(2009) 02 RAJ CK 0018

In the Rajasthan High Court

Commissioner of Income Tax — APPELLANT

Vs

Tara Devi — RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Citation : (2009) 183 TAXMAN 283

Hon'ble Judges : R.C. Gandhi, Acting C.J.;Munishwar Nath Bhandari, J

Bench : Division Bench

Judgement

1. The following questions of law have been referred by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur at the instance of the revenue in the following references:

DB. I.T.Ref. No. 68/1988:

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?

D.B.I.T. Ref. No. 85/1987:

Whether in a case where protective assessment is being resorted to, can the department choose to made any additions protectively though retaining their stand the investment was not made by the assessee?

D.B.I.T. Ref. No. 88/1987:

Whether in a case where protective assessment is being resorted to, can the department choose to made any additions protectively though retaining their stand the investment was not made by the assessee?

D.B.I.T. Ref. No. 87/1987:

Whether in a case where protective assessment is being resorted to, can the department choose to make any additions protectively though retaining their stand the investment was not made by the assessee

2. In these references, the parties are the same. The dispute between the parties was also the subject-matter of D.B.I.T. Ref. Nos. 67/1988 and 69/1988 pertaining to the assessment year 1977-78 in the reference and the cross-objections. In three references, there were three cross-objections also. Two references have already been decided being Reference Nos. 67/1988 and 69/1988 whereas these four are being taken together being the question of law and facts are common and being decided by this order.

3. The references answered by this Court are Reference Nos. 69/1988 and 67/1988 vide order dated 25-2-2002 and 7-3-2007 respectively. In Reference No. 67/1988, it was observed as under:

In the present case there is a categorical finding by the Assessing Officer 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 Assessing Officer, the said income belonged to the husband of the assessee. On appeal, the Appellate Assistant Commissioner 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.

4. We subscribe to the view of the learned Division Bench as noticed above. The reference are answered accordingly against the revenue and in favour of the assessee. The references and cross-objections are accordingly disposed of.