(1989) 08 MP CK 0007

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 : 09-08-1989

Acts Referred:

Wealth Tax Act, 1957 — Section 27(1)

Citation : (1989) 47 TAXMAN 72

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

Bench : Division Bench

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

Judgement

Sohani, Actg. C.J.

1. By this reference u/s 27(1) of the Wealth-tax Act, 1957 (''the Act''), the 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 25-3-1975 and in holding that the amounts alleged to have been given to Smt. Badamibai and gifts made by her to her grandchildren and income accrued thereon continued to belong to the assessee-HUF and was liable to be assessed in the hands of the assessee-HUF under the Wealth-tax Act, 1957 ?

The material facts giving rise to this reference; briefly, are as follows: The assessee is assessed in the status of HUF. For the assessment years in question, the assessee contended that there was a partial partition of the HUF and a sum of Rs. 1 lakh was given to Smt. Badamibai, the mother of the ''karta'', of HUF. 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 benefit of the partnership firms. The WTO, however, found that the partition was sham and bogus and the wealth standing in the name of Smt. Badamibai was accordingly assessed in the hands of the assessee-HUF. The WTO also added the value of the assets gifted by Smt. Badamibai to her minor grandchildren and income thereon in the hands of the assessee-HUF. Aggrieved by the order passed by the WTO the assessee preferred an appeal before the AAC. The AAC upheld the finding of the WTO that the wealth standing in the name of Smt. Badamibai was liable to be included in the wealth of the assessee-HUF. The AAC 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-HUF. 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 HUF and, therefore, in our opinion, were rightly assessed as part of the wealth of the assessee-HUF. The WTO and the AAC simply followed the decisions given under the income tax Act, 1961. Similar is the position of the gifts made by Smt. Badamibai to Shri Narendra Kumar and Shri Vijay Kumar except the portion gifted to Shri Narendra Kumar out of the stridhan of the said Smt. Badamibai. Thus, in holding that the amounts allegedly given to Smt. Badamibai and the income thereof is part of wealth of the HUF, the AAC in our opinion, committed no error and, therefore, 1st two submissions of the learned counsel for the assessee are rejected.

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

2. The decision of the Tribunal given in appeals arising under the income tax Act, 1961, was the subject-matter of reference in Misc. Civil Case Nos. 70, 137 and 474 of 1986 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-HUF. 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-HUF. At the time of the hearing, the 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 the judgments disposing of the 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-HUF and was liable to be assessed under the Act in the hands of the assessee-HUF, the Tribunal was not justified in holding that the gifts made to the grandchildren of Smt. Badamibai and income accrued thereon continued to belong to the assessee-HUF and was liable to be assessed under the Act in the hands of the

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

