

(1980) 11 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 497 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Sardar Virendra Singh Bolia

RESPONDENT

Date of Decision : 21-11-1980

Acts Referred:

Income Tax Act, 1961 — Section 20, 26, 27

Citation : (1981) ILR (MP) 711 : (1982) 135 ITR 802

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

Bench : Division Bench

Advocate : S.C. Bagadia, for the Appellant; G.M. Chaphekar, for the Respondent

Judgement

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

"1. Whether the Tribunal was right in holding that the proportionate maintenance allowance per annum was payable to the two ladies/ one lady (as may be applicable for the assessment years 1963-64 to 1971-72 under a legal obligation or an overriding title and as such did not form part of the assessee's total income ?

2. Whether the Appellate Tribunal was justified in holding that the status of the assessee should be individual as against the status of an HUF adopted by the ITO ?"

2. The material facts giving rise to this reference, briefly, are as follows: Sardar Narayanrao Bolia was an Inamdar in the former Holkar State. He died on 19th March, 1932, leaving behind him two widows, Smt. Laxmibai and Smt. Shakuntalabai. Thereafter, the then Ruler of the Holkar State sanctioned the adoption of the assessee by Smt. Laxmibai. The Ruler also directed that Smt. Laxmibai be paid an allowance at the rate of Rs. 500 per month. By a subsequent order, a monthly allowance of Rs. 500 was also directed to be paid to Smt.

Shakuntalabai. These allowances were subsequently increased to Rs. 600 per month by an order dated 16th June, 1948, passed by the Ruler. In the appeals filed by the assessee arising out of the assessment orders for the assessment years 1963-64 to 1971-72, the question that came up for consideration before the Tribunal was whether the amount of monthly allowance, which was paid by the assessee to the widows as aforesaid, was under a legal obligation or overriding title and, as such, did not form part of the assessee's total income. It was also contended on behalf of the assessee that the estate of deceased Narayanrao was impartible and devolved on the assessee by the law of primogeniture and that the proper status of the assessee could be only that of an individual. As the Tribunal upheld both these contentions advanced on behalf of the assessee, the Tribunal has referred the aforesaid questions of law to this court at the instance of the Department.

3. As regards question No. 1, learned counsel for the department conceded that that question was decided by a Division Bench of this court in *ITAT v. Sardar Virendrasingh* [1978] 113 ITR 120 in a reference made by the Tribunal relating to the assessments for the assessment years 1955-56 to 1960-61. The Division Bench held that the Tribunal was right in holding that the maintenance allowance payable to the two widows of deceased Narayanrao was under a legal obligation or overriding title and, as such, did not form part of the assessee's total income. Learned counsel for the department was unable to point out any reason for taking a view different from that taken in the aforesaid decision. Following the decision in *ITAT v. Sardar Virendrasingh* [1978] 113 ITR 120, therefore, our answer to question No. 1 referred to us is in the affirmative and against the department.

4. So far as the second question is concerned, the Tribunal has found that the estate of deceased Narayanrao was an impartible estate which devolved on the assessee by the rule of primogeniture. Section 27(ii) of the Act provides that for the purposes of Sections 22 to 26 of the Act, the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate. It is well settled that the income from an impartible estate belongs solely and absolutely to the holder of the estate for the time being. The assessee, who is found to be the holder of an impartible estate is, therefore, liable to be taxed on the income of the estate as an individual and not as the representative of an HUF. Under these circumstances, the Tribunal was right in holding that the status of the assessee should be taken as an individual and not as an HUF as held by the ITO. Our answer to the second question referred to us is, therefore, in the affirmative and against the department.

5. Reference answered accordingly. In the circumstances of the case, parties shall bear their own costs of this reference.