
(1984) 02 DEL CK 0009

In the Delhi High Court

Case No : Income-tax Reference No. 21 of 1977

Shri Manmohan Sachdeva

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 09-02-1984

Acts Referred:

Citation : (1986) 158 ITR 12

Hon'ble Judges : D.P Wadhwa, J;D.K. Kapur, J

Bench : Division Bench

Judgement

D.K. Kapur, J.—For the assessment year 1969-70, the following question has been referred to us u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the salary received by Shri Manmohan to the extent of Rs. 9,600 was assessable in the hands of the assessed-family ?"

2. The facts of the case are that the assessed is a Hindu undivided family and the karta is a partner in a firm, M/s. Sant Ram Nikka Mal. The learned counsel has brought to our notice that the question of salary and whether it is to be taxed in the individual hands of the karta or in the hands of the Hindu undivided family of which he is the karta have been decided by us in another reference, being ITR No. 101 of 1972 on July 16, 1980 [Brij Mohan (Huf) Vs. Commissioner of Income Tax, (infra)] but, in that case, the question relating to the salary of Brij Mohan, brother of Manmohan, was involved. It is pointed out that this decision was in favor of the Department and against the assessed and consequently as this case involves the same point, this court may abstain from deciding the matter at this stage as an appeal in the case of Brij Mohan is pending before the Supreme Court. We have considered various aspects of this case. It is already an old one relating to 1969-70 and the fact that we have already decided the case of the brother in 1980, makes us feel that we should not hold up the decision till the Supreme Court may decide the matter, which is likely to take some time, as at present advised.

3. The real point in the case was discussed in the aforementioned judgment in the brother's case. The two brothers were at one time being taxed as individuals in the partnership firm, but later they were taxed as representing their respective Hindu undivided families. In other words, their status was treated as Hindu undivided family. The question before the Tribunal was concerned with the increase in salary which took place on April 1, 1965. Previously, the brothers were getting Rs. 200 p.m. and Rs. 400 p.m., respectively, as salary but from that date, their salaries were increased to Rs. 1,200 to Rs. 1,400 and the question that arose before the Income Tax authority was whether the increased amount of Rs. 1,000 each was to be taxed in their individual hands or in the hands of the Hindu undivided family which the brothers were representing along with other profits and salaries which were being received by the two brothers on behalf of their respective Hindu undivided families.

4. The answer to the referred question in the case of the brother was that the increased salary was also taxable in the hands of the Hindu undivided family and not in the hands of the karta as individual. On a parity of reasoning, we have to hold that in this case also, the salary has to be taxed in the hands of the assessed family and not in the hands of the karta. In other words, we answer the question in the affirmative, against the assessed and in favor of the Department, but leave the parties to bear their own costs.