

H.P. Dandiwala Vs Commissioner of Income Tax

Court: Allahabad High Court

Date of Decision: Feb. 11, 1998

Acts Referred: Income Tax Act, 1961 " Section 64(1)

Citation: (1998) 148 CTR 325 : (1998) 231 ITR 281

Hon'ble Judges: R.K. Gulati, J; M.C. Agarwal, J

Bench: Division Bench

Judgement

1. At the instance of the assessee, the Income Tax Appellate Tribunal, Allahabad, has referred the following question of law for the opinion of this

court under Sub-section (1) of Section 256 of the Income Tax Act, 1961 :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee's case fell within the mischief of

Section 64(1)(iv) of the Income Tax Act, 1961 ?

2. The dispute pertains to the assessment year 1976-77. In the relevant previous year to the assessment year in dispute, the assessee was a "non-

resident" and was assessed in the status of an individual. He was employed as a captain in the Merchant Navy and was posted at Hong Kong. The

assessee remitted certain sums to the home savings bank account of his wife at Allahabad maintained with the Central Bank of India and out of the

sums so received, the assessee's wife invested certain amounts in fixed deposits with various companies, on which she earned an income of Rs.

14,652 as income from interest on fixed deposits.

3. The amount of interest aforesaid was protectively assessed in the hands of the wife of the assessee for the year in question, where a finding was

also recorded that as the amounts so transferred by the assessee to his wife were not for adequate consideration and in pursuance of an agreement

to live apart, the income arising from such transfers was liable to assessment in the hands of the assessee within the meaning of Section 64(1)(iv) of

the Income Tax Act, 1961 (for short "the Act"). By a separate assessment order the interest amount of Rs. 14,652 was also assessed in the

income of the assessee by invoking the provisions of Section 64(1)(iv) of the Act. The assessment made in the hands of the assessee was

confirmed on appeal by the Appellate Assistant Commissioner of Income Tax, Allahabad, and thereafter by the Income Tax Appellate Tribunal,

Allahabad Bench, Allahabad.

4. We have heard learned counsel for the parties. Section 64(1)(iv) reads as under :

64. (1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly . . .

(iv) subject to the provisions of Clause (i) of Section 27, to the spouse of such individual from assets transferred directly or indirectly to the spouse

by such individual otherwise than for adequate consideration or in connection with an agreement to live apart ;

5. The stand taken by the assessee was that he had transferred the various sums to his wife for meeting the household expenses and since due to

his service conditions, the assessee's wife had necessarily to stay separate from the assessee, the income earned by the assessee's wife out of the

savings could not be clubbed in the hands of the assessee by invoking the provisions of Section 64(1)(iv) of the Act . This plea was repelled by the

appellate authorities, as already stated, initially by the Appellate Assistant Commissioner of Income Tax, Allahabad, and thereafter by the Income

Tax Appellate Tribunal. It was found as a fact that out of the amounts which were transferred by the assessee to his wife's account in the previous

year relevant to the assessment years 1974-75 and 1975-76, only a meagre amount of Rs. 2,000 was withdrawn for expenses and the wife of the

assessee stayed with her parents. A further finding had also been recorded that it was only on account of their own convenience that the wife and

daughter of the assessee were staying in India, while the assessee was serving abroad. The Income Tax Appellate Tribunal on consideration of the

material that was placed before it, recorded its finding as under :

On the material placed before me, it is difficult to hold that the assessee was remitting the money to his wife on her living separately from him. The

assessee could remain outside the mischief of Section 64(1)(iv) of the Act if he can show that the moneys remitted to his wife were for adequate

consideration or in connection with an agreement to live apart. In this case, the assessee has miserably failed to show that he was remitting money

to his wife for adequate consideration than natural love and affection or meeting his conjugal obligation. Again, no legal document has been brought

on record to show that the assessee was remitting money to his wife "in connection with an agreement to live apart".

7. It is evident from the findings recorded by the Income Tax Appellate Tribunal that the money was transferred by the assessee to his wife,

otherwise than for adequate consideration or in connection with an agreement to live apart. That being so, the case of the assessee clearly fell

within the ambit of Section 64(1)(iv) of the Act and the Tribunal was clearly right in taking the view that the assessee was liable to assessment in

respect of the interest income of Rs. 14,652.

8. The question referred to this court is answered in the affirmative, in favour of the Revenue and against the assessee.