(1986) 07 MP CK 0050

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 363 of 1984

Commissioner of Income Tax — APPELLANT

Vs

Prakashchandra Basantilal — RESPONDENT

Date of Decision : 26-07-1986

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

Citation : (1987) 59 CTR 203 : (1986) 162 ITR 536

Hon'ble Judges : R.K. Varma, J;G.G. Sohani, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; Chaphekar, for the Respondent

Judgement

Sohani, J.—By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, 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 Tribunal was correct in holding that Section 64(1)(i) of the Income Tax Act had no application to the case and that the income of the assessee''s wife could not be clubbed with the income of the assessee ?"

2. The material facts giving rise to this reference, briefly, are as follows:

The assessee is an individual and the relevant assessment year is 1979-80. For the assessment year in question, the Income Tax Officer clubbed the income of the wife of the assessee from her membership in the partnership firm, M/s. Basant Traders, of which the assessee was a partner, with the income of the assessee. The contention of the assessee that as he was a partner in the firm representing the Hindu undivided family, the provisions of Section 64(1)(i) of the Act were not attracted, was not upheld by the Income Tax Officer. The appeal preferred by the assessee was dismissed. On further appeal before the Tribunal, the Tribunal found that the assessee was a partner in the firm as karta of the Hindu undivided family; that a return was filed by the assessee for the assessment year in question in his capacity as the karta of the Hindu undivided family declaring the share income received from the said firm and that a separate return was filed by the assessee for that assessment year in his individual capacity. The Tribunal held that, under the circumstances, the income of the wife of the assessee could not be clubbed with the income of the assessee as he was a partner in the firm in a representative capacity. In this view of the matter, the Tribunal allowed the appeal preferred by the assessee. Aggrieved by the order passed by the Tribunal, the Revenue sought a reference and it was at the instance of the Revenue that the Tribunal has referred the aforesaid question of law to this court for its opinion.

3. Shri Mukati, learned counsel for the Revenue, contended that the view taken by the Tribunal was erroneous inasmuch as the provisions of Section 64(1)(i) of the Act were clearly applicable in the instant case. Learned counsel relied on the decisions of the Allahabad High Court in Madho Prasad, Madho Prasad Vs. Commissioner of Income Tax, ; Sahu Govind Prasad Vs. Commissioner of Income Tax, and of the Madras High Court in Commissioner of Income Tax, Tamil Nadu-I Vs. S. Balasubramaniam, . In reply, Shri Chaphekar, learned counsel for the assessee, contended that the provisions of Clause (i) of Section 64(1) of the Act were attracted only where the individual, who was being assessed, was a partner in the firm in his individual capacity but not in a case where he was a partner in a representative capacity as the,karta of a Hindu undivided family. Learned counsel relied on the decisions of the Bombay High Court in Commissioner of Income Tax, Bombay City-I Vs. S.K. Thakkar, ; Commissioner of Income Tax Vs. N.P. Khedkar, of the Andhra Pradesh High Court in Commissioner of Income Tax Vs. Sanka Sankaraiah, of the Gujarat High Court in Dinubhai Ishvarlal Patel Vs. K.D. Dixit, Income Tax Officer, Ahmedabad and Others, and of the Punjab and Haryana High Court in Commissioner of Income Tax Vs. Shri Amar Nath Bhatia, .

4. The answer to the question referred to this court turns on the construction of the expression " individual" occurring in Clause (i) of Section 64(1) of the Act. The view of the majority of the High Courts in Commissioner of Income Tax Vs. Sanka Sankaraiah, ; Dinubhai Ishvarlal Patel Vs. K.D. Dixit, Income Tax Officer, Ahmedabad and Others, ; Commissioner of Income Tax Vs. Shri Amar Nath Bhatia, ; Commissioner of Income Tax, Bombay City-I Vs. S.K. Thakkar, and Commissioner of Income Tax Vs. N.P. Khedkar, is that the expression "individual" is used in Section 64(1)(i) of the Act in a restricted sense and that expression takes in only a person in his individual capacity and does not include a person who acts as a representative of others. We respectfully agree with the view taken in-the aforesaid decisions by the learned judges of the Andhra Pradesh High Court, the Bombay High Court, the Gujarat High Court and the Punjab and Haryana High Court because, in our opinion, the Explanation to Section 64 of the Act makes it clear that an "individual" referred to in Section 64(1)(i) can only be an assessee, who is being assessed in his individual capacity and not one, who is being assessed in a representative capacity, such as the karta of a Hindu undivided family. In our opinion, therefore, the Tribunal was right in holding that

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the provisions of Section 64(1)(i) of the Act were not attracted in the instant case and that the income of the asscssee''s wife from the partnership firm could not be clubbed with the income of the assessee.

5. For all these reasons, our answer to the question referred to this court is in the affirmative and against the Revenue. In the circumstances of the case, parties shall bear their own costs of this reference.

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