(2002) 08 GUJ CK 0051

In the Gujarat High Court

Case No : IT Ref. No. 186 of 1990

Commissioner of Income Tax — APPELLANT

Vs

Rangraj Keshumal — RESPONDENT

Date of Decision : 29-08-2002

Acts Referred:

Income Tax Act, 1961 — Section 4

Citation : (2004) 187 CTR 471 : (2004) 267 ITR 476 : (2004) 141 TAXMAN 290

Hon'ble Judges : D.A. Mehta, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant; None, for the Respondent

Judgement

A.R. Dave, J.—At the instance of the Revenue, the following question of law, arising out of the order dt. 28th Jan., 1988 passed by the Tribunal, Ahmedabad Bench ''C'', in ITA No. 563/Ahd/1986, has been referred to this Court for its opinion under the provisions of Section 256(2) of the IT Act, 1961 (hereinafter referred to as ''the Act''):

"Whether the Tribunal is right in law in holding that the income earned from the firm belonged to Rangraj Keshrimal Family Trust and thereby deleting the said income from the income of the assessee?"

2. The facts giving rise to the present reference are as under:

3. The assessee, as a trustee of Rangraj Keshrimal Family Trust, was partner in a partnership firm, named M/s Darshan Traders. As partner of M/s. Darshan Traders when the assessee was assessed in reassessment, proceedings, it was held by the ITO that the income from the business arising out of the partnership firm belonged to the assessee. Being aggrieved by the assessment order passed by the ITO, the assessee filed an appeal before the AAC, who deleted the addition, as the assessee had become partner in M/s Darshan Traders as a trustee of Rangraj Keshrimal Family Trust. It is pertinent to note that the income, which the assessee had received, had in fact gone to the beneficiaries and the

beneficiaries were also assessed in respect of the said income. Being aggrieved by the order passed in appeal by the AAC, the Revenue had filed an appeal before the Tribunal. The Tribunal was pleased to dismiss the appeal.

4. In the circumstances, the question which has been referred to this Court is, whether the income which the assessee had earned from M/s Darshan Traders as partner thereof can be treated to be an income of the assessee and whether the Tribunal was right in deleting the said income by confirming the order of the AAC. .

5. We have heard Shri M.R. Bhatt, learned senior Central Government standing counsel, appearing for the Revenue. Though served, nobody has appeared for the respondent-assessee.

6. Upon hearing the learned counsel, we are of the view that when the assessee was representing Rangraj Keshrimal Family Trust in a partnership firm named M/s Darshan Traders and when income allocated to the assessee as a partner had in fact been assessed in the hands of the beneficiaries, it could not have been said to be the income of the assessee. In the circumstances, the AO was not right in holding that the share of income received by the assessee from M/s Darshan Traders was income of the assessee especially when M/s Darshan Traders was a firm duly registered and the said firm had also been assessed. It is also pertinent to note that there was no dispute with regard to genuineness of the firm and the trust. In the circumstances, in our opinion, the Tribunal was right in deleting the income, which was allocated to the assessee as trustee of Rangraj Keshrimal Family Trust.

7. In the circumstances, the reference is answered in the affirmative, i.e., in favour of the assessee and against the Revenue.

The reference stands disposed of accordingly with no order as to costs.