(1995) 05 GAU CK 0002

In the Gauhati High Court

Case No : IT Reference No. 9 of 1991

Commissioner of Income Tax	APPELLANT
Vs	
Ramgopal Mody	RESPONDENT

Date of Decision : 05-05-1995

Acts Referred:

Income Tax Act, 1961 — Section 2(23), 256(1), 256(2), 64, 64(1)(i)
Partnership Act, 1932 — Section 4

Citation : (1995) 82 TAXMAN 29

Hon'ble Judges : D.N. Baruah, J;B.N. Singh Neelam, J

Bench : Division Bench

Advocate : D.K. Talukdar, for the Appellant; S.K. Kejriwal, for the Respondent

Judgement

D.N. Baruah, J.—The following question has been referred to this Court u/s 256(1) of the income tax Act, 1961 (''the Act'') as per the order passed by this Court u/s 256(2): "Whether, on the facts and in the circumstances of the case and on a proper construction of section 4 of the Indian Partnership Act, 1932, section 2(23) and section 64 of the income tax Act, 1961, the Tribunal was justified in holding the view that the share of profits arising in the hands of the wife of the assessee from the firm Bajranglal Ramgopal & Co. was not includible in the assessment of the assessee u/s 64(1)(i) of the income tax Act, 1961, and in dismissing the appeal filed by the department on that basis?"

Bajranglal Mody (since deceased) was a partner of the firm known as Bajranglal Ramgopal & Co. for the assessment years 1969-70 to 1971-72 in his representative capacity as the karta of the joint family. In this firm, his wife Smt. Bhagwani Devi Mody was also a partner having equal share of 25 per cent. The deceased assessee, i.e., Bajranglal Mody was assessed through his legal representative Shri Ramgopal Mody as late Bajranglal Mody during his life time was a partner in the said firm in his representative capacity as karta. The ITO included the share of profit in the name of wife from that firm amounting to Rs. 13,265 in the income of the individual assessment of late Bajranglal Mody. The assessee preferred an appeal before the AAC who following the order of the Tribunal passed in the case of Gaurishankar Agarwalla on 20-12-1975 for the assessment years 1965-66 to 1968-69 deleted the addition in respect of the share income of the wife from the individual assessment of Bajranglal Mody. The matter was taken up to the Tribunal who in turn noticed that the facts of the present case were similar to those of the case of Shri Gaurishankar Agarwalla. The Tribunal, accordingly, declined to interfere with the order of the AAC and dismissed the appeal. Hence, the present reference.

2. We have heard Mr. D.K. Talukdar, the learned standing counsel for the department and Mr. S.K. Kejriwal, the learned counsel for the respondent.

3. It is submitted by the learned counsels for the parties that this case is squarely covered by a decision of this Court rendered in CIT v. Ramgopal Mody [IT Reference No. 25 of 1990] wherein similar reference was made. In that case this Court answered the question in the affirmative and in favour of the assessee and against the revenue.

4. Following the said decision, we answer this reference also in the affirmative, in favour of the assessee and against the revenue. On the facts and circumstances of the case there will be no direction as to costs.