

(1993) 02 BOM CK 0113

Bombay High Court**Case No:** Income-tax References No"s. 87 and 415 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Smt. Sairabanu

RESPONDENT

Date of Decision: Feb. 18, 1993**Acts Referred:**

- Income Tax Act, 1961 - Section 5

Citation: (1993) 203 ITR 145**Hon'ble Judges:** U.T. Shah, J; Sujata V. Manohar, J**Bench:** Division Bench**Advocate:** G.S. Jetley, S.J. Mehta, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

U.T. Shah, J.

These two references involving a common issue are disposed of together for the sake of convenience. The common issue involved is whether certain income could be included in the total income of the assessee.

2. The assessee is an individual and a well-known film artist. The assessment years are 1972-73 and 1973-74 and the relevant previous years are corresponding financial years ended on March 31, 1972, and March 31, 1973, respectively.

3. It appears that the assessee had a permanent assignment with Messrs Caprica Film Enterprises Private Ltd. As per the terms of the agreement entered into between the assessee and the said company, the assessee's services were made available to the said company for which the said company had agreed to pay a remuneration of Rs. 80,000 per annum to the assessee. The said company had undertaken to enter into agreement with film producers directly and receive all the payments. The said company is being assessed by the First Income Tax Officer, Film Circle, Bombay. One of the objects contained in the memorandum of association of

the said company was to make available artists, technicians, etc., etc., to various film producers.

4. In the previous year relevant to the assessment year 1972-73, the assessee had acted in two movies, namely, "Victoria No. 203" and "Paise Ki Gudiya" for which the said company got Rs. 45,001. In the previous year relevant to the assessment year 1973-74, the assessee had acted in five films and the said company received Rs. 3,35,001. In the returns of income for the years under reference, the assessee had declared her professional income at Rs. 1,65,721 in the first year and Rs. 2,30,976 in the second year. These two amounts, we are told, were inclusive of Rs. 80,000 received by the assessee from the said company.

5. On the aforesaid facts, the Income Tax Officer was of the view that the assessee had entered into an agreement with the said company with a view to avoid tax and circumvent her tax obligation. He, therefore, looked into the composition of the said company and found that the said company was controlled by the assessee's brother and her mother who, in her turn, was a leading film star of yester years. According to the Income Tax Officer, an attempt was made by the assessee to evade taxation of certain income in her hands. He, therefore, added Rs. 45,001 to the total income of the assessee for the assessment year 1972-73 and Rs. 3,35,000 for the assessment year 1973-74. In other words, he has taxed a certain part of the income twice over as he was very much obsessed with an idea that an attempt is made by the assessee to evade tax.

6. In the appeal before the Appellate Assistant Commissioner of Income Tax, the assessee contested the addition of Rs. 45,001 and Rs. 3,35,000 on the ground that the arrangement entered into between herself and the said company was a genuine one and she was entitled only to Rs. 80,000 per annum from the said company. It was further submitted that there was no attempt to hide the source of income or to evade tax as held by the Income Tax Officer. Relying on an unreported decision of this court in the case of Shobhna Pictures, wherein on almost identical facts as are obtaining in this case, it was pointed out that similar addition made by the Income Tax Officer was deleted by the appellate authorities and the High Court was pleased to approve it. The Appellate Assistant Commissioner, following the said decision, deleted the addition made in each of the years under reference.

7. Thereafter, the Revenue came up in appeal before the Income Tax Appellate Tribunal with a grievance that the Appellate Assistant Commissioner ought not to have deleted the two additions made by the Income Tax Officer in the years under reference. The Tribunal, however, followed the aforesaid decision of this court and upheld the action of the Appellate Assistant Commissioner.

8. From and out of the aforesaid facts, the following question is referred to us for opinion in respect of the assessment year 1972-73 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the amount of Rs. 45,000 received by Messrs Caprica Film Enterprises Pvt. Ltd., for lending the services of the assessee to various producers was not liable to be included in the hands of the assessee?"

9. It may be mentioned that for the year 1973-74, the amount involved is Rs. 3,35,000.

10. Learned counsel for the Revenue was fair enough to place before us a copy of the aforesaid decision in Shobhna Pictures wherein, as stated above, on almost identical facts and circumstances obtaining in that case, this court had held that no addition could be made in the manner made by the Income Tax Officer in the instant case. Learned counsel for the Revenue, however, submitted that this decision was rendered by the court prior to the decision of the Supreme Court in the case of [McDowell and Co. Ltd. Vs. Commercial Tax Officer](#), wherein the Supreme Court has deprecated any attempt made by the taxpayers to avoid/evade taxation. According to him, in order to decide the question referred to us, we must keep that decision in view. Learned counsel for the assessee, on the other hand, submitted that since the issue involved in the present case is squarely covered by the decision in the case of Shobhna Pictures, we should uphold the action of the Tribunal in deleting the additions made by the Income Tax Officer. He also stated that, apart from making the wild allegations, the Revenue has not brought any material on record to show that there was any attempt to evade/avoid taxation.

11. On due consideration of the submissions of the parties and after carefully going through the aforesaid unreported decision of this court, we do not find any merit in the submissions made on behalf of the Revenue. In the case of Shobhna Pictures there was a partnership firm of four people including two film actresses and their earnings were pooled together in the partnership concern and each of them was given a share of profit/salary, etc. The Income Tax Officer, in that case, attempted to include the income earned by each of the artists in their respective total income as was attempted to be done by the Income Tax Officer in the present case. In the unreported case, the assessee lost the appeals both before the Appellate Assistant Commissioner as well as before the Tribunal. However, on a reference made to this court, this court came to the conclusion that the Tribunal was not justified in holding that the income earned by two artists, who were partners in the firm Shobhna Pictures, was their individual income and not the income of Shobhna Pictures. Following the ratio laid down in that case in the instant case also, we have no hesitation to hold that out of the income earned by Messrs. Caprica Film Enterprises Pvt. Ltd., in various films where the assessee acted, the assessee was entitled to only Rs. 80,000 from the said company and not the entire income which the producers paid to the said company. We are entirely in agreement with the submissions made on behalf of the assessee that nowhere in the order of the Income Tax Officer any whisper has been made to show that there was an attempt on the part of the

assessee either to evade and/or avoid tax. In this view of the matter, we answer the question referred to us in the affirmative and in favour of the assessee.

12. No order as to costs.