

(1980) 06 CAL CK 0014

In the Calcutta High Court

Case No : Income-tax Reference No. 213 of 1976

Commissioner of Income Tax

APPELLANT

Vs

S.B. Ghose

RESPONDENT

Date of Decision : 02-06-1980

Acts Referred:

Income Tax Act, 1961 — Section 28, 37(1), 38(1)

Citation : (1980) 124 ITR 674

Hon'ble Judges : Sudhindra Mohan Guha, J;Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : S.C. Sen and B.D. Haldor, for the Appellant;D. Pal, P. Pal and M. Seal, for the Respondent

Judgement

Sabyasachi Mukharji, J.—In this reference u/s 256(1) of the I.T. Act, 1961, the following question has been referred to this court :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was entitled to the deduction of Rs. 700 being a part of the house rent paid by the assessee against his share income from the firm u/s 38 of the Income Tax Act, 1961 ? "

2. The assessment year involved is 1971-72, The assessee is a partner in the firm of chartered accountants known as M/s. Price Waterhouse Peat & Co. His share of income from the above firm during the year under consideration was Rs. 62,384. The assessee claimed deduction of Rs. 700 u/s 38(1) for the use of a part of the dwelling house and Rs. 2,400 out of the part of car expenses u/s 37(1) as having been incurred for the purpose of earning his share income from the above firm. The ITO disallowed the assessee's claim without assigning any reason.

3. There was an appeal. The AAC observed that the ITO had not disputed that the expenditure had been incurred for the purpose of business of the firm. He accepted the assessee's contention that the expenditure was an allowable one.

He, therefore, directed the ITO to allow the deductions claimed by the assessee.

4. There was a further appeal to the Tribunal. It was submitted before the Tribunal on behalf of the revenue that the AAC was in error in accepting that the expenditure was incurred for the purpose of the business of the firm and the ITO had not considered that aspect of the matter. It was also argued by the revenue that the expenditure was not allowable in the assessment as it was not incurred for the purpose of earning the share of income from the firm. On the other hand, on behalf of the assessee, reliance was placed on the decisions of the Tribunal in Income Tax Appeal Nos. 5236 and 5247 of 1973-74, in the case of the other partners of the firm. The ITO had allowed the claims of the two partners, but the Addl. Commissioner u/s 263 of the Act negatived those claims. The Tribunal upheld the action of the ITO. Following the aforesaid decision, the Tribunal also in this case rejected the revenue's appeal.

5. It will be instructive to refer to the other decision of the Tribunal to which the Tribunal had referred. There the assessee, that is to say, the partner of the firm, used to have in order to carry on business of the firm consultations at his residence as also quite often had to incur expenses on conveyance for that purpose. These findings of fact were not challenged or disputed before the revenue authorities or the Tribunal nor were disputed before us. It is well settled that when the income is allocated to the different partners of the firm, then the partners are entitled to have their income assessed in accordance with law, that is to say, u/s 28 of the I.T. Act, 1961. In making that assessment a partner of the firm being an assessee is entitled to all the deductions allowable under the Act. In order to earn the income as a partner of a firm, a partner of the firm had to do some work and he had to incur certain expenses. For instance, an example was given in this case of holding consultation for the work of the firm at one's residence or acts done in order to facilitate or earn the income as a partner of the firm. In that view of the matter, the assessee is entitled to deductions under the Act including the car allowance as well as the allowance on the residence. These amounts have been based on the estimates and the estimates have not been challenged before us. The view we are taking is in consonance with the principles laid down by the Supreme Court in the case of Commissioner of Income Tax, Bihar Vs. Ramniklal Kothari, and also the view is in consonance with the decision in the case of Matubai Chunilal Patel Vs. Commissioner of Income Tax, Gujarat, and the decision of the Rajasthan High Court in the case of Commissioner of Income Tax Vs. Jabarmal Dugar, , where the Division Bench of the Rajasthan High Court also held that Section 67(3) was not exhaustive of all the deductions that were allowable to the assessee. This view has also been followed by the Bombay High Court in the case of Phiroze H. Kudianavala Vs. Commissioner of Income Tax, and the decision of the Delhi High Court in the case of CIT v. Ganpat Rai Jaggi and Co. [1972] 86 ITR 363. If one remembers the legislative history of Section 67(3) of the Act and the stages before it was ultimately passed into Act, then this conclusion is further strengthened.

6. In that view of the matter, we answer the question in the affirmative and in favour of the assessee. In the facts and circumstances of the case, each party will pay and bear its own costs.

Sudhindra Mohan Guha, J.

7. I agree.