
(1987) 10 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 53 of 1978

Smt. Shanta Devi

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 05-10-1987

Acts Referred:

Income Tax Act, 1961 — Section 68, 69

Citation : (1988) 68 CTR 52 : (1988) 93 PLR 585

Hon'ble Judges : S.S. Sodhi, J;D.S. Tewatia, J

Bench : Division Bench

Advocate : Rakesh Kumar Jain, for the Appellant; L.K. Sood, for the Respondent

Judgement

D.S. Tewatia, J.—The Appellate Tribunal 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 right in law in holding that the books of account of the firm in which the assessee is a partner should be considered to be the assessee's own books of account in terms of Section 68 of the Income Tax Act, 1961, and thereby confirming the addition of Rs. 8,400 found to have been credited in the account of the assessee in the books of the firm ? "

2. The facts bearing upon the question posed above may be stated thute;

3. The assessee is a partner of Messrs. Pratap Finance Co. (Regd.), Budhlada. Her income for the assessment year 1963-64 was being assessed for the purpose of Income Tax and a sum of Rs. 38,400 was sought to be brought to tax by the Income Tax Officer as income from undisclosed sources. This amount represented a cash credit entry on December 9, 1961, in the accounts of the said partnership firm. The books of account of the said firm were treated as those of the assessee and the said amount was brought to tax in terms of Section 68 of the Income Tax Act.

4. On appeal, the Appellate Assistant Commissioner accepted the explanation of the assessee which had been disbelieved and rejected by the Income Tax Officer and deleted the said income as from undisclosed sources from the taxable amount. The Tribunal, on appeal, however, accepted the explanation of the assessee only regarding Rs. 30,000 and did not accept the assessee's explanation regarding the remaining sum of Rs. 8,400 and, therefore, took that amount into consideration in assessing the income of the assessee for the assessment year 1963-64 u/s 68 of the Income Tax Act, holding that the books of account of the partnership firm were as much those of the assessee partner and, therefore, it was Section 68 and not Section 69 of the Income Tax Act which was attracted.

5. Counsel for the assessee has argued that a partnership firm is an assessable entity distinct from its individual partners constituting the firm and in this regard sought support from the Supreme Court decision in Commissioner of Income Tax, West Bengal Vs. A.W. Figgies and Co. and Others, .

6. The proposition that a partnership firm is an assessable entity distinct from its individual partners is not in dispute. The primary question that falls for consideration in this reference is as to " whether the books of accounts of the partnership firm have to be treated as those of the individual partner also ? "

7. At this stage, it would be appropriate to take notice of the two relevant provisions of Sections 68 and 69 of the Income Tax Act, which are in the following terms :

" 68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Income Tax Officer, satisfactory, the sum so credited may be charged to Income Tax as the income of the assessee of that previous year."

"69. Unexplained investments.--Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Income Tax Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

8. It is not in dispute that in case the books of account of the partnership firm are not to be treated as those of the individual partner, then the amount of Rs. 8,400 which represents alleged undisclosed income, could not be brought to tax along with the income of the assessee for the assessment year 1963-64, because in that case, the provisions of Section 69 of the Income Tax Act shall be applicable.

9. Perusal of Section 68 of the Income Tax Act would show that in relation to the

expression "books", the emphasis is on the word "assessee". In other words, such books have to be the books of the assessee himself and not of any other assessee.

10. In the present case, admittedly, the assessee maintained no books of account. The cash credit entry of which the sum in question forms part, was found in the books the account of the partnership firm which in its own right is an assessee.

11. In the above view of the matter, the books of account of the partnership firm herein cannot be considered as those of the individual assessee herein and, therefore, section 68 of the Income Tax Act would not be attracted to the present case.

12. The above view receives support from Laxmi Narain Gupta Vs. Commissioner of Income Tax, .

13. No decision taking a contrary view has been brought to our notice at the Bar.

14. For the reasons aforementioned, we answer the question in the negative, i.e., in favour of the assessee and against the Revenue and dispose of the reference accordingly. No costs.