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Court : Allahabad

Decided On : Jan-23-1976

Reported in : (1976)5CTR(All)113

Appeal No. : I.T.R. No. 639 of 1972

Appellant : Phool Chand Varshney

Respondent : The C.i.T., Lucknow and ors.

Judgement :

C. S. P. Singh, J. - The Appellate Tribunal, Allahabad Bench, Allahabad under section 66(2) of the Indian Income-tax Act, 1922 has referred the following question for our opinion :-

'Whether upon the facts and in the circumstances of the case, the findings of the Income-tax Appellate Tribunal that the amounts of Rs. 19,620/- and Rs. 8,140/- were the income of the assessee Hindu Undivided Family taxable during the assessment years 1959-60 and 1960-61 respectively and also that, therefore, the claim of Shrimati Sukho Kunwar, wife of the Karta of the assessee family, was liable to be disallowed, were findings valid in law ?'

The assessment years involved are 1959-60 to 1962-63. The assessee, a Hindu Undivided Family, during the relevant accounting period, was carrying on the business of supplying sand. While examining the account for the year 1959-60 and 1960-61, the Income-tax Officer, found that there was an account of Shrimati

Sukho Kunwar, wife of the Karta of the assessee showing deposits of Rs. 19,620/- in the previous year ending 31-3-1959 and Rs. 8,140/- in the previous year ending 31-3-1960. The assessee was called upon to explain the source of these deposits, and thereupon, the assessee disclosed that the cash deposit came out of the money which Shrimati Sukho Kunwar received in the year 1936 from her father, and also out of the money which the assessee received on the death of his father in 1932. In support of this explanation, the assessee relied on a statement recorded by the Income-tax Officer on 4th February, 1943 about the source of money which the assessee had invested in the money lending business. The Income-tax Officer did not accept the explanation, and treated the deposit in the respective two years as the assessee's income from undisclosed source. Interest paid on these deposits was also disallowed.

2. An appeal was filed by the assessee before the Appellate Assistant Commissioner. In connection with the appeal for the earlier year i.e. 1958-59, the Appellate Assistant Commissioner had on a consideration of the explanation of the assessee, deleted an addition of Rs. 14,542/- made in respect of cash credit of Shrimati Sukho Kunwar. This order had been upheld by the Tribunal on appeal by the Department. However, in respect of the deposit of Rs. 19,620/- for the year 1959-60, the Appellate Assistant Commissioner held that the deposit remained unexplained, and the source from which the assessee tried to explain the deposit were already exhausted, by the benefit given in the year 1958-59 for a sum of Rs. 14,542/-. As a result the order of the Income-tax Officer was upheld. The Appellate Assistant Commissioner took a similar view of the deposit of Rs. 8,140/- for the assessment year 1960-61. In the years 1961-62 and 1962-63, the only question involved was as to the amount of interest paid on these deposits. In conformity with the order passed for the year 1959-60 and 1960-61, wherein it was held that the deposit represented the undisclosed income of the assessee, claim for interest was also disallowed. The Tribunal on appeal upheld the addition.

3. After hearing counsel for the assessee, we are of the view that the question referred is, in the circumstances of the case, essentially a question of fact and no question of law at all arises. The Tribunal agreeing with the Appellate Assistant Commissioner has held that neither the assessee, nor his wife had any fund

available with them in the years, 1959-60 and 1960-61, to make the impugned deposits. The fact that the assessee's wife had received some money in 1936, was of no consequence, as there was no evidence to show that this money was available in the assessment years in question. The contention of the assessee that the deposit could be explained by income or sale from immovable property, jewellery, and cash received by his wife from her father in 1932, was not accepted by the Tribunal, on the view that there was no evidence to show that the aforesaid property had ever been sold by the assessee. It also held that whatever money the assessee had in the money lending business carried on at Aligarh, were deposited by the assessee in its bank account, and further that whatever money the assessee's wife had, had also likewise been exhausted at Aligarh prior to migration of the family to Allahabad. Considering the fact that the assessee and his family had been making deposit in the bank, it took the view that it was not probable that such large amounts of money would be retained by the family outside the bank. It also held that there was nothing on the record to indicate that the deposit in dispute came out of the funds available with the family in the earlier years. Having held that the deposit did not belong to the wife, it held that interest on them could not be allowed.

4. The Tribunal has considered relevant material for these conclusions. The question whether the deposit belonged to the assessee or the wife of the Karta is essentially a question of fact. The claim for interest on these deposits is inter-linked with the question as to whether the deposit belonged to the assessee or to the wife of the Karta. Once the Tribunal reached the conclusion that the deposits represented the undisclosed income of the assessee, interest paid to the wife of the Karta, could not be allowed. We have not been able to find any legal infirmity in the findings recorded by the Tribunal.

5. In view of these conclusions, the question referred is answered in the affirmative, against the assessee and in favour of the Department. The Department is entitled to costs which we assess at Rs. 200/-. Counsel's fee is assessed at the same figure.