
(1985) 04 RAJ CK 0032

In the Rajasthan High Court

Case No : Income Tax Case No"s. 66 and 67 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Sohan Sankhla

RESPONDENT

Date of Decision : 19-04-1985

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2)

Citation : (1986) 157 ITR 437

Hon'ble Judges : S.K. Mal Lodha, J; Dwarka Prasad, J

Bench : Division Bench

Advocate : J.L. Daga, for the Appellant; C.R. Mehta, for the Respondent

Judgement

Dwarka Prasad, J.—These two applications u/s 256(2) of the Income Tax Act, 1961, which have been filed by the Commissioner of Income Tax, Jodhpur, arise in similar circumstances, raise identical questions and as such they are disposed of together by a common order.

2. Dr. Sohan Sankhla is an assessee as an individual. He filed his returns of income for the assessment years 1973-74 and 1974-75. The Income Tax Officer found that the assessee had purchased immovable property for a sum of Rs. 60,000 in the name of his minor sons, Anil Kumar and Arun Kumar, during the accounting years relevant to the assessment years 1973-74 and 1974-75. According to the Income Tax Officer, the house property in question was purchased by Dr. Sohan Sankhla himself in the name of his minor sons and so the income earned from the house property was added to the income shown by Dr. Sankhla in his returns in respect of the aforesaid two assessment years. The order passed by the Income Tax Officer was affirmed on appeal by the Appellate Assistant Commissioner of Income Tax, Bikaner, by his order dated March 5, 1977, and he held that in fact Dr. Sankhla had purchased the house property in question in the name of his minor sons from his own money and by taking loans from the Life Insurance Corporation, the State Insurance Department and from other persons.

3. On further appeal by the assessee, the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter called " the Tribunal"), found that apparently, it was clear that the property in question was purchased by the minor sons of the assessee after taking loans from different persons. It was also held by the Appellate Tribunal that apparently there was no material on the record to show that in reality the assessee was the owner of the property in question and the entire investment made in the purchase of the said property was made by him. Thus, the Tribunal arrived at the conclusion that the property in question was purchased by the minor sons of the assessee and the appellant and his wife helped their minor sons in purchasing the said property. Consequently, the Appellate Tribunal was of the view that the income arising out of the house property in question could not be assessed in the hands of the assessee.

4. The Commissioner of Income Tax, Jodhpur, filed an application u/s 256(1) of the Income Tax Act, 1961, before the Tribunal for making a reference to this court, but the Tribunal rejected the application on the ground that its decision turned on questions of fact and the findings of fact recorded by the Tribunal could not be held to be vitiated on any ground nor could the same be said to be perverse.

5. The Department has filed these two applications in this court u/s 256(2) of the Income Tax Act as mentioned above. D.B. Income Tax Case No. 67 of 1978 relates to the assessment year 1973-74, while D.B. Income Tax Case No. 66 of 1978 relates to the assessment year 1974-75.

6. We have considered the arguments advanced by learned counsel for both the parties. The Appellate Assistant Commissioner of Income Tax, Bikaner, by his order dated March 5, 1977, held that the assessee was a physician having good professional income by way of private practice, as well as by way of salary from the State Government and that he purchased property situated at House No. 52, N-Block, Sri Ganganagar, in the name of his two minor sons. He further held that the three creditors, Shri Mam Raj, Jaimal Singh and M/s. Bharat Motors, had advanced money on loan to Dr. Sankhla in the name of his two minor sons. He also held that the assessee had utilised his own money and the money belonging to his wife, Smt. Kamla Devi, in the purchase of the house property in question, besides taking loan on his own life insurance policy and on his State insurance policy. The Appellate Assistant Commissioner also observed that the sons of the assessee were minors at the time when the property in question was purchased and that they had no adequate income nor had they any capital of their own. Further, the minor sons were not capable of entering into contract either for taking loans from others or in respect of the life insurance policy and State insurance policy of their father, the assessee. It was emphasised by the Appellate Assistant Commissioner that although the property was purchased by the assessee in the name of his minor sons, they apparently had no source of income. On these facts, the conclusion of the Appellate Assistant Commissioner was that Dr. Sohan Sankhla had purchased the house property in disguise,

although he tried to explain that the money was taken on loan on behalf of the minor sons. However, the Tribunal assumed that it was not the case of the Department that the loans were bogus and it was further assumed by it that the Income Tax Officer did not dispute the advancement of loan by the assessee to his minor sons. It was also assumed by the Tribunal that there was no material on record to show that in reality the assessee was the owner of the house property in question and the entire investment was made by him.

7. As a matter of fact, the case of the Department is just the contrary, as according to the Department, the assessee was the owner of the house property and the investment for purchasing the said property was made by the assessee. At this stage, we are not called upon to decide as to whether the Tribunal could have come to the conclusion at which it arrived on the basis of the material on record. But there is no doubt that the case of the Department from the beginning has been that the purchase of the house property was made by the assessee in disguise in the name of his minor sons. Thus, although the word "benami" has not been used specifically, there appears to be no doubt from a perusal of the assessment order passed by the Income Tax Officer as well as the order passed by the Appellate Assistant Commissioner that both the aforesaid authorities were of the view that the house property in question was purchased by Dr. Sankhla "benami" in the name of his minor sons and that the real owner of the said house property was the assessee, while the minor sons were mere benamidars. The Tribunal, instead of examining the aforesaid pleas on merits, merely went on to assume that it was not the case of the Department that the transaction was "benami". We are of the view that the Tribunal should have arrived at a finding as to whether the transaction relating to the purchase of house property was "benami" or not, on the basis of the primary facts proved on the record and not merely on an assumption that it was not the case of the Department that the loans were bogus and the transaction was "benami". It appears to us that the Tribunal has committed a grave error in making an assumption in the case without any basis and in misconceiving and misconstruing the case set up by the Department. There can be no doubt that, in the aforesaid circumstances, a question of law arises out of the order of the Tribunal, when the conclusion arrived at by it is influenced by the application of unfounded inferences (see *Champan Cane Concern Vs. State of Bihar and Another*,

8. A similar question, as to whether the transaction was genuine or not arose in the case of *Commissioner of Income Tax Vs. Golcha Properties (P.) Ltd. (In Liquidation)*, where a Bench of this court held that the Tribunal committed a grave error when it held that the Department must prove by positive evidence that the income of the contractor was in fact the income of the assessee. It was observed in that case that although the Tribunal was justified in holding that the burden could only be discharged by the Department by leading positive evidence only, the Department could rely upon the facts of the case established by the assessee's own record, as highlighted by the Income Tax Officer in his order. We are of the view that the circumstances of the present case are similar to those in

Commissioner of Income Tax Vs. Golcha Properties (P.) Ltd. (In Liquidation), referred to above.

9. We, therefore, hold that a question of law arises from the order of the Appellate Tribunal in the present case in respect of the nature of the transaction relating to the purchase of the house property. The Department has prayed that the Tribunal may be directed to refer the following question to this court for its opinion :

" Whether, on the facts and circumstances of the case, the finding of the Income Tax Appellate Tribunal in holding that the property in question was purchased by the minor sons of the assessee and, as such, the income of this property could not be assessed in his hands, is perverse ? "

10. In our view, the question has not been properly framed and we would like to reframe the question as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that there was no material on record to hold that the transaction of purchase of house property by the minor sons of the assessee was " benami" and that the income from such property could not be assessed in the hands of the assessee ? "

11. We accordingly allow both these applications and direct the Income Tax Appellate Tribunal, Rajasthan, Jaipur, to state the case and refer the question indicated above to this court for its opinion. The parties are left to bear their own costs of these proceedings.