

(1993) 02 AHC CK 0057

In the Allahabad High Court

Case No : Income-tax Reference No. 54 of 1986

Puspa Devi

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-02-1993

Acts Referred:

Income Tax Act, 1961 — Section 2(45), 64(1)

Citation : (1993) 112 CTR 285 : (1993) 203 ITR 42

Hon'ble Judges : M.C. Agarwal, J;A.P. Misra, J

Bench : Division Bench

Advocate : S.B.L. Srivastava and Vikram Gulati, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Agarwal, J.—The Income Tax Appellate Tribunal "A" Bench, Allahabad, has, u/s 256(1) of the Income Tax Act, 1961 (herein after referred to as "the Act"), referred the following question for the opinion of this court :

"Whether, on a true construction of Section 64(1)(iii) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal was right in taking the view that the income arising to the minor sons of the assessee as a result of their admission to the benefits of partnership is liable to be included and assessed in the hands of the assessee notwithstanding that the assessee had no income of her own from any source whatsoever to which the income earned by the minor could be included ?"

2. The relevant facts are that one Sri Narendra Kumar was a partner in a firm styled as Messrs. Malik Chemical Works, Bulanala, Varanasi. The said Sri Narendra Kumar died leaving behind him the present assessee as his widow and five minor sons, namely, Ashok Kumar, Rakesh Kumar, Rajesh Kumar, Rajendra Kumar and Surendra Kumar. After the death of the said Sri Narendra Kumar, the aforesaid minors were admitted to the benefits of the said partnership firm. The

present assessee was not a partner in the said firm.

3. The present proceedings relate to the assessment years 1976-77, 1977-78 and 1978-79, for which action u/s 148 of the Act was initiated by the Assessing Officer intending to assess the income accruing to the aforesaid minors from their admission to the benefits of the partnership firm aforesaid as, according to the Assessing Officer, the said income was assessable in the hands of the present assessee by virtue of the provisions of Section 64(1)(iii). The assessee contended that she had no income of her own from any source and, therefore, there was nothing to which the share income of the minors may be included and, therefore, the said provision of law could not be invoked in her case. This contention was negated by the Assessing Officer, but was accepted by the Appellate Assistant Commissioner of Income Tax. The Revenue then went to the Income Tax Tribunal and the contention of the Assessing Officer was upheld. That is how, at the instance of the assessee, the present reference has been made. The relevant portion of Section 64 reads as under :

"64(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."

4. Admittedly, the minor children of the assessee have been admitted to the benefits of the partnership firm and, therefore, their income has to be included in computing the total income of the assessee. The assessee's contention, however, is that the language used in Section 64(1) shows that an assessee should have some other income of her own to which the income of the nature referred to in the aforesaid Sub-clause (iii) could be added. According to learned counsel for the assessee, since admittedly the assessee has no other income of her own, there is nothing to which the share income of the minors can be included.

5. Such a contention is not being raised for the first time before this court. It has already been raised before several other High Courts and rejected. This contention was raised in a writ petition before the Hon"ble Andhra Pradesh High Court in Sivalal Sogaji, It was rejected in a brief judgment observing that there is no ambiguity in the language of Section 64(1)(iii) of the Act so as to support the distinction sought to be drawn by learned counsel for the assessee on the ground that such minor's income can be included in the individual assessee's income only in case the assessee has, as an individual, income above the taxable limit. It was also observed that this provision was enacted to bring all such income to tax with a view to plug evasion of tax by the assessee by transferring assets to minors or by deriving income admitting the minors to the benefits of partnership in a firm. Again, in Commissioner of Income Tax, Visakhapatnam Vs. G. Gopal Rao and Others, the same High Court had an occasion to consider a similar argument in a reference made by the Income Tax Appellate Tribunal u/s 256(1)

of the Act. As in the case before us, Gopal Rao too had no income of his own. The contention put very strenuously before the court was that, in such a situation, Section 64(1)(iii) could not be applied. The reference was answered in favour of the Revenue and it was held that the income arising to the minor children of an individual on their admission to the benefits of a partnership firm is includible in the total income of such individual u/s 64(1)(iii) of the Act notwithstanding the fact that such an individual has no total income at all from any other source.

6. The same view was taken by the Karnataka High Court in Commissioner of Income Tax Vs. L.N. Horkeri, by the Patna High Court in Commissioner of Income Tax Vs. Rameshwarlal Jawanpuria by the Orissa High Court in Commissioner of Income Tax Vs. Sanyasi Mohapatra,

7. Thus, as many as five High Courts have negated the arguments like those advanced by learned counsel for the assessee before us and learned counsel on either side in spite of their best efforts could not trace any precedent in which such a contention may have been accepted.

8. Learned counsel for the assessee, however, placed reliance on Addl. Commissioner of Income Tax Vs. H.L. Gulati, in which while dealing with the provisions of Section 23 of the Act, this court held that, where the wife to whom the property belonged had no other source of income, the property income was to be restricted to ten per cent. of the other income of the wife and since the wife had no other income, the ten per cent. would be nil. In this manner, no income from house property could be assessed in the hands of the wife and, as a necessary consequence, no income could be included in the assessment of the husband u/s 64(1)(iii) of the Act. This authority deals with an entirely different situation and does not even remotely support the contention raised on behalf of the assessee.

9. "Total income" has been defined in Section 2(45) of the Act to mean the total amount of income referred to in Section 5, computed in the manner laid down in this Act. Section 64 of the Act creates a source of income for certain individuals by treating the income which otherwise belongs to other persons as their own and it also lays down a procedure for computing the total income of such individual by providing that the income referred to in the various clauses of Section 64(1) shall be included in computing the total income of any individual. "Total" means a product of addition and even a student of elementary arithmetic knows that you can add something to zero as well as to a negative figure. When the Act speaks of total income, it does not mean that every individual must have more than one source of income before he can have a total income. The language used in Section 64(1) is significant ; it does not say that "in computing the total income of any individual, there shall be added to his other income all such income as arises directly or indirectly". If such had been the language, then probably the contention raised on behalf of the assessee could have been accepted.

10. We may mention that language similar to the one used in Section 64 has been used in several provisions of the Act. We find similar expressions in Sections 60, 61, 67, 67A, 182(1)(ii) to speak only of a few of them. If the interpretation advanced on behalf of the assessee is accepted, all such provisions of law would become unworkable where an individual has no other source of income. We may, for the sake of illustration, refer to Section 182(1) which says that, after assessing the total income of a firm, the Income Tax payable by the firm shall be determined and the share of each partner in the income of the firm shall be included in his total income and assessed to tax accordingly. Now, if the language used in Section 182(1)(ii), which is in all respects akin to the language used in Section 64, is given the same interpretation as is canvassed in respect of Section 64, then in cases where the partners have no other source of income than the share of profit in the partnership firm, such share of profit cannot be taxed in the hands of the partners. Such an interpretation would thus bring about absurd results and cannot be accepted.

11. For the reasons discussed above and agreeing with the views expressed by the various High Courts, we hold that the Income Tax Appellate Tribunal was right in taking the view that the income arising to the minor sons of the assessee as a result of their admission to the benefits of partnership is liable to be included and assessed in the hands of the assessee notwithstanding that the assessee has no income of her own from any source whatsoever. We, therefore, answer the question in the affirmative. The Revenue shall be entitled to its costs of this reference.

12. A copy of this judgment shall be sent to the Assistant Registrar of the Appellate Tribunal at Allahabad in accordance with the provisions of Section 260(1) of the Act.