(1996) 10 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 78 of 1981

Commissioner of Income Tax — APPELLANT

Vs

Wazir Singh — RESPONDENT

Date of Decision : 03-10-1996

Acts Referred:
Income Tax Act, 1961 — Section 171

Citation : (1997) 226 ITR 820

Hon'ble Judges : N.K. Agrawal, J;Ashok Bhan, J

Bench : Division Bench

Advocate : R.P. Sawhney and Mahavir Ahlawat, for the Appellant; Hemant Kumar, for the Respondent

Judgement

Ashok Bhan, J.—For the assessment year 1974-75, at the instance of the Commissioner of Income Tax, Rohtak, the following question of law has been referred to this court for opinion by the Income Tax Appellate Tribunal, Chandigarh :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in affirming the order of the Appellate Assistant Commissioner deleting addition of Rs. 29,601 ?"

2. The Income Tax Officer made an addition of Rs. 29,601 to the income of the assesses, on the basis of his order passed u/s 171 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), rejecting the partial partition of the bigger Hindu undivided family.

3. Against the order of the Income Tax Officer passed u/s 171 of the Act, the assessee had filed an appeal before the Appellate Assistant Commissioner. The appeal was accepted, against which the Department filed an appeal before the Tribunal. The Tribunal upheld the order of the Appellate Assistant Commissioner, against which the Department claimed a question of law which was referred to this court for its opinion. The question referred to this court was answered in the

negative, i.e., against the Revenue and in favour of the assessee. It was accepted that there was a partial partition in terms of Section 171 of Act with effect from April 1, 1973. The aforesaid judgment is in Commissioner of Income Tax Vs. Wazir Singh, .

4. In the present case, as stated above, the Income Tax Officer made an addition of Rs. 29,601 to the income of the assessee, on the basis of his earlier order passed u/s 171 of the Act. The Tribunal, on the basis of its order relating to partial partition u/s 171 of the Act, reversed the order of the Income Tax Officer and deleted the addition made by the Income Tax Officer. It was held that since the partial partition of the bigger Hindu undivided family was accepted, the addition made of Rs. 29,601 in the hands of the assessee on account of the determined share from Prabhu Singh Tirlok Singh Grover could not be sustained.

5. In view of the decision of this court in Commissioner of Income Tax Vs. Wazir Singh, the matter stands concluded between the parties. The partial partition of the bigger Hindu undivided family has already been accepted. The addition made, under the circumstances, could not be sustained. The question referred to us is, therefore, answered in the affirmative, that is, against the Revenue and in favour of the assessee. No costs.

