

**(1989) 08 CAL CK 0037**

**Calcutta High Court**

**Case No:** IT Reference No. 167 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Murari Mohan Hazra

RESPONDENT

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**Date of Decision:** Aug. 10, 1989

**Acts Referred:**

- Income Tax Act, 1961 - Section 256(2), 64, 64(iii)

**Citation:** (1990) 52 TAXMAN 377

**Hon'ble Judges:** Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

**Bench:** Division Bench

**Advocate:** B.K. Bagchi, for the Appellant; S.K. Roy and A. Pal, for the Respondent

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### **Judgement**

Sen, J.

The Tribunal has referred the following questions of law u/s 256(2) of the income tax Act, 1961 ("the Act") to this Court:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal had any evidence to hold that the beneficial interest in the business styled as Precision Mechanical Works and that the house property at 28, Hem Chakraborty Lane, Howrah actually belonged to the assessee's wife and did not belong to the assessee and/or whether such finding of the Tribunal was otherwise unreasonable or perverse ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal had any evidence to hold that the income arising from the share in the name of the assessee's wife in the firm Mechanical Precision Works could not be included in his hands u/s 64(iii) of the income tax Act, 1961 and/or whether such finding of the Tribunal was otherwise unreasonable or perverse ?"

In this case the assessment years involved are 1966-67 to 1971-72.

2. The facts found by the Tribunal as contained in the statement of case are as under:

The assessee is an individual and the assessment years involved are 1966-67 to 1971-72. The dispute giving rise to the reference relates to the question, whether the income of the assessee's wife Smt. Tulsi Hazra from the share in the firm styled as Precision Mechanical Works could be included in the assessee's hands u/s 64(iii) and whether the income from the property at 28, Hem Chakraborty Lane, Howrah standing in the name of the assessee's wife could be included in the hands of the assessee as his income. It appears that the business styled as Precision Mechanical Works, which stood in the name of the assessee's wife was started sometime in 1953-54 with the capital investment of Rs. 4,800. The said lady purchased a piece of land in 1951 and completed the construction of a property at 28, Hem Chakraborty Lane, Howrah in the year 1952. The total investment in the business and the house property was to the extent of Rs. 12,000. The ITO found that for the assessment year 1954-55 the assessee agreed to be assessed both in respect of the income from the above business and from the property, which was standing in the name of his wife and that right up to the assessment year 1965-66 the above incomes were assessed in his hands. In the returns for the period from the assessment year 1958-59 to the assessment year 1965-66 the assessee had also included in his returns the income from the property and the business and declared himself as the proprietor of the business styled as Precision Mechanical Works. In the returns for the assessment years 1966-67 to 1971-72, however, the assessee did not include the income for the property or from the abovesaid business. It was claimed that a partnership was constituted on 1-1-1965 to carry on the business styled as Precision Mechanical Works of which the assessee's wife, Smt. Tulsi Hazra was a partner with her son, each having 50 per cent share. On these facts, the ITO held that the assessee had transferred indirectly to his wife the assets of the business of Precision Mechanical Works without adequate consideration and, therefore, the share income of the assessee's wife from the said partnership business was includible in his hands u/s 64(iii). He also found no reason to depart from the mode of assessment adopted in the past in respect of the income from the property. Accordingly for each year under consideration he included the income from the property at 28, Hem Chakraborty Lane, Howrah and also 50 per cent share income from the firm Precision Mechanical Works in the hands of the assessee.

3. The AAC on appeal held that the ITO was not justified in adding the share income from the business of Precision Mechanical Works as also the income from the property in the hands of the assessee.

4. The department preferred an appeal before the Tribunal. The department's contentions were taken into consideration.

5. The Tribunal found no merit in the case of the department. The finding of the Tribunal was that the facts of the case clearly went to show that the assessee's wife

had set up a business in the name and style of Precision Mechanical Works and also constructed the property in question. The assessee's wife had also filed returns and explained the source of investment of Rs. 12,000 but the department considered that the income from the business and the property should be assessed in the hands of the assessee to which the assessee had agreed. The Tribunal observed that the assessee's agreement to be so assessed was made with a view to purchasing peace. The Tribunal further referred to the evidence produced before the AAC with regard to the source of sum of Rs. 12,000 said to have been received by his wife from her mother and held that the evidence so produced could not be rejected as insufficient inasmuch as the assessee's wife was the only daughter of her mother and the amount involved was also not big. The Tribunal also held that there is nothing on record to show that the assessee's wife was benamidar of the assessee in respect of the partnership business and the property. The Tribunal also observed that the share of profits from the said business and the rent received from the property were collected by the assessee's wife and were kept in bank account, which stood in her name and, therefore, it was she who had the full custody and control over the finance and, further that the assessee had no right of enjoyment over the said business or property and the said funds were not appropriated by the assessee. The Tribunal also held that the assessee had not transferred any assets directly or indirectly to his wife so as to make the provisions of section 64 applicable in the instant case. Mr. Bagchi had strongly relied on the fact that previously these incomes were all assessed in the hands of the husband. But the Tribunal has pointed out that this may have been done to purchase peace. The Tribunal has found for a fact that the initial capital with which the business was started was provided by the mother of the wife. The mother invested her personal money, which was a very small amount of Rs. 4,000. In view of these facts it cannot be said that the findings of the Tribunal are perverse. Under the circumstances, Question No. 1 is answered in the affirmative and in favour of the assessee. Question No. 2 is also answered in the affirmative and in favour of the assessee. There will be no order as to costs.

Banerjee, J.

I agree.