ito Vs. Vinod Kumar Soni

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Court : Delhi

Decided On : Aug-29-2002

Reported in : [2002]124TAXMAN603(Delhi)

Appeal No. : IT Ref. No. 547 of 1983 29 August 2002

Appellant : ito

Respondent : Vinod Kumar Soni

Advocate for Pet/Ap. : R.D. Jolly and; Rajeev Awasthi, for the Responden

Judgement :

D.K. Jain, J.

At the instance of the revenue, the Tribunal, Delhi Bench E, has referred under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act), the following question, arising out of Income Tax Appeal No. 89 (Del) of 1982, for the opinion of this court :

'Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the salary income having already been assessed in the hands of the assessed's wife Smt. Madhu Soni under section 64(1)(ii) could not again be assessed in the hands of the assessed ?'

2. Briefly stated, the background facts are that the respondent-assessed, an individual, owns 25.04 per cent shares in Ashok Worsted Spinners (P) Ltd., in which his wife holds 2.42 per cent shares. Similarly, the assessed holds 25 per cent shares in Sharmila Spg. Mills (P) Ltd., in which his wife's shareholding was to the extent of 2.56 per cent. The assessed received a salary of Rs. 13,200 from each of the two companies. In his return of income for the assessment year 1978-79, the assessed did not include the said salary income from the companies on the ground that the same is taxable in the hands of his wife, namely, Smt. Madhu Soni, under section 64(1)(ii) of the Act as she had substantial interest in these two companies. Although up to the assessment year 1977-78, the said salary income was offered for assessment by the assessed in his own hands and had been assessed as such. While completing assessment for the relevant assessment year, the assessing officer rejected the stand of the assessed on the ground that the assessed held a dominant interest in the shares of the two companies as compared to his wife. He, accordingly, brought the said salary income to tax in the hands of the assessed.

3. Aggrieved, the assessed preferred an appeal to the Commissioner (Appeals), but without any success.

4. The assessed took the matter in further appeal to the Tribunal. The Tribunal, vide its order dated 4-2-1983, rejected the contention of the assessed that the assessed's wife had substantial interest in the aforementioned two companies. The Tribunal, thus, upheld the view taken by the Commissioner (Appeals). However, while rejecting the stand of the assessed on merits, the Tribunal finally concluded that since the same salary income has already been assessed in the hands of the assessed's wife, and the assessment not being in the nature of a protective assessment, the same income could not be brought to tax in the hands of the assessed.

5. On revenue's moving an application under section 256(1) of the Act, the aforenoted question has been referred.

6. Despite service, there is no appearance on behalf of the assessed. We have, accordingly, heard Mr. R.D. Jolly, the learned senior standing counsel for the

revenue.

7. It is vehemently submitted by Mr. Jolly that since the wife of the assessed had on her own volition included the salary in question in her return of income, the assessing officer had no option but to frame assessment on that basis. The submission is that merely because an income has been included in the hands of a person, who otherwise is not liable to be taxed in respect of that income, the revenue is not precluded from including the same in the hands of the person, in whose hands it is liable to be taxed in accordance with law.

8. We are unable to persuade ourselves to agree with the learned counsel for the revenue. Apart from the fact that no such plea was raised before the Tribunal, while coming to the conclusion that there was no principle in law justifying double taxation, the Tribunal has referred to the assessment order in the case of Smt. Madhu Soni, placed before it. The Tribunal has recorded a categorical finding that the said assessment is not a protective assessment. In view of the observations of this court in R. Dalmia v. CIT : [1982]133ITR169(Delhi) , to the effect that there is no rule which provides for double taxation', with which we are in respectful agreement, the answer to the question referred is self-evident.

9. In this view of the matter, the question referred is answered in the affirmative, i.e., in favor of the assessed and against the revenue.

10. The reference stands disposed of with no order as to costs.