

(1978) 08 AHC CK 0071

In the Allahabad High Court

Case No : Income-tax Reference No. 589 of 1976

Mulk Raj

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 18-08-1978

Acts Referred:

Income Tax Act, 1961 — Section 64(2)

Citation : (1979) 120 ITR 387 : (1980) 3 TAXMAN 61

Hon'ble Judges : R.R. Rastogi, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; Ashok Gupta, for the Respondent

Judgement

R.R. Rastogi, J.—The assessee, an individual, had deposited a sum of Rs. 20,000 in his individual account with Messrs. Sohan Mal Hakam Chand and Company of Muzaffarnagar. With effect from 18th March, 1972, he impressed this amount with the character of HUF property. He became a partner in the aforesaid firm on September 4, 1972. In the previous year relevant to the assessment year 1973-74, he earned Rs. 1,000 as interest on the aforesaid amount for the period from April 1, 1972, to September 3, 1972, and share income of Rs. 8,204 for the period from September 4, 1972, to March 31, 1973. In his assessment, the assessee claimed that these two amounts belonged to his HUF but the ITO added them in his income u/s 64(2) of the I. T. Act, 1961. The AAC confirmed that inclusion and when the matter came in second appeal before the Tribunal the same view was taken. Now, at the instance of the assessee, the Delhi Bench "C" of the Income Tax Appellate Tribunal has referred the following question of law for the opinion of this court :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in upholding the inclusion of interest of Rs. 1,000 and the share income of Rs. 8,204 received by the assessee from the firm, M/s. Sohan Mal Hakam Chand & Company, in the assessee's income for the assessment year 1973-74 u/s 64(2) of the Income Tax Act, 1961 ? "

2. After hearing counsel for the parties, we are of the opinion that the revenue authorities as also the Appellate Tribunal have been right in including the aforesaid two amounts in the income of the assessee u/s 64(2) of the Act. The relevant part of that sub-section reads as under :

" (2) Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has, at any time after the 31st day of December, 1969, been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family (such property being hereinafter referred to as the converted property), then, notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computation of the total income of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1971,--

(a) the individual shall be deemed to have transferred the converted property, through the family, to the members of the family for being held by them jointly ;

(b) the income derived from the converted property or any part thereof, in so far as it is attributable to the interest of the individual in the property of the family, shall be deemed to arise to the individual and not to the family ;

(c)the converted property has been the subject-matter of a partition (partial or total) amongst the members of the family, also the income derived from such converted property as is received by the spouse or minor son on partition shall be deemed to arise to the spouse or the minor son from assets transferred indirectly by the individual to the spouse or minor son and the provisions of Sub-section (1) shall, so far as may be, apply accordingly :

Provided that the income referred to in Clause (b) or Clause (c) shall, on being included in the total income of the individual, be excluded from the total income of the family or, as the case may be, the spouse or minor son of the individual."

3. This sub-section was inserted by the Taxation Laws (Amend.) Act, 1970, with effect from 1st April, 1971. This sub-section supersedes the general law that where a coparcener throws his separate property into the common stock of the family and thereby converts it into joint family property, or where such property is subsequently partitioned among the family members including the coparcener's wife and minor children, there is no direct or indirect transfer by the coparcener to the wife or the minor children, nor a transfer by him for the benefit of the wife or minor children. The effect of this provision is that where a member has converted his separate property into joint family property on or after 1st January, 1970, the part of the income from the converted property proportionate to that member's interest in the joint family property is taxable as his income and not as income of the joint family. The words " in so far as it is attributable to the interest of the individual in the property of the family " occurring in Clause (b) of this sub-section were omitted by the Taxation Laws

(Amend.) Act, 1975, with effect from 1st of April, 1976. It would be seen that the provisions contained in Section 64(2) are very clear and admit of no doubt and the Appellate Tribunal was right in confirming the inclusion of interest and the share income in the income of the assessee.

4. We, therefore, answer the question in the affirmative, against the assessee and in favour of the department. There will, however, be no order as to costs.