(1989) 08 MP CK 0042

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 106 of 1987

S.R. Kalani (HUF) APPELLANT

Vs

Commissioner of Wealth-tax RESPONDENT

Date of Decision : 18-08-1989

Acts Referred:
Wealth Tax Act, 1957 — Section 27(1)

Citation : (1991) 192 ITR 303

Hon'ble Judges : G.G. Sohani, Acting C.J.;R.K. Verma, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; V.S. Samvatsar, for the Respondent

Judgement

G.G. Sohani, Actg. C.J.

1. By this reference u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion ;

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in following its earlier decision dated March 25, 1975 and in holding that the amounts alleged to have been given to Smt. Badamibai and gifts made by her to her grand-children and income accrued thereon continued to belong to the assessee-Hindu undivided family and was liable to be assessed in the hands of the assessee-Hindu undivided family under the Wealth-tax Act ?"

The material facts giving rise to this reference, briefly, are as follows :

The assessee is assessed in the status of a Hindu undivided family. For the assessment years in question, the assessee contended that there was a partial partition of the Hindu undivided family and a sum of Rs. 1,00,000 was given to Smt. Badamibai, mother of the karta of the Hindu undivided family. The assessee also claimed that Smt. Badamibai had made certain gifts to her grandchildren who were minors and that the amount of gift was invested in certain firms which had admitted the minors to the benefits of the partnership firms. The Wealth-tax Officer, however, found that the partition was a sham and bogus and the wealth standing in the name of Smt. Badamibai was, accordingly, assessed in the hands of the assessee-Hindu undivided family. The Wealth-tax Officer also added the value of the assets gifted by Smt. Badamibai to her minor grandchildren and income thereof in the hands of the assessee-Hindu undivided family. Aggrieved by the order passed by the Wealth-tax Officer, the assessee preferred an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner upheld the finding of the Wealth-tax Officer that the wealth standing in the name of Smt. Badamibai was liable to be included in the wealth of the assessee-Hindu undivided family. The Appellate Assistant Commissioner also held that the gifts made by Smt. Badamibai to her grandchildren, of assets relatable to the family funds, were also liable to be included in the wealth of the assessee-Hindu undivided family. On further appeal before the Tribunal, it was held by the Tribunal as follows :

"We have heard the parties and examined the record produced before us. The family arrangement and partial partition having not been accepted right up to the Tribunal, the funds and income earned thereon in law continue to belong to the Hindu undivided family and, therefore, in our opinion, were rightly assessed as part of the wealth of the assessee-Hindu undivided family. The Wealth-tax Officer and the Appellate Assistant Commissioner simply followed the decisions given under the Income Tax Act. Similar is the position of the gifts made by Smt. Badamibai to Shri Narendrakumar and Shri Vijaykumar except the portion gifted to Shri Narendrakumar out of the stridhan of the said Smt Badamibai. Thus, in holding that the amounts allegedly given to Smt. Badamibai and the income therefrom is part of wealth of the Hindu undivided family, the Appellate Assistant Commissioner, in our opinion, committed no error and, therefore the first two submissions of learned counsel for the assessee are rejected."

Aggrieved by the order passed by the Tribunal, the assessee sought a reference and it is at the instance of the assessee that the aforesaid question of law has been referred to this court for its opinion.

2. The decision of the Tribunal given in appeals arising under the Income Tax Act was the subject-matter of reference in Miscellaneous Civil Cases Nos. 70 and 137 of 1986 S.R. Kalani (HUF) Vs. Commissioner of Income Tax, and Miscellaneous Civil Case No. 434 of 1986 (S.R. Kalani (HUF) v. CIT [1989] 180 ITR 14) and it has been held by the court that the Tribunal was right in holding that the assets alleged to have been given to Smt. Badamibai continued to belong to the assessee-Hindu undivided family. It was further held that the gifts made to the minor grandchildren having not found to be not genuine, the Tribunal was not justified in holding that the income of the minor grandchildren was liable to be included in the hands of the assessee-Hindu undivided family. At the time of hearing, learned counsel for the parties conceded that the answer to the question referred to this court under the Wealth-tax Act should be the same as given in

judgments disposing of references under the Income Tax Act. Under the circumstances, our answer to the question referred to this court by the Tribunal is that though the Tribunal was right in holding that the amount alleged to have been given to Smt. Badamibai continued to belong to the assessee-Hindu undivided family and was liable to be assessed under the Act in the hands of the assessee-Hindu undivided family, the Tribunal was not justified in holding that the gifts made to the grandchildren of Smt. Badamibai and the income accrued thereon continued to belong to the assessee-Hindu undivided family and was liable to be assessed under the Act in the hands of the assessee-Hindu undivided family.

3. Reference answered accordingly. In the circumstances of the case, the parties shall bear their own costs of this reference.