Harinarayan Jamnadas Lakhani Vs Commissioner of Income Tax, Vidarbha and Marathwada

Court: Bombay High Court

Date of Decision: Jan. 14, 1983

Acts Referred: Income Tax Act, 1961 â€" Section 66

Citation: (1983) 35 CTR 186 : (1984) 147 ITR 576 : (1983) 14 TAXMAN 455

Hon'ble Judges: M.N. Chandurkar, J; M.H. Mohta, J

Bench: Division Bench

Judgement

Chandurkar, J.
The wife of the assessee in this reference was a partner in a partnership firm carrying on business of mining and contraction

under the name and style of M/s. Maheshwar Mining & Contracting Company. Her share of capital was Rs. 6,875. Out of the other four partners,

three partners were the daughters of the assessee and the fifth one was a stranger.

2. The ITO, however declined to grant registration to the firm for the assessment year 1956-57 on the ground that it was the assessee, was had

contributed capital on behalf of his wife and daughters and it was he who was in control and management of the business and had enjoyed the

profits arising out of the partnership. In respect of the same assessment year in question, originally the assessee had filed a return on January 13,

1959, declaring the entitle share income of his wife and daughters from the said partnership firm but in the revised return filed by him, he omitted

the said income. The ITO, however, while making the assessment for the assessment year in question included a sum of Rs. 11,085, being the 14

annas share income in the said firm in the income of the assessee. Though this assessment was upheld by the AAC, when the matter was taken to

the Tribunal by the assessee, the finding recorded by AAC was reversed and the Tribunal held that it is open to the assessee to contend that he

was not a partner at all in the firm and remanded the case to the AAC.

3. The AAC called for a report from the ITO. Before the ITO, the assessee''s wife filed an affidavit on August 5, 1966, stating that the capital

contribution of Rs. 6,875 was made by her from her stridhan in the form of gifts, presents and ornaments received by her from her parents and

relatives at the time of her marriage in the year 1924 and thereafter on some ceremonial occasions. She also disclosed that she had purchased

three annas share in 12 bungalows at Kamptee for 9,000 in 1942 and the remaining of 13 annas was acquired by her for Rs. 46,312 in 1950.

According to her, consideration of Rs. 97,541 and, therefore, she was in possession of sufficient funds in the year 1955 which would enable her to

make an investment of Rs. 6,875 in the partnership firm. According to her, the business was managed by the 5th partner, Shivraj, and not by her

own share of income from M/s. Maheshwar Mining & Contracting Company for the assessment years 1956-57 to 1958-59.

4. The assessee had also filed his written statement taking the same stand and denying that his wife was his benamidar in the firm.

5. The ITO did not accept the stand of the wife and found that it was the assessee who had purchased the properties at Kamptee with the aid of

his own money, that he had disclosed the share income from M/s. Asaram Sadani & Co., in respect of these properties and he had 1953, and

October 26, 1954. Relying on the statements made by the assessee''s wife in reply to a questionnaire, the ITO found that the wife was completely

ignorant about the business and it was really the assessee who was to manage and control the business. He also found that the wife had not

withdrawn a single penny out of the profits credited to her accounts during the existence of the partnership for five years and that she did not even

get the amount of Rs. 1,13,168 which was due to her on the dissolution of the firm in Diwali 1959. On the contrary, the accounts of the firm

revealed that the assessee and M/s. M. P. Mineral Syndicate (P) Ltd., of which the assessee was a major shareholder and the managing director,

were to pay amounts of Rs. 70,128,31 and Rs. 34,033 to the firm in Diwali 1959 when the firm was dissolved and they never paid the same. On

these facts, he found that it was the assessee who had enjoyed the profits and, therefore, it was he and not his wife who was the partner of the

firm. The ITO had also considered the previous conduct of the assessee who had taken an insurance agency in the assessment year 1947-48,

purchased the properties in the years 1942 to 1950 and acquired shares in another partnership firm and in M/s. M. P. Mineral Syndicate (P) Ltd.,

benami in the name of his wife. He also considered the fact that registration of the firm was refused.

6. This report of the ITO was considered by the AAC who upheld the view of the ITO and held that the assessee''s wife was the benamidar of the

assessee to the extent of 11 annas share and, therefore, the 11 annas share income from the firm was liable to included in the income of the

assessee. He, however, found that the annas share in the name of the three daughters was a very pretty one and excluded share income to that

extent from the income of the assessee.

7. The Tribunal while disposing of the appeal recorded six circumstances extensively reproduced in para 13 of the statement of the case. The first

was that there was no evidence to prove that the wife had received gifts as alleged; the second was that the immovable properties, out of the sale

proceeds of which the share capital of the firm was claimed to have been contributed, belonged to the assessee and not to his wife. The third was

that the wife had not drawn a single penny from the partnership for five years and she had not even got the sum of Rs. 1,13,168 which was due to

her on October 31, 1959, when the firm was dissolved; the fourth was that it was the assessee who had enjoyed the benefits of the partnership by

drawing a sum of Rs. 70,127 from the firm directly and a sum of Rs. 54,033 indirectly through M/s. M. P. Mineral Syndicate (P.) Ltd., of which

he was the managing director, the fifth was that the source of investment as capital in the firm being within the special knowledge of the assessee

and his wife, no direct evidence would be possible to show that the transaction was of a benami nature and the sixth circumstances was that merely

because the income of the firm was assessed in the hands of the wife, the Department was not prevented from including that income in the

assessment of the assessee. In view of those circumstances, the Tribunal recorded a finding upholding the orders of the AAC and the ITO. The

correctness of the order of the Tribunal is put in issue in the following two questions referred under s. 66(1) of the Indian I.T. Act, 1922 :

1. Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that Smt. Rampyaribai was the benamidar of Shri H. M.

Lakhani is based upon insufficient material and hence vitiated ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the income of Smt. Rampyaribai from M/s.

Maheshwar Mining & Contracting Company (P) Ltd., was assessable in the hands of the assessee for the assessment year 1956-57 ?

8. It is difficult to see how question No.1 framed in the manner that it is, could really have been referred under s. 66(1). Insufficiency of material or

evidence is not a question of law and the learned counsel for the assessee had, therefore, to concede that the question was required to be reframed

by substituting the Word ""any"" in place of ""insufficient"". We are, therefore, reframing question No.1 and it has to be read as follows :

Whether, on the facts and in the circumstances of the case, the finding of the Tribunal that Smt. Rampyaribai was the benamidar of Shri H. M.

Lakhani is based on any material ?

9. The learned counsel for the assessee had considerable difficulty in overcoming the hurdles which faced him at the outset in dealing with this

reference. It is well established that sufficiency of material is not a question of law and if there is any material on which the finding of the Tribunal

can be supported, then the correctness of that finding cannot be reviewed in the reference unless the question is framed in such a manner that it

brings into focus either the admissibility or the legality of the material upon which the finding is based. The learned counsel in this case no doubt

contended that merely because the Tribunal and the Tax Authorities have rejected the affidavit filed by Smt. Rampyaribai, she could not be said to

have failed to establish that the capital invested in the partnership firm belonged to her and an inference need not necessarily follow that she was the

benamidar for her husband. This contention overlooks the fact that the finding with regard to the benamidar character of the investment in the firm

of capital of the partnership firm is not based merely upon the circumstance that the assessee''s wife has failed to prove that she owned ornaments

as that was the source of the money invested in the form of capital of the partnership firm. We have referred above to the several circumstances

which have weighed with the Tribunal in arriving at the finding that the capital contribution is in fact not made by the wife of the assessee but by the

assessee himself. Each one of the circumstances referred to above is important by itself to indicate that it was really the assessee who was the

person who had invested the monies in the form of share capital in the name of his wife. Having regard to question No.1, it is obvious that each of

the circumstances referred to above was material which could have been considered by the Tribunal for reaching the findings, which it has

recorded. Consequently question No.1 must be answered in the affirmative and against the assessee.

10. The answer to question No.2 must follow, as a necessary corollary, against the assessee. Accordingly, question No.2 is also answered in the

affirmative and against the assessee. The assessee to pay the costs of this reference.