(2004) 08 AHC CK 0251

In the Allahabad High Court

Case No : Income Tax R. No. 217 of 1983 & Income Tax R. No. 217 of 1983 3 August 2004

Commissioner of Income Tax — APPELLANT

Vs

Subhash Chand — RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:
Income Tax Act, 1961 — Section 64, 64(1)

Citation : (2005) 194 CTR 449 : (2005) 273 ITR 216

Hon'ble Judges : R.K. Agarwal, J;K.N. Ohja, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

1. The Income Tax Appellate Tribunal, Allahabad, has referred the following three questions of law u/s 256(1) of the Income Tax Act, 1961, hereinafter referred to as "the Act" for the opinion of this court :

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the investments made with the firm, M/s. Jahanganj Cold Storage, by the minors, Ajit Kumar and Sujit Kumar, were not on capital account but were mere deposits ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law, in holding that the interest derived by the minors, Ajit Kumar and Jahanganj Cold Storage was not as a result of their admission to the benefits of partnership and that it could not be included in the assessee''s income u/s 64(1)(iii) of the Income Tax Act, 1961 ?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in not upholding that the income derived from admission of the minors, Ajit Kumar and Sujit Kumar to the benefits of the partnership in the firm, M/s. Jahanganj Cold Storage, included the share in the

profits of the said firm as well as the interest credited to the account of the aforesaid minors on their investments with the said firm ?"

2. The present reference relates to the assessment years 1977-78 and 1978- 79. The respondent-assessee is an individual. He is a partner in M/s. Ratan Cold Storage and M/s. Jahanganj Cold Storage. He has three minor sons, namely, Ajit Kumar, Sujit Kumar and Vaibhav Kumar, who are admitted to the benefits of the partnership in M/s. Jahanganj Cold Storage. Vaibhav Kumar has been admitted to the benefits of partnership in the firm, M/s. Ratan Cold Storage. In both the firms the assessee represents his Hindu undivided family in the capacity of "karta". Since the assessee had no income in the capacity of an individual, he had been regularly filing his returns and was being assessed as a Hindu undivided family. The minors were being assessed separately. For the assessment years in question the assessee filed his return in the status of individual also. For the assessment year 1977-78, the income returned by him was the income earned by the minors, Ajit Kumar and Sujit Kumar, from M/s. Jahanganj Cold Storage and Vaibhav Kumar from M/s. Ratan Cold Storage. Agricultural income was also returned. In Part III of the return the assessee claimed that the income returned did not arise from the admission of the minors to the benefits of partnership and as such it was not liable to be included u/s 64 of the Act. For the assessment year 1978-79, the return was filed showing "nil" income. A note was given in the return to the effect that the assessee''s minor sons were admitted to the benefits of partnership in two firms, which had been shown in the statement accompanying the return, which should be considered in case section 64 was held to be applicable. The Income Tax Officer completed the assessment for both the years by including the profits and interest paid to the minors.

3. Thereupon the assessee came up in appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that the interest received by the minors, attributable to the initial investment made in the firm, was not includible in the assessee''s total income u/s 64(1)(iii) of the Act.

4. Thereupon the Revenue came up in appeal before the Appellate Tribunal. On the date of hearing of the appeal the authorised representative on both the sides submitted that this very issue cropped up in the appeal for the assessment year 1976-77 (I. T. A. No. 90 (All) of 1979) and that the facts relevant to the point at issue as well as the arguments of both the sides were the same before the Appellate Tribunal as in the appeal for the assessment year, 1976-77. For that year also, the Appellate Assistant Commissioner had excluded the interest to the accounts of the minors from the assessee''s total income, interest on initial deposits of the minors.

5. The appeal filed by the Revenue has been dismissed by the Tribunal.

6. We have heard Sri A. N. Mahajan, learned counsel for the Revenue. Nobody has appeared on behalf of the respondent-assessee.

7. Sri Mahajan, learned counsel for the Revenue, submitted that it is not in dispute that the minors, namely, Ajit Kumar and Sujit Kumar had been admitted to the benefits of partnership in the firm, Jahanganj Cold Storage, and, therefore, all such income as arises directly or indirectly to these minors out of the firm is liable to be included in the total income of the respondent-assessee. He submitted that in view of section 64(1)(iii) of the Act, which has been substituted by the Taxation Laws (Amendment) Act, 1975 with effect from April 1, 1976, any income which arises directly or indirectly to a minor who is admitted to the benefits of partnership firm, is liable to be included.

8. Having heard Sri Mahajan, we are of the considered opinion that u/s 64(1)(iii) any such income which arises directly or indirectly to a minor child from the admission to the benefits in a partnership firm is liable to be included in the individual. Section 64(1)(iii) of the Act is reproduced below :

"64. Income of individual to include income of spouse, minor child, etc.-(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 ;"

9. The income earned on the deposits made by a minor in the firm would also be covered under the phrase "such income as arises directly or indirectly". This court in the case of Puspa Devi Vs. Commissioner of Income Tax, , has held that the income arising to the minor sons of the assessee as a result of the admission to the benefits of a partnership firm is liable to be included in the total income of the assessee u/s 64(1)(iii) of the Act. Similar view has been taken by this court in the cases of Commissioner of Income Tax Vs. Sri Ram Ratan, and Commissioner of Income Tax Vs. Smt. Savitri Devi, .

10. We are in respectful agreement with the view taken by this court in the aforementioned cases and therefore hold that the Tribunal has committed illegality in holding that the income earned on the deposits made by the two minors in the firm, Jahanganj Cold Storage, was not includible u/s 64(1)(iii) of the Act.

11. In view of the foregoing discussion, we answer all the questions of law referred to us in the negative, i.e., in favour of the Revenue and against the assessee. However, there shall be no order as to costs.