Cit Vs. S.N. Anand

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Court : Allahabad

Decided On : Feb-23-2005

Reported in : [2006]155TAXMAN390(All)

Appeal No. : IT Reference No. 52 of 1992 23 February, 2005

Appellant : Cit

Respondent : S.N. Anand

Advocate for Pet/Ap. : A.N. Mahajan, *for the Applicant.*

Judgement :
ORDER

1. The Income Tax Appellate Tribunal, Allahabad, has referred the following question of law under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for opinion to this Court:

'Whether in the circumstances of the case, the Tribunal was legally correct to hold that there was no case for reopening of assessment under section 147(a)/148 ?'

2. The dispute relates to the assessment years 1978-79,1980-81 to 1983-84.

3. Briefly stated the facts giving rise to the present reference are as follows:

The assessee - S.N. Anand is a partner in a firm MIS. Sarang Products, Modinagar, in the capacity of karta of the HUR His wife Smt. Anand was also a partner in the said firm in her individual capacity. In the income returns, the assessee did not disclose the income of his wife. The original assessment was completed under section 143(1) of the Act. Thereafter, reassessment proceedings were initiated for all these years on the ground that the assessee had not disclosed the share income of his wife in the individual status in accordance with the provisions of section 64(1)(i) of the Act. In the reassessment proceedings it was contended that the share of his wife cannot be assessed in the individual status. The Income Tax Officer added the share income of the wife of assessee of the firm M/s. Sarang Products in accordance with the provisions of section 64(1)(i) of the Act. The said order was confirmed in appeal by the Deputy Commissioner of Income-tax (Appeals). Further aggrieved, the assessee filed second appeal before the Tribunal. The Tribunal allowed the appeal.

4. Heard Sri A.N. Mahajan, learned standing counsel for the department.

5. Section 64(1)(i) of the Income Tax Act as it then stood reads as follows:

'64. Income of individual to include income ol spouse, minor child, etc.(1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly

(i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner,'

6. It appears that there was divergence of opinion among the various High Courts on the question where the husband is partner in a firm as the karta of hindu undivided family, the wife being a partner in the firm in the individual capacity, the share income of wife in the individual capacity is liable to be clubbed with the income of the husband who is the partner in the firm as karta of hindu undivided family. The Supreme Court interpreted the word individual occurring in sub-section (1) of section 61. It has been held by the Apex court in CIT v. Om Prakash : [1996]217ITR785(SC) that an individual can be a partner in a partnership firm in his individual capacity or in the capacity of karta of Hindu undivided family or for

that matter, in any other capacity such as a trustee. There can also be a firm comprising of two more individuals, wherein the wife/wives of one or more are also partners. So far as the partners in the partnership firm are concerned, they are not really concerned in which capacity a particular person is a partner, i.e., either as an individual, as a karta as a trustee or otherwise. To them, he is an individual person, This aspect, however, becomes relevant as between the partner and those whom he represents in his partnership firm. A karta receives income as a partner is not his individual income, it is income of hindu undivided family and he receives it on behalf of Hindu undivided family. It is, thus, for this reason that the income of wife arising from her membership is not held to be includible in the income of Hindu undivided family and section 64(1) is not attracted.

7. Respectfully following the aforesaid judgment of the Apex Court, we are of the view that the income of wife could not be included in the income of the assessee, i.e., the income of the Hindu undivided family, therefore, it was not obligatory on the part of the husband who is karta of the Hindu undivided family to disclose the share income of his wife from the partnership firm. We, accordingly, answer the question referred to us in the affirmative L e. in favour of the assessee and against the revenue. There shall be no order as to costs.