
(1991) 11 GAU CK 0006

In the Gauhati High Court

Case No : Income-tax Reference No. 2 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Smt. Saraswati Devi Singh

RESPONDENT

Date of Decision : 14-11-1991

Acts Referred:

Income Tax Act, 1961 — Section 2(15A), 64(1)

Citation : (1992) 195 ITR 185

Hon'ble Judges : S.N. Phukan, J;J.M. Srivastava, J

Bench : Division Bench

Advocate : Senapati, for the Appellant; A.K. Saraf, for the Respondent

Judgement

S.N. Phukan, J.—This is a reference u/s 256(1) of the Income Tax Act, 1961, for short "the Act" on the prayer of the Revenue. The following question has been referred to this court for opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in deciding that a step-child does not come within the purview of Section 64(1)(iii) when Section 2(15A) of the Income Tax Act, 1961, clearly defined "child" in relation to an individual as including a step-child and an adopted child of that individual ? "

2. The present reference relates to the assessment year 1979-80, The assessee was a partner of a firm in which her minor step-daughter, namely, the daughter of her husband through some other wife, was admitted to the benefits of the said firm. The Income Tax Officer included the minor's share in the total income of the assessee. On appeal, the Appellate Assistant Commissioner ordered that the said share could not be included because Section 64(1)(iii) of the Income Tax Act would not cover the case of a stepchild. A second appeal was filed by the Department and the Tribunal, after discussing the relevant provisions of various Acts, confirmed the decision of the Appellate Assistant Commissioner holding that Section 64(1)(iii) did not apply to a step-child.

3. We have heard Mr. Senapati, learned counsel for the Revenue, and Mr. A. K. Saraf, learned counsel for the assessee.

4. To consider the matter, the following provisions of the Act are relevant. Clause (15A) of Section 2 of the Act defines "child" which runs as follows :

"(15A) "child", in relation to an individual, includes a step-child and an adopted child of that individual ;"

5. It may be stated that this clause was inserted by the Taxation Laws (Amendment) Act, 1975, which came into force from April 1, 1976. The above clause was renumbered as "1513" by an amendment in 1987 which came into force with effect from April 1, 1988. Clause (iii) of Sub-section (1) of Section 64 of the Act 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-

(iii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm ; "

Explanation 1 of the said Sub-section (1) of Section 64 of the Act runs as follows :

"1. For the purposes of Clause (i), the individual, in computing whose total income the income referred to in that clause is to be included, shall be the husband or wife whose total income (excluding the income referred to in that clause) is greater ; and, for the purposes of Clause (iii), the income of the minor child from the partnership shall be included in the income of that parent whose total income (excluding the income referred to in that clause) is greater ; and where any such income is once included in the total income of either spouse or parent, any such income arising in any succeeding year shall not be included in the total income of the other spouse or parent unless the Income Tax Officer is satisfied, after giving that spouse or parent an opportunity of being heard, that it is necessary so to do."

6. According to Mr. Senapati, in view of the definition of the child which includes a step-child, the Tribunal erred in law in ignoring this definition. Learned counsel has submitted that, in a taxing statute, analogies play no part. Whether it is a charge, allowance or a deduction or exemption from a charge, the direct terms of the statutory provisions will have to be followed. In support thereof, learned counsel has placed reliance on a decision of the Madras High Court in *Rm. P. Al. A. Alagappa Chettiar Vs. Controller of Estate duty, Madras*, Learned counsel has further submitted that when a Legislature has given a special meaning to a particular word in a particular statute, then that meaning has to be given to that word and, in support, our attention has been drawn to the decision of the Allahabad High Court in *Commissioner of Income Tax Vs. J.K. Cotton Spinning and Weaving Mills Co. Ltd.*,

7. Mr. Saraf has rightly stated that, on the above proposition of law, there cannot

be any dispute. However, according to learned counsel, the definition of a "child" as stated above is not applicable to Section 64, more particularly in view of Explanation 1 to the said Section 64. According to learned counsel, the word "parent" occurring in Explanation 1 is the crux of the matter and "parent" would include only the natural parent. According to learned counsel, as the word "parent" has not been defined in the Act, the Tribunal was justified in taking the aid of the provisions of the Hindu Adoptions and Maintenance Act, 1956, and the Hindu Minority and Guardianship Act, 1956. In this connection, learned counsel has drawn our attention to the decision of the Goa Bench of the Bombay High Court in *Leukoplast (India) Ltd. v. State of Goa* [1988] 71 STC 180(Goa) wherein it was held that, generally, a definition given to a word or an expression in a particular Act or statute cannot be utilised for the interpretation of a similar word or expression occurring in a different Act or statute, but this is not an absolute principle of law and, in a given case, the definition given in a particular statute, not being repugnant, may be used to construe and interpret the same expression in another statute.

8. According to learned counsel for the assessee, the main object of Explanation 1 to Sub-section (1) of Section 64 is to ensure that income of a minor child in a partnership shall be included only in respect of the income of his natural parent. Learned counsel has given some illustration such as a child having two or more step mothers and his natural mother may also be alive and, in that case the income has to be included only in the income of the natural mother as otherwise it would be difficult for the Revenue to ascertain as to the step-mother in whose income the income of the minor should be included.

9. Regarding Explanation 1, we are unable to accept the submission of learned counsel for the assessee. In our opinion, the object of this Explanation is to determine in whose income, whether the father's or mother's, the income of the child has to be included. We may also add that this Explanation does not nullify the definition of child in the Act nor is the said definition of "child" repugnant to the above Explanation 1. We may also add that, as the expression "parent" has not been defined, Mr. Saraf has drawn our attention to the dictionary meaning of the said word. But, in our opinion, the clear meaning of "child" has been provided in the Act and we need not refer to the dictionary meaning of the word "parent."

10. From what has been stated above, we are of the opinion that a stepchild would come within the purview of Section 64(1)(iii) of the Act in view of the clear definition of "child", vide Section 2(15A) of the Act.

11. In the result, the question is answered in favour of the Revenue and against the assessee.