(1981) 06 GAU CK 0002

In the Gauhati High Court

Case No : Civil Rule No''s. 18 (M) and 19 (M) of 1979

Commissioner of Income Tax APPELLANT

Vs

R.D. Sharma RESPONDENT

Date of Decision : 05-06-1981

Acts Referred:

Income Tax Act, 1961 — Section 64
Partnership Act, 1932 — Section 2(23)

Citation : (1983) 140 ITR 423

Hon'ble Judges : T.C. Das, J;S.M. Ali Mohamed, J

Bench : Division Bench

Judgement

Das, J.—Both the petitions will be covered by this common judgment as the parties are same and similar question of facts and common question of law arises. Civil Rule No. 18(M)/79 relates to the assessment year 1973-74 and the other, viz.. Civil Rule No. 19(M)/79 is for the assessment year 1974-75, These two applications have been filed by the Revenue against the order of the Tribunal dated August 26, 1978, in R. A. Nos. 93 and 94 of 1977-78. The Revenue being aggrieved by the judgment and order dated 19th January, 1978, in dismissing the appeals by the learned Tribunal, they moved an application praying for a reference to the High Court on the question of law. According to the Revenue, the question of law involved in both the cases is as follows:

"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, M/s. Asiatic Trading 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 ?"

2. The Tribunal found that u/s 64 of the I.T. Act, 1961, the share income of the spouse could be added in the hands of the individual only where the share

income itself was being taken in his individual hands and on that ground, the two appeals of the Revenue were dismissed. According to the Tribunal, there was no substantial question of law to be referred for the opinion of the High Court in view of the earlier decisions as a similar question of law had been raised in the case of Shri Gouri Shankar Agarwalla, wherein the Tribunal held that no such question need be referred for the opinion of the High Court. We have heard the learned counsel and we have carefully perused the order of the Tribunal. The other side has not been represented. The learned counsel for the petitioner has submitted that the decision of this court in Civil Rules 27(M), 28(M), 29(M), 30(M), 31(M), 36(M) of 1976 and 18(M) of 1980, CIT v. Gaurishankar Agarwalla (see below) disposed of on May 13, 1980, does not cover this case inasmuch as the said case was decided on a different point. Though a different point on facts arose in that case, in considering the present position of the case at hand, we feel that Section 64 of the I.T. Act, 1961, is very clear and needs no interpretation as to whether in computing the total income of any individual (an income) arises directly or indirectly to the spouse of such individual. Section 64(1)(i) of the I.T. Act, 1961, runs as follows :

"64. (1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly--

(i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner."

3. It is very clear that Section 64 of the I.T. Act speaks about the individual and there appears no scope for further interpretation. The Tribunal by the impugned order held that the above question was self-evident and need not be referred for the opinion of the High Court in view of the decisions in the appeal on the findings of fact and law as referred to above. Accordingly, we hold that no question of law arises to be referred for the opinion of the High Court and we, therefore, are not inclined to call for a statement of the case on the question of law sought to be raised by the petitioner in these applications u/s 256(2) of the I.T. Act.

4. In the result, both the petitions stand, rejected. We make no order as to costs.

