

Shikharchand Jain Vs Commissioner of Income Tax

Court: Madhya Pradesh High Court

Date of Decision: July 27, 1985

Acts Referred: Income Tax Act, 1961 " Section 147, 23(3)

Citation: (1986) 160 ITR 564

Hon'ble Judges: K.K. Adhikari, J; J.S. Verma, J

Bench: Division Bench

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

Judgement

J. S. Verma, J.

This reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the assessee is to answer the following questions

of law, namely ;

(i) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the Income Tax Officer was

justified in reopening the assessment u/s 147(a) of the Income Tax Act, 1961 ?

(ii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the assessee was not

entitled to exemption u/s 23(3)(a) of the Income Tax Act, 1961 ?

2. The relevant assessment years are 1966-67 to 1968-69. The assessee owns a house in the City of Sagar which was kept vacant by him, as he

was living with the father in the same city in a different house. The Income Tax Officer reopened the assessment for these years u/s 147 of the

Income Tax Act, 1961, on the ground that income from the property had escaped assessment. The Commissioner (Appeals) dismissed the

assessee's separate appeals for these years and that view was affirmed also by the Tribunal by dismissal of the further appeals filed by the

assessee. The assessee's case was that the property was exempt u/s 23(3)(a) of the Act, inasmuch as the assessee had kept his house vacant and

was living with his father by reason of the fact that owing to his business or profession, he could not live in his house. It has, however, been found

that the assessee was living with his father voluntarily for the sake of his own convenience and, therefore, Section 23(3)(a) is not attracted.

3. On the same facts, a reference relating to the assessment years 1969-70 to 1972-73, which was Misc. Civil Case No. 115 of 1977 decided on

March 19, 1982, has been answered against the assessee taking the view that the assessee was not entitled to exemption u/s 23(3) of the Act.

Following that decision, which is reported as Shikharchand Jain Vs. Commissioner of Income Tax, this reference also has to be answered against

the assessee and in favour of the Revenue.

4. Consequently, the aforesaid questions are answered as follows :

(i) The Tribunal was right in holding that the Income Tax Officer was justified in reopening the assessment u/s 147(a) of the Income Tax Act,

1961.

(ii) The Tribunal was justified in holding that the assessee was not entitled to exemption u/s 23(3)(a) of the Income Tax Act 1961.

5. There shall be no order as to costs.