Commissioner of Income Tax Vs Shri Manakram

Court: Madhya Pradesh High Court

Date of Decision: Feb. 13, 1990

Acts Referred: Income Tax Act, 1961 â€" Section 2(45), 2(7), 5, 64(1)

Citation: (1990) 183 ITR 382 : (1990) MPLJ 727 : (1990) 53 TAXMAN 448

Hon'ble Judges: K.M. Agarwal, J; B.C. Verma, J

Bench: Division Bench

Advocate: B.K. Rawat, for the Appellant; B.L. Nema, for the Respondent

Judgement

This Judgment has been overruled by : Commissioner of Income Tax, Ludhiana, etc.etc. Vs. Shri Om Prakash, etc.etc., (1996) 1 AD

205 : AIR 1996 SC 593 : AIR 1995 SC 593 : (1996) 130 CTR 82 : (1996) 217 ITR 785 : (1995) 8 JT 245 : (1995) 6 SCALE 487 :

(1995) 4 SCC 737 Supp : (1995) 5 SCR 346 Supp : (1996) 84 TAXMAN 156

B.C. Verma, J.

The Income Tax Appellate Tribunal, Jabalpur Bench, Jabalpur, has referred u/s 256(1) of the Income Tax Act, 1961, the following question for

the decision by this court :

Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the income arising to the minor sons of the

assessee from their admission to the benefits of partnership was not liable to be included in computing the total income of the assessee ?

The assessee in this case is one Manakram. The years of assessments are 1976-77 and 1977-78. Dilip Kumar and Suresh Kumar, two minor

sons of the assessee, were admitted to the benefit, of the partnership firm by name ""Messrs. United Service Station, Patna"". Yet other two minor

sons, Ashok Kumar and Brijlal, were admitted to the benefit of another partnership firm, styled as ""Messrs. Krishna Dal Mill"". The assessee

himself was a partner in both these firms, as representative of the Hindu undivided family. The Income Tax Officer, while assessing the total income

in the hands of the assessee included the income of the minor sons, derived from these partnership firms. This was in terms of Section 64(1)(iii) of

the Income Tax Act. The Appellate Assistant Commissioner, in appeal, affirmed that order and rejected the contention that, if the income of the

assessee is nil; the benefit earned by his minor sons from the partnerships could not be included and taken into consideration, while assessing the

total income in the hands of the assessee. The Income Tax Appellate Tribunal reversed this finding. The view taken by the Tribunal is that, in case

the assessee has no income at all which could be assessed to Income Tax, the income of his minor children, earned as a result of their admission to

the partnership, was not includible for assessing the income of the father (assessee in the present case). It is under these circumstances and facts

that the aforesaid question has been referred at the instance of the Department for decision by this court.

It is not disputed and it is also clear from the record that Shri Manakram, father of the four minor sons admitted to the benefit of the two

partnerships, is an ""assessee"" within the meaning of the term, as defined in Section 2(7) of the Act. ""Assessee"" there, is defined to mean a person

by whom any tax or any other sum of money is payable under the Act. It includes ""every person in respect of whom any proceeding under this Act

has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained

by him or by such other person, or of the amount of refund due to him or to such other person"". According to this expression as used in the Act,

the term ""assessee"" should cover a person who is liable for assessment of income belonging to his minor children, which is fictionally treated as his

income for purposes of assessment. ""Total income"" has been defined in Section 2(45) of the Act, to mean the total amount of income referred to in

Section 5, computed in the manner laid down in the Act. It will thus include profits and gains, representing both positive or negative profits, or it

may be nil profit. Section 64 speaks of income of certain persons to be included, while computing the total income of any individual. The clause

relevant for our purposes may be quoted ;

64. Income of individual to include income of spouse, minor child, etc.--(1) In computing the total income of any individual, there shall be included

all such income as arises directly or indirectly--...

(iii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm ...

Explanation 1.--... for the purposes of Clause (iii), 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 so to do.

From these provisions, it can be safely inferred that, while assessing the total income which is computed in the manner laid down in the Act, the

income belonging to the minor children of the assesses has to be treated, though fictionally, as income of the assessee for the purposes of

assessment. In computing, i.e., calculating such income, the assessee, in his return, is bound to include the income falling u/s 64(1)(iii) of the Act,

i.e., the share income arising to the minor children of an individual on their admission to the benefits of partnership in a firm, notwithstanding the fact

that the total income of such an individual assessee is either less than the minimum liable to tax or that such an individual has no income at all from

any source other than the income included u/s 64(1)(iii) of the Act. It is not permissible to exclude income mentioned in Section 64 of the Act, if

the income assessable in the hands of an assessee may be his own income or the income of any other person in respect of which the assessee is

assessable under the provisions of the Act. The provisions in Section 64 form part of an indivisible scheme for the purposes of assessment of

income in the hands of the assessee, in respect of which he is assessable under the Act and the categories of income specified in Section 64 or

incomes of other persons in respect of which the assessee is assessable under the Act. In the return required to be furnished u/s 139 of the Act, the

assessee is under an obligation to furnish a return, declaring his total income which, as we have seen above, includes also the income of any other

person in respect of which he is assessable. [See Commissioner of Income Tax, Kerala Vs. Smt. P.K. Kochammu Amma Peroke,]. This decision

of the Supreme Court was followed by a Division Bench of the Andhra Pradesh High Court in Commissioner of Income Tax, Visakhapatnam Vs.

G. Gopal Rao and Others, . The learned judges expressed themselves in these words (at pp. 318 and 319):

Once it is accepted that the assessee is under an obligation to himself declare in the return filed by him the income arising to his minor sons on their

admission to the benefits of partnership in a firm, no further consideration becomes relevant. It would be immaterial whether such an assessee has

income from any other source under the Act. In the first place, the income, although derived by his minor children, is held to be "his income" and

an obligation is" imposed on the assessee u/s 139(1) of the Act to declare such income in the return filed by him. It would, therefore, be true to say

that the income of the minor children is treated as the income of the assessee...

For the aforesaid reasons, we are satisfied that the provisions of Section 64(1)(iii) of the Act empower the Income Tax Officer to include the share

income arising to the minor children of an individual on their admission to the benefits of partnership in a firm u/s 64(1)(iii) of the Act, in the total

income of such individual assessee, notwithstanding the fact that the total income of such individual assessee is either less than the minimum liable to

tax or that such an individual has no total income at all from any source other than the income u/s 64(1)(iii) of the Act.

We are in full agreement with the view so taken. Similar view has been expressed by the Karnataka High Court in Commissioner of Income Tax

Vs. L.N. Horkeri, . The learned judges said that the income, in order to come within the purview of the term ""total income"" as defined in Section

2(45) of the Act, may comprise ""profits and gains"" representing both positive or negative profits or it may be ""nil profit"". It may not be, therefore,

proper to state that if an individual has got nil income, the minor"s income shall not be included in his total income. The court rightly observed, and

with which observation we fully agree, that such an interpretation would defeat the purpose of Section 64(1).

Shri Nema, learned counsel for the assessee, referred to Explanation 1 appended to Section 64 and submitted that the income of the minor

children from the partnership has to be included in the income of that parent whose total income is greater. Learned counsel urged that if the

income of the parent is nil, it will not be possible to say that the income of one of the parents is greater than that of the other and, therefore, the

minor"s income cannot be considered as income of any of the parents. The fallacy is that the argument ignores that what is to be assessed is the

total income of the assessee. If this is borne in mind, then it will not be difficult at all to identify that parent whose total income is greater. Therefore,

this argument, based upon Explanation 1 to Section 64(1) of the Act, does not help the assessee at all, because it will be easily possible for the

Income Tax Officer to identify that parent whose total income is greater. The Andhra Pradesh High Court in Commissioner of Income Tax,

Visakhapatnam Vs. G. Gopal Rao and Others, has dealt with this question at page 318 of the report. It has been rightly observed that the Income

Tax Officer has to enquire into the question as to who has the greater income between the parents of a minor child. If the Income Tax Officer

comes to the conclusion that the income included in the return filed by an individual is liable to be assessed by reason of Explanation 1 to Section

64(1), in the hands of another parent, the Income Tax Officer would then be under an obligation to disregard the income returned by the assessee

in whose hands it is not assessable because of Explanation 1 to Section 64(1), and assess it in the hands of the real person according to

Explanation 1.

Shri Nema, however, referred to a decision of the Madras Bench of the Income Tax Appellate Tribunal in ITO v. S. Krishna Iyer [1983] 2

Selected Orders of Income Tax Appellate Tribunal 55 (reported in Tax-man''s Selected Orders of Income Tax Appellate Tribunal at page 298,

Vol. 2), which does support the contention raised by learned counsel. The Tribunal rejected the Department''s contention that there is no

requirement of the parent in whose hands the minor''s share income is sought to be assessed having any other income before the provisions of

Section 64(1)(iii), requiring the inclusion, are attracted. With all respect to the Tribunal as to what it observed, we are unable to accept the view so

taken, for, if that interpretation is to be accepted, then it may be possible for any individual to so manage the affairs as to distribute his income to

his minor child and wife and avoid tax. The object with which Section 64(1)(iii) was introduced by the Taxation Laws (Amendment) Act, 1975,

with effect from April 1, 1976, is to check tax avoidance by diverting the income to the minor children of the family by their admission to the

benefits of the partnership in the firm. These provisions in the fiscal statute should, therefore, be so construed as to avoid any chance of escape or

the means of evasion. Any interpretation that may defeat the intent and purpose of the legislation should be avoided. It will, therefore, be just to

subscribe to the view which will promote the object with which Section 64(1)(iii) was introduced by that amendment. We, therefore, hold that the

assessment made by the Income Tax Officer and upheld by the Appellate Assistant Commissioner of Income Tax is correct and the Tribunal was

in error in coming to the conclusion that such income earned by the minor admitted to the benefits of the partnership is not liable to be taxed in the

hands of the assessee, i.e., the respondent Manakram.

We, accordingly, answer the question referred to us in favour of the Revenue and against the assessee. There shall be no order as to costs.