(2007) 03 RAJ CK 0062

In the Rajasthan High Court

Commissioner of Income Tax APPELLANT

Vs

Smt. Tara Devi RESPONDENT

Date of Decision : 07-03-2007

Acts Referred:
Income Tax Act, 1961 — Section 144

Citation : (2007) 211 CTR 509 : (2007) 292 ITR 539

Hon'ble Judges : Vineet Kothari, J;R.M. Lodha, J

Bench : Division Bench

Judgement

R.M. Lodha, J.—The Tribunal, Jaipur Bench, Jaipur, drew up the statement of the case for the opinion of this Court on the following question:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in excluding the amount of Rs. 28,800 from the assessment of the assessee without recording a finding as to whom does this amount belong to?

2. The facts are not in dispute. The assessee in her return of income for the asst. yr. 1977-78, showed the income of Rs. 8,046. The assessment order was passed on 31st March, 1980 u/s 144 of the IT Act, 1961 (for short ''Act of 1961'') on an income of Rs. 85,000. The assessee''s case was reopened for the asst. yr. 1977-78 and the fresh assessment order was made by adding an income of Rs. 27,320 being unexplained investment in house construction as income from undisclosed sources to the total income of Rs. 8,050 shown by the assessee. The assessee was, thus, assessed at the total income of Rs. 35,370 for the asst. yr. 1977-78.

3. The assessee carried the matter in appeal. The AAC deleted the addition of Rs. 27,320. In the second appeal before the Tribunal the Tribunal noticed that in view of the finding by the AO that the assessee was not the owner of the investment, the amount of investment could not have been added to the assessee''s declared income.

4. The counsel for the Revenue would submit that without recording the

categorical finding as to whom the amount of Rs. 27,320 belonged, the Tribunal was not justified in excluding the said amount. She relied upon the following judgments:

(I) Income Tax Officer, A-ward, Lucknow Vs. Bachulal Kapoor,

(II) Suresh Kumar Rawat Vs. Commissioner of Income Tax, and

(III) COMMISSIONER OF Income Tax Vs. SMT. SARASWATI DEVI.,

5. The counsel for the Revenue fairly admitted that the IT Act, 1961 did not provide for specific provision for protective assessment. However, according to her, protective assessment is a recognized mode of assessment. The object of the protective assessment, she would submit as explained by the Courts, being that the assessment is also made in the hands of some other person, and if such other person objects to the assessment or finally it is held that it is not liable for payment of tax on such income, when the Department must get the tax from the person in whose hands the protective assessment is made. That being the purpose, she contended that once the Tribunal found that the assessee was not the owner of investment, the specific finding ought to have been given with regard to the person which in the present case is the husband of the assessee that the said sum belonged to him.

6. In Bachu Lal Kapoor (supra), the Supreme Court was concerned with the notice issued u/s 34 of Indian IT Act, 1922 to the Karta of the HUF. In that context while upholding the issuance of notice u/s 34, the Supreme Court referred to the distinct assessable entity and held that so long HUF existed the individual members thereof cannot be separately assessed in respect of its income and that while Section 3 thereof confers an option on the ITO to assess either the AOP or the members of the association individually, no such option is conferred on him thereunder in the case of a HUF. The judgment of the Supreme Court in the case of Bachu Lal Kapoor (supra) has no application to the question raised before us.

7. The Division Bench of this Court in the case of Surest Kumar Rawat (supra) held that the assessment of the income on protective basis in the hands of the assessee was done but during the assessment it was found that the income belonged to the benami and the said finding given by the Tribunal did not suffer from any perversity. We hardly find relevance of the decision in Suresh Kumar Rawat (supra) for decision by us in the present case.

8. In the case of Smt. Saraswati Devi (supra), the Division Bench of this Court explained the object of making the protective assessment.

9. In the present case there is a categorical finding by the AO that the assessee was not the owner of the investment and that the assessee had really not earned the income of Rs. 27,320. However, the said income was added to the total income of the assessee by making protective assessment since in the opinion of the AO, the said income belonged to the husband of the assessee. On appeal, the

AAC modified the assessment order but maintained the addition in part. On further appeal, the Tribunal set aside the addition by holding that when the Department itself has taken the stand that the investment did not belong to the assessee, that could not have been added to the income of the assessee. We wanted to know from the counsel for the Revenue as well as the assessee with regard to the assessment of the assessee''s husband but both of them were not able to give any firm answer in that regard. Be that as it may, on the face of categorical and unequivocal finding that the assessee was not the owner of the investment and that she had not really earned the income, deletion of the said amount by the Tribunal cannot be said to be unjustified. In our considered opinion, it was not necessary for the Tribunal to record the specific finding as to whom this amount belonged to.

10. We answer the question accordingly.

11. No costs.

