(1985) 11 MP CK 0033

In the Madhya Pradesh High Court

Case No : Miscellaneus Civil Case No. 223 of 1981

S. Rajendra Singh APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 29-11-1985

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 256(2)

Citation : (1986) 57 CTR 226 : (1987) 165 ITR 712

Hon'ble Judges : J.S. Verma, Acting C.J.;B.M. Lal, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; B.K. Rawat, for the Respondent

Judgement

J.S. Verma, Actg. C.J.

1. This is a reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the assessee for answering the following question of law, namely :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in coming to the conclusion that the assessee made a cash gift of Rs. 50,000 to his wife on October 27, 1970, and not the gift of a property situated at Bombay of the value of Rs. 65,000 in terms of the gift deed dated October 27, 1970?"

2. It may be mentioned that the assessee had applied for reference of three questions in the application u/s 256(1) of the Act, out of which the question referred was question No. 1 only. While referring question No. 1 alone u/s 256(1) of the Act, the Tribunal did not refer the remaining two questions. We are, therefore, concerned with the decision, in this reference, of the only question referred to us by the Tribunal.

3. The material facts are these. The assessee is a lawyer practising at Jabalpur. A flat was purchased at Bombay in the name of the assessee''s wife in the year 1962-63. In the gift deed dated October 26, 1970, executed by the assessee in

favour of his wife, it was stated that the amount of Rs. 50,000 paid as consideration for purchase of the flat in the name of the assesses'' wife, was gifted by the assessee to his wife and that the assessee had relinquished his right to recover the amount paid to his wife. For the relevant assessment year 1976-77, for which the accounting period ended on March 31, 1976, a dispute arose about the inclusion of Rs. 1,260 in the assessee''s income which represented the interest which had accrued on the rental income of the flat deposited during that period in the bank account of the assessee''s wife. By this view taken by the Tribunal on the question of income as also on some other points decided by the Tribunal, the assessee felt aggrieved and an application was made u/s 256(1) of the Act for reference to this court of these three questions of law, namely :

"1. On the facts and circumstances of the case, could the Tribunal come to the conclusion that the gift was made of cash amount of Rs. 50,000 when the gift on the basis of valuation of property and assessed the same at Rs. 66,000 ?

2. Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that property under consideration was purchased in the benami name of the assessee''s wife as the property income is being assessed in the hands of the assessee ?

3. Whether interest earned by the assessee''s wife on the deposits made by her from the house property income could legally be tagged with the income of the assessee ?"

4. As already stated, it is only question No. 1 which has been referred by the Tribunal u/s 256(1) of the Act while refusing to refer the remaining two questions.

5. An application (I.A. No. 4900 of 1985) dated July 19, 1985, has been made by the assessee for reframing the question referred to this court as under :

"Whether the amount of interest of Rs. 1,260 earned by the assessee''s wife on the deposits made by her out of the income earned from the house property in Bombay could legally be clubbed in the income of the assessee ?"

6. The first question, therefore, for our decision is whether this prayer made in the application of the assessee can be granted by us :

7. In our opinion, the application, I.A. No. 4900 of 1985, made by the assessee in this court cannot be allowed inasmuch as doing so would amount to circumventing the provisions of Sub-sections (1) and (2) of Section 256 of the Act. A bare perusal of the question, which the assessee wants to be answered now calling it a refraining of the question referred, would show that it is question No. 3 for which an application u/s 256(1) of the Act was made by the assessee to the Tribunal and which the Tribunal declined to refer to this court. It is also clear that the only question referred is question No. 1 in the assessee''s application u/s 256(1) which is distinct from question No. 3 in the application for reference. It is not, as if, the answer to the said question No, 1, which alone has been referred,

includes the answer to the said question No. 3 so that it may be a case of refraining of the question referred. This is more so, when the two questions were treated as distinct by the assessee himself and obviously even now, according to the assessee, the two are distinct inasmuch as the answer to the question referred does not automatically answer the question which the assessee now wants us to answer by this application. It is sufficient to refer to the decision of the Supreme Court in Agha Abdul Jabbar Khan Vs. Commissioner of Income Tax, M.P., , to support our conclusion, that we have no jurisdiction to answer a new question of law which has not been referred to us for decision particularly when the Tribunal declined to refer that question and the assessee having a right to apply u/s 256(2) of the Act has failed to do so. This application is, therefore, rejected.

8. We shall now consider the question which has been referred to us for decision. The question is whether the Tribunal was justified in its conclusion that the assessee made a cash gift of Rs. 50,000 and not gift of the property purchased out of it by virtue of the gift deed dated October 26, 1970. Learned counsel for the assessee states that the assessee does not require a decision of the question in the present case, in view of our conclusion that the application, I.A. No. 4900 of 1985, cannot be allowed. It is, therefore, not necessary to answer this question and for that reason we decline to answer the same.

9. The reference is answered accordingly. There will be no order as to costs.

