

(1970) 09 AHC CK 0016

In the Allahabad High Court

Case No : Income-tax Reference No. 467 of 1964

Commissioner of Income Tax

APPELLANT

Vs

Smt. Triveni Devi

RESPONDENT

Date of Decision : 24-09-1970

Acts Referred:

Income Tax Act, 1961 — Section 64

Citation : (1971) 81 ITR 511

Hon'ble Judges : V.G. Oak, C.J;H.N. Seth, J

Bench : Division Bench

Advocate : B.L. Gupta and R.R. Misra, for the Appellant; R.K. Gulati, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Oak, C.J.—This is a reference u/s 256 of the Income Tax Act, 1961 (hereafter referred to as "the Act"). Smt. Triveni Devi is the assessee. The assessment year is 1962-63. She was assessed by the Income Tax Officer in due course. When the assessment came up for consideration before the Appellate Assistant Commissioner, he noticed that no action had been taken with respect to the assessee's minor son, Prem Prakash, who had been admitted to the benefits of partnership of a firm. The Appellate Assistant Commissioner, therefore, issued a notice of enhancement proposing the inclusion of the share of the minor in the assessment of Smt. Triveni Devi. The assessee protested, and further submitted that in any case interest amounting to Rs. 5,561 received by the minor from the firm was not includible u/s 64(i) of the Act in the assessee's income. This last submission was accepted by the Appellate Assistant Commissioner. The sum of Rs. 5,561 received by the minor son as interest was not included in the assessee's income. The Income Tax Officer, Kanpur, appealed against the appellate decision of the Appellate Assistant Commissioner. It was urged for the department that the sum of Rs. 5,561 earned by the minor as interest ought to be included in the mother's assessable income. The contention was not accepted

by the Appellate Tribunal. The appeal was dismissed.

2. At the request of the Commissioner of Income Tax, U.P., the Appellate Tribunal, Allahabad, has referred the following question of law to this court:

"Whether, on the facts and in the circumstances of the case, the interest of Rs. 5,561 paid to the minor by the firm was rightly excluded from the assessment of the assessee u/s 64(i) of the Act ?"

3. The department relies upon Section 64 of the Act. Section 64 deals with the income of an individual so as to include the income of spouse, minor child, etc.; Section 64 states :

"In computing the total income of any individual, there shall be included all such income as arises directly or indirectly-

(i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner;

(ii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm in which such individual is a partner."

4. Apparently, the department relied upon Clause (ii) of Section 64 of the Act. The question referred by the Tribunal mentions Clause (i) of Section 64 of the Act.

5. In Bhogilal Laherchand Vs. Commissioner of Income Tax, Bombay City, the partnership deed did not cast any obligation upon minors to maintain any deposits in the firm. The question arose whether interest which minor partners had received on deposits standing to their credit in the firm could be included in the total income of the assessee u/s 16(3)(a)(ii) of the Indian Income Tax Act, 1922. It was held by the Bombay High Court that the interest earned by the minors could not be included in the income of the assessee.

6. In Chouthmal Kejriwal Vs. Commissioner of Income Tax, Assam, it was held by the Assam High Court that where a minor has been admitted to the benefits of partnership in a firm in which his father is a partner, and the minor has supplied capital, any income accruing to the minor as interest on the capital is an indirect result of his being admitted to the benefits of partnership, and has to be included in the total income of his father u/s 16(3)(a)(ii) of the Indian Income Tax Act, 1922.

7. In Sakarlal Balabhai and Co. Vs. Commissioner of Income Tax, Gujarat, the appellant was senior partner in a firm in which his wife and a stranger were partners, and two minor sons were admitted to the benefits of the partnership. One of the clauses of the deed of partnership provided that if the firm requires any sum for meeting the expenses towards management and if any of the partners has and is willing to give such amount, he may advance such amount as loan. He may receive interest at the rate of 12 as. per cent. per mensem. For a number of years up to the previous year relating to the assessment year 1957-58, the shares of profit of the wife and minor sons were allowed to

accumulate without interest. The question was whether interest so allowed was assessable in the hands of the appellant under Sub-clauses (i) and (iii) of Clause (a) of Section 16(3) of the Indian Income Tax Act, 1922. It was held by the Supreme Court that interest accrued to the wife and minor sons because of their capacity mentioned in Section 16(3)(a). That interest was, therefore, assessable in the assessee's hands.

8. That decision of the Supreme Court came up for examination before the Gujarat High Court in Commissioner of Income Tax, Gujarat II Vs. Chinubhai M. Modi, It was observed on page 85 :

" . . . even though a particular amount standing to the credit of a minor admitted to the benefits of the partnership may not be a deposit or advance and may not be a capital contribution but still if there is a causal connection between the amount standing to the credit of the minor and his admission to the benefits of the partnership, such connection being either direct or indirect, then the interest accruing on that account to the minor will be includible in the assessee's total income."

9. Annexure "C" to the statement of the case is a copy of the Tribunal's judgment dated December 19, 1963, dismissing the appeal by the Income Tax Officer, Kanpur. In paragraph 2 of its judgment the Tribunal observed :

"We are, however, unable to accept this submission of the departmental representative because it is nowhere found out that the minor contributed any capital to the firm and that the interest was paid to the minor in respect of his capital contributed to the firm. The partnership deed in question does not make any provision for the contribution of capital either by the minor or by any other partner of the firm."

10. That passage contains two findings. Firstly, the deed of partnership did not contain any provision as regards contribution of capital by the minor or by any other partner of the firm. Secondly, the sum brought by the minor to the account of the firm was not in the nature of capital.

11. The Tribunal's judgment does not disclose the full circumstances in which money was brought by the minor to the firm. But, in view of a definite finding that it was not in the nature of capital, we may infer that the money was in the nature of a deposit or loan. The department relies upon Clause (ii) of Section 64 of the Act. In order to bring the case under Clause (ii) of Section 64, it was for the department to establish a connection between the partnership of the minor and the receipt of interest on the money brought in by the minor. No such connection has been established by the department in this case. Consequently, the department's case under Clause (ii) of Section 64 of the Act must fail.

12. We answer the question referred to the court in the affirmative, and in favour of the assessee. The Commissioner of Income Tax, U.P., shall pay the assessee Rs. 200 as costs of this reference.