

ito Vs. Shri Yogi H. Aggarwal, Associated

ito Vs. Shri Yogi H. Aggarwal, Associated

SooperKanoon Citation : sooperkanoon.com/73837

Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Feb-24-2005

Reported in : (2005)278ITR116(Mum.)

Judge : T Sharma, R Rajesh

Appellant : ito

Respondent : Shri Yogi H. Aggarwal, Associated

Judgement :

1. These two appeals by the Revenue are directed against the common order dated 24/6/99 of CIT(A)XXX, Mumbai, for the assessment year 1977-98 and 1998-99. These were heard together and are being disposed of by this common order.

2. The facts in brief are that the assessee is an individual. In the return of income filed for the assessment year 1997-98, under the head "income from other sources" assessee declared the income earned by two minor children Under Section 64(1A) of the IT. Act as under :-Ayesha Agarwal - Rs. 4,27,059/- Rs. 8,53,125/-Less deduction Under Section 10(33) in respect of minor Rs. 3,000/- Rs. 8,50,115/- 3. Out of the income of minor children, the assessee has also claimed deduction of Rs. 30,000/- i.e., Under Section 80L @ Rs. 15,000/- per minor child in addition to deduction of Rs. 15,000/- Under Section 80L against his own income.

4. The Assessing Officer vide order dated 30/1/98 processed the return of income Under Section 143(1)(a) and in "Adjustment Explanatory Sheet" he made prima facie adjustment whereby he disallowed deduction of Rs. 30,000/- claimed Under Section 80L (@ Rs. 15,000/- per minor child) observing as under :- "The assessee claim Under Section 80L of the IT Act up to the extent of Rs. 30,000/- is in excess of the limit specified in Section 80L of the Act. That is, the separate claim Under Section 80L in respect of minors' income from specified investments is prima facie disallowable as the expression used in Section 64(1A) of IT Act is "such income" and not total income/taxable income of the minor(s).

Hence, the excess claim to the extent of Rs. 30,000/-is disallowed." 5. For the assessment year 1998-99 also, the Assessing Officer, while processing the return of income, disallowed the deduction Under Section 80L out of two minor children's income clubbed by the assessee Under Section 64(1A) of the Act. The disallowance for the assessment year 1998-99 is Rs. 24,000/- because in this year the assessee claimed deduction Under Section 80L @ Rs. 12,000/- per child in respect of two minor children.

6. For both the assessment years against the prima facie adjustment made in intimations Under Section 143(1)(a) assessee preferred two separate appeals and the Ld.CIT(A) vide common order dated 24/6/99 deleted the prima facie adjustment of Rs. 30,000/- for the assessment year 1997-98 and Rs. 24,000/- for the assessment year 1998-99 on the ground that issues which were controversial would not come within - the purview of the prima facie adjustments which Assessing Officer made while processing the return of income Under Section 143(1)(a). For this, the Ld. CIT(A) relied on the decisions of ITAT Guwahati Bench in the case of S.K. Deb 14 TTJ 429 and judgment of Hon'ble Karnataka High Court in the case of S.K. Nayak, 145 ITR 791.

Aggrieved by this order of the Ld. CIT(A) for both the assessment years revenue is in appeal before us. The ground common to both the assessment years is as under :- "On the facts and circumstances of the case and in law, the Ld.

CIT(A) erred in holding that the deduction Under Section 80L pertaining to the income of the minor children be allowed before clubbing the same with the income of the assessee Under Section 64(1A) the IT Act, 1961."

7. At the time of hearing before us on behalf of revenue Shri Mohit Kapoor appeared and contended that Section 64(1A) was inserted by the Finance Act, 1992, w.e.f. 1/4/93. After this insertion minor cannot be assessed under the IT Act unless minor is a child suffering from any disability specified in Section 80(U) of the Act. Reliance was also placed on the provisions contained in Section 10(32) of the IT Act according to which for and from assessment year 1993-94, in the case of an assessee referred to Sub-section (1A) of Section 64, any income includible in his total income under that sub-section, to the extent such income does not exceed Rs. 1,500/- in respect of each minor child is exempt. The Ld. DR submitted that once the income of minor child was included in the gross total income of the assessee, only deduction permissible was Rs. 1,500/- per minor child Under Section 10(32) of the IT Act, 1961. Regarding reliance placed by Ld. CIT(A) in Impugned order on decision of ITAT Guwahati Bench in the case of Shri S.K. Deb v. ITO (supra), the Ld. DR submitted that the said decision pertained to assessment year 1976-77 regarding clubbing of income of wife Under Section 64(1A) in the hands of husband. The Ld. DR submitted that as per the provisions contained in Section 64(1)(A) for and from assessment order 1993-94 minor child ceases to be an assessee unless child is suffering from a disability of the nature as specified in Section 80(U) of the IT Act or income arises or accrues to minor child on account of b) activity involving application of his skill, talent or specialized knowledge, as provided in proviso to Section 64(1A) of the Act.

8. The Ld. DR accordingly concluded that as per provisions contained in Section 64(1A) of the Act all income arising or accruing to a minor child is required to be clubbed subject to the exclusion provided in Section 10(32) of the IT Act, 1961.

9. Shri A.V. Sonde, Authorised Representative, appearing for the assessee supported the order of the CIT(A). The Ld. Counsel for the assessee submitted that the assessee was entitled to deduction in respect of each of minor child Under Section 80L of the IT Act whose income is included in the total income of the assessee. This is in addition to deduction Under Section 80L in respect of his own income.

For this reliance is placed on the decision of Karnataka High Court in the case of CIT v. S.K. Nayak (supra) wherein it was held that only net salary income of wife is to be clubbed with that of her husband and not gross salary income. Further, relying on the decision of ITAT Guwahati Bench in the case of S.K. Deb (14 TTJ 429) supra, it was submitted that issue regarding allowance of deduction Under Section 80L out of income of minor child included is highly debatable and therefore the same was outside the purview of prima facie adjustment permissible Under Section 143(1)(a) of the Act. On a query from the Bench, whether similar deduction as disallowed by the A.O. was ever allowed Under Section 143(3) in assessee's or any other case after insertion of Clause (1A) of Section 64 and Clause (32) to Section 10 of the I.T. Act, w.e.f.

1.4.93, the Counsel for the assessee stated that he was not aware of any such deduction was allowed Under Section 143(3).

10. In rejoinder, Ld. DR submitted that in the decision relied by Ld.

Authorized Representative of Assessee on the decision of Karnataka High Court, the issue was regarding inclusion of net income as computed under the head "income from salary" and issue regarding allowance of deduction Under Section 80L of the I.T.Act. The Ld. DR submitted that up to the assessment year 1992-93 income of minor child could be clubbed as per provisions contained in Clause (v) of Section 64(1) of the IT Act, Clause (v) of Section 64(1) (pertain for Assessment year 1976-77 to 1992-93) provide that in computing the total income of the individual, there shall be included all such income as arises directly or indirectly to minor child of such individual or otherwise than for adequate consideration. This Clause was omitted by Finance Act,

1992 and Section 64(1A) as well as Section 10(32) were inserted w.e.f.

1/4/93. Ld. DR accordingly submitted that various case laws relied prior to insertion of Clause 1(A) to Section 64 of the Act and Clause (32) to Section 10 of the Act are not relevant because w.e.f. 1/4/93, only deduction permissible out of income of minor child as provided in Section 10(32) of the IT Act, 1961. He further submitted that there is no doubt or debate in this regard therefore prima facie adjustment in respect of both the assessment year was correctly made by the Assessing Officer.

11. We have heard both the sides and carefully gone through the orders of the authorities below and relevant provisions contained in the IT Act, 1961. Prior to omission of Clause (v) of Section 64(1), by Finance Act, 1992 w.e.f. 1.4.93 income of minor child could be clubbed from assets transferred directly or indirectly to minor child by such individual otherwise for inadequate consideration. In view of this omission s/s1(A) was inserted by Finance Act, 1992 w.e.f. 1/4/93 to Section 64 which reads as under :- "In computing the total income of any individual, there shall be included all such income as arises or accrues to his minor child not being a minor child suffering from any disability of the nature specified in Section 80U. Provided that nothing contained in this sub-section shall apply in respect of such income as arises or accrues to the minor child on account of any - b) activity involving application of his skill, talent or specialized knowledge and experience." 12. With effect from 1/4/93 by the Finance Act, 1992 Section 10(32) was also inserted which reads as under :- "In the case of an assessee referred to in Sub-section (1A) of Section 64, any income includible in his total income under that sub-section, to the extent such income does not exceed one thousand five hundred rupees in respect of each minor child whose income is so includible;" 13. The CBDT vide Circular No. 636 dated 31/8/92 issued explanatory notes relating to insertion of aforesaid two sub sections to the income tax Act w.e.f. 1/4/93. The relevant portion explaining the scope of these two sections is contained in para-36 at page-31 of said circular reported in 198 ITR (St.)¹ which reads as under :- 36. Section 64 of the Income-tax Act provided that in computing the total income of any individual, there shall be included all such income as arises directly or indirectly to a minor child of such individual from,- (i) the admission of the minor to the benefits of partnership in a firm.

(ii) assets transferred directly or indirectly to the minor child by such individual otherwise that for adequate consideration, and (iii) assets transferred directly or indirectly by such individual to any person or association of persons otherwise than for adequate consideration, to the extent to which income from such assets is for the immediate or deferred benefit of such individual's minor child. In reality as well as in law, the minor children cannot administer their property nor can they take decisions on the disposal of income arising there from. These responsibilities fall on parents, who, for all practical purposes, treat and use this income as part of their own income. Exclusion of minor children's income from the income of their parents also leads to tax avoidance. The aforesaid provisions of Section 64 with regard to clubbing of minors' income had also led to litigation between the Income-tax Department and the assesseees.

Section 64 of the Income-tax Act has, therefore, been amended to provide that all income of a minor is to be included in the income of his parent. However, the income derived by the minor from manual work or from any activity involving his skill, talent or specialized knowledge or experience will not be included in the income of his parent. It has also been provided that the income of the minor will be included in the income of that parent whose total income is greater. Once clubbing of minor's income is done with that of one parent, it will continue to be clubbed with that parent only, in subsequent years. The Assessing Officer may, however, club the minor's income with that of the other parent if, after giving the other parent an opportunity to be heard, he is satisfied that it is necessary to do so. Where the marriage of the parents does not subsist, the income of the minor will be includible in the income of that parent who maintains the minor child in the relevant previous year.

The Act has also inserted Clause (32) in Section 10 of the Income-tax Act, to provide that in case the income of an individual includes the income of his minor child in terms of Section 64 of the Act, such individual shall be entitled to exemption of one thousand five hundred rupees in respect of each minor child if the income of such

minor as includible under Section 64 exceeds that amount.

However, where the income of any minor so includible is less than one thousand five hundred rupees, the aforesaid exemption shall be restricted to the income so included in the total income of the individual. The provision is to provide relief to the individuals in whose total income of the minor child is to be included.

These amendments take effect from 1st April, 1993, and will, accordingly, apply in, relation to assessment year 1993-94 and subsequent years.

14. A combined reading of Sub-section (1A) of Section 64 and Sub-section (32) of Section 10 in conjunction with explanatory notes on these two provisions as contained in CBDT Circular No. 636 dated 31/8/92 supra, clearly indicate that w.e.f. 1/4/93 i.e. assessment year 1993-94 "all such income as arises or accrues to minor child" is required to be included in the total income of the individual. The total income is defined in Section 2(45) of the Act. According to this definition "total income" means total amount of income referred to in Section-5 computed in the manner laid down in the IT Act. Deduction Under Section 80L is to be allowed for the purpose of computing "total income". After 1/4/93 there is no necessity to compute the "total income" of minor as defined in Section 5 of the I.T. Act unless minor child suffering from any disability of nature specified Under Section 80U or income is of such a nature as provided in proviso to Section 64(1A). Up to assessment year 1992-93 minor could be assessed to tax whereas after insertion of s/s (1A) minor has no locus-standi under the IT Act unless minor child suffering from any disability of the nature specified Under Section 80(U) or in respect of such income as arises or accrues to minor child on account of any - b) activity involving application of his skill, talent or specialized knowledge and experience.

15. In this context we have also gone through the provisions of Section 80L. Section 80L (i) reads as under:- "Deduction in respect of interest on certain securities, dividend etc. 80L(1) "Where the gross total income of an assessee, being"-- 16. Section 80L(1) contains the word "assessee". After the insertion of Clause (1A) to Section 64 minor cannot be assessed unless the minor child suffering from any disability of the nature specified Under Section 80(U) or in respect of such income as arises or accrues to minor child on account of any - b) activity involving application of his skill, talent or specialized knowledge and experience.

17. In the present case, income is not derived by minor from manual work or any activities involving his skill, talent or specialized knowledge or experience. Therefore, whatever income (excluding deduction permissible Under Section 10(32) of the Act) included by the assessee himself Under Section 64(1A), the assessee is entitled to deduction Under Section 80L.

18. From the aforesaid provisions of law it is clear that w.e.f.

1/4/93, there is no room for doubt or debate regarding disallowance of separate deduction Under Section 80L out of income of minor clubbed in the case of parent(s). Various case laws relied by the Ld. Counsel for the assessee are not applicable because either they pertain to assessment year prior to 1993-94, insertion of Section 64(1A) of the Act or regarding allowance of deduction which are to be allowed for computing the income under a particular head of "income" for example the decision of Karnataka High Court in the case of S.K. Nayak (supra) the issue was regarding allowance of standard deduction for the purpose of including income from salary of spouses in the hands of husband (assessee).

19. For the aforesaid reasons, we hold that prima facie adjustment for both assessment under appeal was correctly made by the Assessing Officer and Ld. CIT(A) clearly erred in deleting the same on the ground that issue regarding allowance of addition Under Section 80L of income of minor child clubbed Under Section 64(1A) is of debatable nature. We therefore reverse the order of the CIT(A) and prima facie adjustment made by the Assessing Officer are restored.