

Cit Vs. R.N. Rai

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Court : Madhya Pradesh

Decided On : Mar-14-2001

Reported in : (2001)168CTR(MP)390

Appeal No. : WT Appeal Nos. 26, 28 & 31 to 37 of 2000 14th March 2001

Appellant : Cit

Respondent : R.N. Rai

Advocate for Pet/Ap. : Rohit Arya, *for the Revenue* None, *for the Assessee*

Judgement :

Arun Mishra, J.

In all these nine appeals against common order passed by the Income Tax Appellate Tribunal (hereinafter referred to as the Tribunal) whereby the order dated 22-10-1998, passed by the Commissioner (Appeals), Jabalpur, was affirmed. The Commissioner (Appeals) has reversed the order passed by the Asstt. Commissioner .

2. The Asstt. Commissioner assessed the residential house at Napier Town, Jabalpur, of the assessee sold in the year 1986 at Rs. 18,00,000, of which value was estimated on 31-3-1984, at Rs. 14,00,000. Net taxable wealth was found at Rs. 15,74,657.

3. For the assessment years 1982-83 to 1992-93 in question, notice under section 17 of the Wealth Tax Act, 1957, was served on the assessee on 12-10-1992. In reply to the notice under section 16(2) of the Wealth Tax Act, it was contended that the wealth of the assessee has been disclosed in the case of Hindu Undivided Family following the order of the Commissioner (Appeals). Assessee, therefore, has not filed any return under section 14(2) of the Wealth Tax Act at the relevant time. It appears as against the order which was passed by the Commissioner (Appeals) an appeal preferred at the relevant time by the revenue before the Tribunal was pending. The Asstt. Commissioner in the absence of return of wealth-tax proceeded ex parte and passed assessment order assessing net taxable wealth at Rs. 15,74,700 under section 16(5) and demand notices were issued. Penalty proceedings by issuance of notice under section 18(1)(c) for furnishing inaccurate particular of the income and for non-compliance of notice under section 18(1)(b), proceedings were started.

4. The order passed by the Asstt. Commissioner was challenged before the Commissioner (Appeals), Jabalpur. The Commissioner (Appeals) came to the conclusion that the wealth is substantially assessable in the hands of Hindu Undivided Family status. While coming to the conclusion, the Commissioner (Appeals) has relied on the decision passed in the case of assessee by the Commissioner (Appeals) and Tribunal with respect of the same property, income from which was assessed as that of Hindu Undivided Family. The Commissioner (Appeals) felt itself bound by the order passed in income-tax matter about the same property. Hence, it held that total sale proceed of house which is of Hindu Undivided Family cannot be treated to be that of individual capacity of the assessee. The revenue preferred an appeal before the Tribunal. The Tribunal in view of its own decision in the assessee's own case in the income-tax matter vide ITA Nos. 43 to 46/Jab/1994, passed in November, 1998, dismissed the appeal filed by the revenue.

5. These nine appeals have been preferred against the common order dated 16-9-1999, passed by the Tribunal affirming the orders of Commissioner (Appeals).

6. In the present appeals, learned counsel for the revenue has submitted that the house has been wrongly treated to be that of Hindu Undivided Family. There is release deed in favour of the assessee executed by two brothers of the assessee; S/Shri Choudhary Sahsanar Pratap Rai and Sheshnarayan Rai. This release deed was executed on 30-1-1948, on stamp-paper of Rs. 10. Initially the income from the house property was shown by the assessee to be his own. Subsequently, in the assessment year 1970-71 the assessee declared the house property in the status of Hindu Undivided Family. On 26-11-1970, the Income Tax Officer assessed his income from the house property in the hand of Hindu Undivided Family and held the building belonged to Hindu Undivided Family. In the subsequent assessment years also the income from the house was shown to be in the status of Hindu Undivided Family.

7. Learned counsel Shri Rohit Arya strenuously submits that once an income from house was shown that of individual income, it later on could not be treated to be that of Hindu Undivided Family. He further submits that the nucleus of Hindu Undivided Family was not established, as such the house in question should have been treated to be an individual property of the assessee and the order passed by the Assistant Commissioner (Appeals) was just and proper and has been illegally reversed by the Commissioner (Appeals) and the appeals preferred before the Tribunal have also been illegally dismissed.

8. After going through the record, averments made in the memo of appeal, we are satisfied that the appeals do not raise any substantial question of law and the submissions raised by the learned counsel for the appellant are not acceptable. The house in question was purchased by registered sale-deed dated 12-3-1947, in the name of three brothers, Rs. 16,000 were advanced by the father of the assessee to the seller in the shape of an FDR, which was in the name of the assessee's father in Calcutta National Bank, which was endorsed in favour of the seller and this fact finds place in the sale deed itself and only a sum of Rs. 1,000 was advanced jointly by three brothers. Thus, it appears that for the purchase of the property the major source of money came from the father. Thus, we do not find any justification in the submission that nucleus fund of the Hindu Undivided Family is not established as source of purchase. There was no division in the family at the

relevant time of purchase. It is not disputed that at that time there was Hindu Undivided Family.

9. Learned counsel has relied on release deed dated 30-1-1948. This release deed as per the revenue was executed on stamp-paper of Rs. 10. It is not shown to be registered. Release deed with respect to the property worth more than Rs. 100 is required to be compulsorily registered under section 17 of the Registration Act, 1908. The release deed evincing relinquishment of share in writing amounts to a transfer of immovable property. Hence, it requires registration. The house in question was worth Rs. 24,947. Thus, the document cannot have the effect of relinquishment of right. It is not registered nor bears proper stamp duty.

10. It is also not disputed that in the assessment year 1970-71 the assessee declared income from the disputed house property in the status of Hindu Undivided Family, the Income Tax Officer vide order under section 143(3), dated 26-11-1970, assessed the house property in the hands of Hindu Undivided Family and that state of affair continues in the income-tax assessment for 1970-71 onwards and this state of affair cannot be changed all of a sudden for the purpose of wealth-tax assessment. For the purpose of income-tax the assessee has been assessed in the capacity of Hindu Undivided Family. On facts also we are satisfied that the sale proceed of the house cannot be treated as that of individual property of assessee for the purpose of wealth-tax. The assessee had also shown the income in the status of Hindu Undivided Family and income-tax assessment have attained finality upto Tribunal. Thus, we find the order passed by the Commissioner (Appeals) and affirmed by the Tribunal is based on decision in assessee's own case in the income-tax matter decided in November, 1998. Thus, no interference is called for in the instant appeals.

11. In our opinion, no substantial question of law arises in the present appeals. The appeals being devoid of merits, are dismissed.