(1997) 01 AHC CK 0045

In the Allahabad High Court

Case No : Income-tax Reference No. 201 of 1981

Commissioner of Income Tax APPELLANT

Vs

Smt. Savitri Devi RESPONDENT

Date of Decision : 02-01-1997

Acts Referred:
Income Tax Act, 1961 — Section 64

Citation : (1997) 227 ITR 631

Hon'ble Judges : R.K. Gulati, J;Om Prakash, J

Bench : Division Bench

Judgement

1. At the instance of the Revenue, the Income Tax Appellate Tribunal (Delhi Bench "E", Delhi) referred the following questions relating to the assessment year 1976-77 for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the interest income of Rs. 4,334 in all, which accrued to the three minor children of the assessee, was not income which arose directly or indirectly to the minor children of the assessee from their admission to the benefits of partnership in the firms ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition of Rs. 4,334 made u/s 64(1)(iii) of the Income Tax Act, 1961, from the total income of the assessee for the assessment year 1976-77 ?"

2. A notice was sent to the assessee by registered post as early as on September 15, 1981. The registered envelope has not been received back undelivered and, therefore, the petitioner is presumed to have been served sufficiently. Apart from that, the assessee was served personally by the Income Tax Inspector of the Department on October 8, 1982. Despite service of notice, the assessee has not put in appearance, though the list has been revised. We have, therefore, heard only standing counsel.

3. The facts are that one of the minor sons of the assessee, namely, Padan Chand Jindal, was admitted to the benefits of the partnership firm, Impex Chemical Enterprises and another minor son, namely, Sunil Kumar Jindal, was admitted to the benefits of the partnership firms, namely, Golden Chemicals and Chemi Traders. The assessee was a partner in all these firms. The assessing authority found that the minors contributed capital in the respective partnership firms on which interest had accrued to them. That interest was included by the assessing authority in the total income of the assessee u/s 64(1)(iii) of the Income Tax Act, 1961 (briefly, the Act). The assessee appealed. The Appellate Assistant Commissioner affirmed the order of the assessing authority in this behalf.

4. On further appeal, the Income Tax Appellate Tribunal observed as under ;

" We find that the Income Tax Officer in this case did in fact try to distinguish the decision of the Allahabad High Court in Kaladhar Prasad Chaturvedi Vs. Commissioner of Income Tax, . In the partnership deed there it was provided that the capital necessary for the business shall be supplied by the partners and that the minors admitted to the benefits of the partnership shall not be liable to invest any capital, that the money credited to the names of the partners shall be deemed to be the capital of the business and that the money credited in the names of the minors shall be deemed to be their deposits in the firm. According to the Income Tax Officer only where there is such a specific recital in the partnership deed can the ratio of the decision in Kaladhar Prasad Chaturvedi Vs. Commissioner of Income Tax, apply. We do not see that such a rigid line of reasoning is correct. It is clear from the partnership deeds of the three firms that in the light of the Partnership Act which governs these deeds that the minors are not required to contribute any capital and hence the interest income does not fall to be assessed u/s 64(1)(iii)."

5. The only question for consideration is whether the interest accruing on capital contribution by the minors in the firms in which the assessee was a partner is includible u/s 64(1)(iii) in the total income of the assessee. In Kaladhar Prasad Chaturvedi Vs. Commissioner of Income Tax, , this court made a distinction in respect of the interest accruing on capital investment and deposits simpliciter. In that case, this court held that interest accruing on deposits made by a minor was not includible in the total income of his parent u/s 64(1)(iii) but interest accruing on capital investment was includible under that provision. In Commissioner of Income Tax Vs. Smt. Nirmala Devi, , the Madhya Pradesh High Court held that interest accruing on capital investment was includible in the total income of a parent u/s 64(1)(iii). A similar view was taken by the Allahabad High Court in Commissioner of Income Tax Vs. Sri Ram Ratan, , In these authorities, it has been unequivocally held that interest accruing on capital investment made by the minors will be includible u/s 64(1)(iii) in the total income of a parent.

6. The Appellate Tribunal referring to the clauses of the partnership deed, held that there was no legal obligation on the minors to contribute capital. In our

view, the question is not whether there was legal obligation on the part of the minors to contribute capital, but, undisputedly, the factual position is that the minors did contribute capital in the respective partnership firms.

7. We see no good reason to deflect from the view taken by this court in the case of Commissioner of Income Tax Vs. Sri Ram Ratan, and on the earlier occasions too that interest accruing on capital investment by the minors is includible in the total income of the assessee u/s 64(1)(iii) of the Act.

8. We, therefore, answer the aforementioned questions referred to this court in the negative that is, in favour of the Revenue and against the assessee.