(1985) 11 RAJ CK 0040

In the Rajasthan High Court

Case No : Income Tax Reference No. 84 of 1984

Commissioner of Income Tax APPELLANT

Vs

Shivji Ram Agarwal RESPONDENT

Date of Decision : 04-11-1985

Acts Referred:
Income Tax Act, 1961 — Section 256(2), 64, 64(1)

Citation : (1986) 52 CTR 274 : (1986) 162 ITR 793 : (1986) 24 TAXMAN 517

Hon'ble Judges : V.S. Dave, J;S.K. Mal Lodha, J

Bench : Division Bench

Advocate : B.R. Arora, for the Appellant; Vineet Kothari, for the Respondent

Judgement

S.K. Mal Lodha, J.—This application u/s 256 of the Income Tax Act, 1961 (Act No. XLIII of 1961) (for short "the Act " hereinafter), by the Commissioner of Income Tax, Jodhpur, for a direction to the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (" the Tribunal "), to refer the following questions of law which are said to arise out of its order dated July 15, 1982, passed in Income Tax Appeal No. 431(JP) of 1982 :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that in the absence of inclusion of Section 64(1)(vi) in Explanation 3 to Section 64 of the Act, the provisions of Section 64(1)(vi) will not apply to the clubbing of income which arises from assets transferred directly or indirectly to the son''s wife after June 1, 1973, with the income of the father-in-law ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that there was no intimate connection between the lady (Smt. Reshma Devi) becoming a partner with her father-in-law in a partnership firm by investment of the amount transferred to her by way of gift by her father-in-law ? "

2. The deceased assessee was Shivji Ram Agarwal of Raisinghnagar who is

represented by his son, Shyam Lal. Shri Shivji Ram Agarwal (deceased) made a gift of Rs. 25,000 to his daughter-in-law, Smt. Reshma Devi. After making the gift, Smt. Reshma Devi and Shivji Ram constituted a partnership firm styled as M/s. Shivjiram Trading Company, Raisinghnagar. The Income Tax Officer, after taking recourse to the provisions of Section 64(1)(vi) of the Act, added the interest allowed on the amount in the income of the assessee. Besides this, Reshma Devi''s share of the profit was also added in the income of the assessee. This order was passed by the Income Tax Officer on November 20, 1981. Being dissatisfied, the assessee, Shivji Ram, went in appeal and the Appellate Assistant Commissioner confirmed the inclusion of the interest in the hands of the assessee. So far as the share in profits from the firm was concerned, the Appellate Assistant Commissioner, in his order dated March 17, 1982, observed as under :

" The Income Tax Officer would rectify this and he would include share of profit in the same proportion which the amount of Rs. 25,000 bears to the total investment made by Smt. Reshma Devi in the firm, M/s. Shivjiram Trading Company,"

3. In view of this, the appeal of the assessee was allowed in part with the aforesaid direction. The assessee filed a second appeal before the Tribunal. The Tribunal allowed the appeal by its order dated July 15, 1982. Thereafter, the Commissioner of Income Tax, Jodhpur, submitted an application u/s 256(1) of the Act before the Tribunal. The Tribunal by its order dated September 29, 1983, rejected the application observing that the aforesaid question No. 1 which has been proposed by the Revenue does not arise out of the order of the Tribunal allowing the appeal. So far as question No. 2 was concerned, it was held by the Tribunal that the finding arrived at by it relates to a pure question of fact and so no reference can be made on such a finding u/s 256(1) of the Act. Hence, this application u/s 256(2) of the Act by the Commissioner of Income Tax, Jodhpur, for a direction to the Tribunal to refer the aforesaid questions for the opinion of this court.

4. We have heard Mr. B, R. Arora, learned counsel for the Revenue, as well as Mr. Vineet Kothari, learned counsel for the representative assessee, Shyam Lal, and have carefully considered the order of the Tribunal dated July 15, 1982, as well as the order rejecting the reference application u/s 256 of the Act.

5. It will be useful here to refer to the findings arrived at by the Tribunal while allowing the appeal, vide its order dated July 15, 1982 :

(1) that in view of Explanation 3 to Section 64(1) the same is applicable to Section 64(1)(iv) and Section 64(1)(v) but not to Section 64(1)(vi) as there is no scope for intendment in the taxing statutes ;

(2) that the deposit of the gifted amount by Reshma Devi (daughter-in-law of Shivji Ram) has no intimate connection with her becoming a partner in the firm and that the deposit in the firm and the lady''s becoming a partner of the firm

are not intimately connected and so in view of the aforesaid findings, the Tribunal reached the conclusion that the share income of Reshma Devi from the gift is not includible in the hands of the assessee despite Section 64(1)(vi).

6. In our opinion, the question of the applicability of the provisions of Section 64(1)(vi) does not arise, for, before the Tribunal, on the basis of the finding recorded by it, recourse could not be had to the provisions of Section 64(1)(vi) of the Act. A perusal of Explanation 3 to Section 64(1) shows that its applicability is confined to Clauses (iv) and (v) of Section 64 and so no aid could be taken of Explanation 3 for the purpose of Clause (vi) of Section 64(1) of the Act. The view taken by the Tribunal in this connection is correct. It follows, therefore, that question No. 1 proposed by the Commissioner of Income Tax does not arise out of the order of the Tribunal.

7. The Tribunal has categorically come to the conclusion that there was no intimate connection between Smt. Reshma Devi, daughter-in-law of Shivji Ram, becoming a partner with her father-in-law in the partnership firm and the investment of the amount transferred to her by way of gifts by her father-in-law. This is a finding of fact and this finding of fact has not been shown to have been vitiated by non-consideration of the material on record or that it has been arrived at by extraneous considerations, or is so unreasonable that no reasonable man could have arrived at it. u/s 256 of the Act, only questions of law which arise out of the order of Tribunal can be referred and as the finding recorded by the Tribunal in this regard is a finding of fact, the Tribunal was justified in not referring this question.

8. For the reasons aforesaid, the order of the Tribunal rejecting the reference application u/s 256(1) by its order dated September 29, 1983, is correct inasmuch as no referable question of law arises out of the Tribunal''s order.

9. The application u/s 256(2) of the Act is dismissed.

