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(2004) 09 AHC CK 0192

Allahabad High Court

Case No: Income Tax Reference No. 11 of 1988 27 September 2004

Commissioner of Income Tax		APPELLANT
	Vs	
Anand Swarup Aggarwal		RESPONDENT

Date of Decision: Sept. 27, 2004

Acts Referred:

- Income Tax Act, 1961 - Section 256, 64

Citation: (2005) 143 TAXMAN 119

Hon'ble Judges: R.K. Agarwal, J; K.N. Ojha, J

Bench: Full Bench

Advocate: Shambhoo Chopra, for the Commissioner Rithik Upadhyaya, for the Assessee, for the Appellant;

Final Decision: Allowed

Judgement

R.K. Agarwal J.

The Income Tax Appellate Tribunal, Allahabad, has referred the following question of law u/s 256(2) of the Income Tax Act, 1961, hereinafter referred to as "the Act", for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the interest credited to the account of the minor in the books of the firm was not includible in the total income of the assessee as per section 64(1)(iii) of the Income Tax Act, 1961

2. Briefly, stated the facts giving rise to the present reference are as follows :

3. The present reference relates to the assessment year 1978-79. The respondent is an individual. His minor son, Master Vishal Swarup, was admitted to the benefits of

partnership in the firm, M/s. Vishal Financiers, from which he enjoyed Rs. 1,843 as his share income and Rs. 5,529 as interest. The Income Tax Officer added the aforesaid two amounts u/s 64(1)(iii) of the Act in the assessable income of the respondent which action has been confirmed by the Appellate Assistant Commissioner in the appeal filed by the respondent. In further appeal the Tribunal deleted the addition of Rs. 5,529 towards interest u/s 64(1)(iii) of the Act on the ground that the said amount has accrued on a loan advanced to the firm. The Tribunal was of the view that in the partnership deed there is no clause which provided for a minor to contribute any capital and he had advanced the loan to the firm out of his separate funds on which interest had been paid. There was no material to show that the said income had any direct or indirect nexus with the interest income so earned by him.

4. We have heard Sri Shambhoo Chopra, learned counsel for the revenue, and Sri Rithik Upadhyaya, learned counsel appearing for the respondent.

5. Sri Shambhoo Chopra, learned counsel for the revenue, submitted that in view of the provisions of section 64(1)(iii) of the Act the interest of Rs. 5,529 accrued to the account of the minor was includible in the assess able income of the respondent. He relied upon the following decisions :

(i) Puspa Devi Vs. Commissioner of Income Tax,

(ii) Commissioner of Income Tax Vs. Sri Ram Ratan,

(iii) Commissioner of Income Tax Vs. Smt. Savitri Devi, and

(iv) ITR No. 217 of 1983- Commissioner of Income Tax Vs. Subhash Chand, decided on 3-8-2004.

6. Sri Rithik Upadhyaya, learned counsel for the respondent, however, submitted that under the partnership deed the minor was not required to contribute any income towards capital and the interest had accrued on the separate funds which had been advanced by him, thus, it had no direct or indirect nexus with the admission of a minor to the benefits of the partnership firm and, therefore, his income is not liable to be included u/s 64(1)(iii) of the Act. He relied upon the following decisions (i) Commissioner of Income Tax Vs. Smt. Triveni Devi, and (ii) Shakuntla Devi Vs. Commissioner of Income Tax,

7. Having heard learned counsel for the parties, we find that a sum of Rs. 5,529 had accrued as interest on the loan advanced by the minor Master Vishal Swarup who was admitted to the benefit of the partnership firm-M/s. Vishal Financiers during the assessment year in question. u/s 64(1)(iii) of the Act all income which arises directly or indirectly from the admission of the minor to the partnership firm is includible in the income of the parent.

8. In the case of Smt. Triveni Devi (supra) this court has held that the interest of Rs. 5,561 paid to the assessees minor son by the firm could not be included in the assessment of the assessee u/s 64(ii) of the Act as no connection had been established by the department between the partnership and the income of the minor and it had been found that the money brought in by the minor was not in the nature of capital. In the case of Puspa Devi (supra) this court has held that the income arising to the minor sons of the assessee as a result of their admission to the benefits of a partnership is liable to be included in the total income of the assessee u/s 64(1)(iii) of the Act, notwithstanding that the assessee has no income of her own from any source whatsoever. In the case of Sri Ram Ratan (supra) this court has held that where the amounts subsequently deposited were credited in the capital account of the minors and no separate account was maintained nor were such subsequent amounts shown as loans in the balance-sheet of the year, the interest credited to the account of the minor would be as a result of the admission to the benefits of the partnership and includible u/s 64(1)(iii) of the Act. In the case of Commissioner of Income Tax Vs. Smt. Savitri Devi, this court has held that the interest accruing on the capital investment by the minors in the firm was includible in the total income of the assessee u/s 64(1)(iii) of the Act. In the case of Commissioner of Income Tax Vs. Subhash Chand, this court has held that the income earned on the deposits made by a minor in the firm would also be covered under the phrase "such income as arises directly or indirectly". In the aforesaid case the deposits were relatable to the admission of the minor to the benefits of the partnership firm. In the case of Shakuntla Devi (supra) the Delhi High Court has held that a bare reading of the provision makes it clear that any interest which is received on accumulated profits would be relatable to the minors admission to the benefits of the partnership. It is only if by an independent volition on the part of the minors or their guardians the accumulated profits are imparted with the character of a deposit or a loan and interest is earned thereon, that such an income would escape from being assessed in the hands of the father or mother as the case may be. If any income arises to the minor as a result or in consequence of the partnership, whether it be in the form of a share of profit, commission, fee or even interest, the same would be assessable in the hands of the father or the mother, as the case may be, but if there is an independent agreement de hors the partnership agreement, whereby a loan is advanced by a minor to the partnership concern in which he has been admitted to the benefits of the partnership, then that interest would not be liable to Income Tax in the hands of the father or mother as the case may be. To put it differently, there has to be a nexus between the income of the minor, and his admission to the benefits of the partnership.

9. Applying the principles laid down in the aforesaid cases to the facts of the present case, we find that in the present case the Tribunal has recorded a categorical finding that the minor had advanced the loan to the firm out of his separate funds on which interest was paid and it did not have any direct or indirect nexus with the admission of the minor to the benefit of the firm.

10. In this view of the matter, there is no material on record to show that the said income has any direct or indirect nexus with the interest income in question and it was not includible u/s 64(1)(iii) of the Act.

11. In view of the foregoing discussion, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the revenue. However, there shall be no order as to costs.