

Smt. Radha Devi Vs. Commissioner of Income Tax

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Court : Allahabad

Decided On : Sep-09-1997

Reported in : (1998)150CTR(All)55

Appeal No. : IT Ref. No. 362 of 1980

Appellant : Smt. Radha Devi

Respondent : Commissioner of Income Tax

Judgement :

ORDER

BY THE COURT:

At the instance of the assessee, the Tribunal referred the following question relating to the asst. yr. 1973-74 for the opinion of this Court :

'Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that the system of accounting was mercantile and when the assessee's consistent case was that in respect of the loan advanced to MIs Durga Glass Works the assessee had adopted the cash systemT'

The facts, as found by the Tribunal, are that the assessee showed dividend income of Rs. 1,000 by estimate, but she did not show any income by way of interest. The ITO noticed that the assessee had advanced Rs. 4,00,000 to a firm, M/s Durga Glass Works. The interest that accrued on the aforesaid loan, was not shown by the assessee, though she followed mercantile system of accounting. For the asst. yrs. 1969-70 and 1970-71, the ITO noticed that the interest income from the aforesaid firm was estimated and included in the total income of the assessee on the basis of mercantile system of accounting. Similarly, the ITO estimated interest income at Rs. 25,000 on the aforesaid loan advanced to the firm and brought the same to tax on the basis of mercantile system of accounting.

On appeal, the assessee before the AAC disputed the addition of Rs. 25,000 in her total income on the ground that cash system of accounting was followed by her in respect of the interest income from the aforesaid firm during the previous year relevant to the asst. yr. 1973-74. The AAC following the orders relating to the asst. yrs. 1969-70 and 1970-71, affirmed the order of the ITO.

On further appeal, the Tribunal held as follows:

'As the assessee transferred the above said capital from M/s R.N. Jhunjhunwala (P) Ltd. in the accounting period 1967~68, relevant for the asst. yr. 1967-68 and therein she did not make any change in the system of accounting and even thereafter when she employed a change for the income, from interest on the said amount for the asst. yrs. 1968-69, 1969-70 and 1970-71, which was not accepted by the Revenue, rather it was rejected and the assessee-appellant did not file an appeal, which means that she accepted the system of accounting computed for this very item upto the year 1970-71. But the assessee appellant has failed to show

that her stand was accepted for the asst. yr. 1971-72'.

3. From the finding of the Tribunal, it is clear that for the asst. yrs. 1968-69, 1969-70 and 1970-71, the assessee contended the same way that the cash system was being followed for those years to include the interest which accrued on the aforesaid loan, but that contention was rejected and the matter was not further pursued by the assessee in appeal. The question is whether the assessee having followed the mercantile system to include the interest income in the past, can shift to the cash system during the accounting period, relevant to the assessment year in question.

4. In Shiv Prasad Ram Sahai vs. CIT (1966) 61 1TR 124 (M) , this Court held that, if the assessee has once chosen the mercantile system for a transaction and has regularly employed that system, it is not open to him unilaterally at any time during subsequent accounting years to change that system. The variation could be only by mutual consent. The assessee has not shown that she had changed over to the cash system from mercantile system by mutual prior consent of the AO.

Following the said authority, we answer the aforementioned question in the affirmative, i.e., against the assessee and in favour of the Revenue.

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