a HUF for carrying on the business of the HUF is allowable as a deduction in the computation of the income of the HUF. It seems to us that the point is really covered by the decision of the Supreme Court in Jugal Kishore Baldeo Sahai Vs. Commissioner of Income Tax, U.P., Lucknow, . Following an earlier decision in Jitmal Bhuramal Vs. Commissioner of Income Tax, Bihar and Orissa, , the Supreme Court held that the remuneration paid by the HUF to the karta who managed the family business was liable to be allowed as an expenditure u/s 10(2)(xv) of the Indian I.T. Act, 1922, if the remuneration was bona fide and in the interest of and expedient for the business of the family and that the payment was genuine and not excessive. In the instant case, it has been found by the Tribunal that Prakashchandra Agrawal was looking after the joint family business. It has also been found that the salary was being paid to Prakashchandra Agrawal by the HUF for the services rendered by him for the joint family. It has not been found that the remuneration was not genuine or was excessive. In view of these findings, it must be held that the Tribunal was justified in holding that the sum of Rs. 18,000 paid to Prakashchandra Agrawal as remuneration by the assessee-HUF was a permissible deduction from the income of the assessee. Our answer to the question referred to this court is, therefore, in the affirmative and against the Department. In the circumstances of the case, parties shall bear their own costs of this reference.