Cit Vs. Brig. Kapil Mohan

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SooperKanoon Citation : sooperkanoon.com/710695

Court : Delhi

Decided On : Aug-06-2002

Reported in : [2002]124TAXMAN745(Delhi)

Appeal No. : IT Appeal No. 77 of 2002 6 August 2002

Appellant : Cit

Respondent : Brig. Kapil Mohan

Advocate for Pet/Ap. : Sanjeev Khanna and; Ms. Rashmi Chopra,;for the Revenue; Ano

Judgement :
ORDER

This appeal under section 260A of the Income Tax Act, 1961, directed against the order dated 25-4-2001, passed by the Tribunal, Delhi Bench 'B', New Delhi, in IT Appeal No. 5861 (Delhi) of 1995, pertaining to the assessment year 1993-94, proposes the following questions, stated to be one of law :

'1. Whether, the ITAT was right in law in holding that the dividend income from 63,676 shares from Mohan Meakins Ltd. cannot be included in the income of the assessed in view of section 64(2) of the Income Tax Act, 1961 ?

2. Whether, the ITAT was right in holding that dividend income of 63,676 shares of Mohan Meakins Ltd. cannot be taxed in the hands of the assessed as he is a sole

male member and coparcener in the alleged smaller HUF consisting of the assessed, his wife and minor daughter?

3. Whether, the ITAT was right in holding that dividend income from 60,000 shares of M/s. Mohan Meakins Ltd. is income of a trust created by the assessed in favor of the first son of Sh. Rakesh Mohan who was not born at the time of the creation of the trust and whether such a trust is a valid trust ?

4. Whether, the income of the 60,000 shares transferred by the assessed in favor of the alleged trust of unborn person is legal and valid and dividend income from the said 60,000 shares cannot be included in the income of the assessed ?'

2. Insofar as proposed question Nos. 1 and 2 are concerned, we find that in the case of the assessed, the same issue had come up for consideration of this court in CIT/CWT v. Lt. Col. Kapil Mohan : [2001]251ITR386(Delhi) , and vide judgment dated 30-5-2001, the matters pertaining to various assessment years were remanded back to the Tribunal with a direction to rehear the appeal and take decision on the factual aspects, keeping in view the legal position as was indicated in the said judgment. We are of the view that instead of admitting this appeal, it would be appropriate to set aside the impugned order with a direction to the Tribunal to rehear the appeal and take a fresh decision in the light of the aforenoted judgment. We order accordingly. It goes without saying that while hearing the appeal afresh, the Tribunal will take into consideration the provisions of law, which would be applicable for the relevant assessment year, as we find that the section in question has undergone amendments a number of times.

3. As regards proposed question Nos. 3 and 4 concerning the issue, subject-matter of the said questions, stands concluded by a decision of this court in CIT v. Brig. Kapil Mohan (2001) 252 ITR 830 . In view of the said judgment, no fault can be found with the view taken by the Tribunal.

4. The appeal stands disposed of in the above terms.