
(2001) 01 DEL CK 0080

In the Delhi High Court

Case No : Income-tax Reference No's. 95 and 96 of 1982

Vipin Kumar Khanna

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:

Income Tax Act, 1961 — Section 2(45), 256(1), 5, 64, 64(1)

Citation : (2001) 171 CTR 218 : (2001) 251 ITR 782 : (2001) 116 TAXMAN 821

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; D.K. Jain, J

Bench : Division Bench

Advocate : Non, for the Appellant; R.C. Pandey and Ajay Jha, for the Respondent

Judgement

Arijit Pasayat, C.J.—At the instance of the assessed, the following question has been referred for the opinion of this court u/s 256(1) of the Income Tax Act, 1961 (in short, "the Act"), by the Income Tax Appellate Tribunal (in short, "the Tribunal") in respect of the assessment years 1968-69 and 1969-70 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Inspecting Assistant Commissioner (Assessments) was justified in assessing the income of the assessed u/s 64(1)(i) of the Income Tax Act read with the Explanation ?"

2. The factual position in a nutshell is as follows :

Both the assessed and his wife, Smt. Naginder Kumari Khanna, were during the relevant assessment years partners of a firm, Delhi Small Scale Industries. For the previous assessment year income was assessed u/s 64(1)(i) and was assessed in the hands of his wife. However, during the assessment years 1968-69 and 1969-70, the Assessing Officer taxed the share income of the assessed's wife from the firm in the hands of the assessed. The matter was carried in appeals before the Commissioner of Income Tax (Appeals) (in short "the CIT(A)"). It was argued before him that mode of assessment done was not proper and merely because in one year income of the assessed was higher than

that of his wife, the same could not be added to the income of the assessed. The Commissioner of Income Tax (Appeals) held that there was nothing in the Explanation to Section 64(1)(i) to allow the Assessing Officer to make a departure from the earlier practice adopted in the succeeding year if the quantum of income of the assessed and the spouse were altered. The matter was carried in appeal before Tribunal by the Revenue. The Tribunal reversed the finding of the Commissioner of Income Tax (Appeals) and restored the finding of the Assessing Officer. On being moved, a reference indicated above has been made.

3. We have heard learned counsel for the Revenue. There is no appearance on behalf of the assessed despite notice.

4.. Learned counsel for the Revenue submitted that the language of Section 64(1) (i) read with the Explanation thereto makes the position crystal clear and the Tribunal's view is irreversible.

5. Section 64(1)(i) along with the Explanation needs to be quoted. The same read as follows :

"64. (1) Income of individual to include income of spouse, minor child, etc.--In computing the total income of any individual, there shall be included all such income as arises directly or indirectly-

(i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner ; ...

Explanation.--For the purpose of Clause (i), the individual in computing whose total income the income referred to in that clause is to be included shall be the husband or wife whose total income (excluding the income referred to in that clause) is greater ; and, for the purpose of Clause (ii), where both the parents are members of the firm in which the minor child is a partner, the income of the minor child from the partnership shall be included in the income of that parent whose total income (excluding the income referred to in that clause) is greater ; and where any such income is once included in the total income of either spouse or parent, any such income arising in any succeeding year shall not be included in the total income of the other spouse or parent unless the Assessing Officer is satisfied, after giving that spouse or parent an opportunity of being heard, that it is necessary to do."

6. It is to be noted that the assessment for each assessment year has to be made separately and on the basis of the fact situation prevailing in the year in question. The Explanation refers to the computation of total income of the individual referred to in Clause (i) of Section 64(1). It is clearly stipulated in the Explanation that for the purpose of inclusion in terms of Clause (i), the total income of the husband or wife whose total income after excluding the income referred to in Clause (i) is greater shall be included. The total income of each year has to be assessed separately. It is the total income of an assessment year

which is assessed.

7. The expression "total income" is defined in Section 2(45) of the Act in the following manner :

" "total income" means the total amount of income referred to in Section 5, computed in the manner laid down in this Act."

8. Section 5 brings within its fold all income which is received or is deemed to be received in India or which accrues or arises or is deemed to accrue or arise in India to the assessed in any particular previous year.

9. Therefore, the fact situation in an earlier year when addition was made in the hands of the husband would not make the situation different if in the subsequent year income of the wife is more and vice versa. That being the position, the Tribunal was justified in its conclusion. We answer the question in the affirmative, in favor of the Revenue and against the assessed.