

Cit Vs. Kastoori Devi

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Court : Rajasthan

Decided On : May-24-2001

Reported in : (2001)170CTR(Raj)99

Appeal No. : IT Ref. Appln. Nos. 43 & 44 of 1988 24 May 2001

Appellant : Cit

Respondent : Kastoori Devi

Judgement :

Rajesh Balia, J.

These are two applications under section 256(2) of the Income Tax Act, 1961, arising out of the common order passed in ITA Nos. 863 and 864/Jp/85 in respect of the very same assessee for the assessment years 1981-82 and 1982-83 for raising an identical issue for two years as under:

'RA No. 185/Jp/87

'Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing the claim of deduction of Rs. 38,551'

'RA No. 186/Jp/87

'Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing the claim of deduction of Rs. 38,859.'

2. The assessee late Smt. Prabha Gupta was widow of Kashiram. On the death of Kashiram, she along with her minor two daughters inherited the properties of Kashiram. As per the will left by Smt. Kashiram, widow Smt. Prabha Gupta and two daughters were entitled to receive amount from his share in M/s. Kashiram & Sons in equal ratio, and in his place his widow was nominated to be as a partner. The will also stated that the widow of Kashiram and his two daughters will be the equal partners as far as the properties left by her husband are concerned.

The assessee claimed that only that part share in income from M/s Kashiram & Sons, to which she was entitled as an heir of Kashiram is liable to be taxed as per income in her hands, but the share of daughters cannot be included in her income.

This contention was not accepted by the Income Tax Officer. He included in the income of assessee the share from the firm as per computation made in the assessment of firm and did not exclude the shares to which daughters were entitled as per will of deceased Kashiram.

The Appellate Assistant Commissioner agreed with the Income Tax Officer.

However, the Tribunal found that on the death of Kashiram three rights could not have been constituted as one and therefore, it could not be considered income of single person and since the existence and validity of will has not been disputed as per the will of Smt. Prabha Gupta, was nominated as a partner in M/s. Kashiram & Sons. Whatever share income can be allotted to Smt. Prabha Gupta was an income received by her on behalf of heirs and two daughters in equal share as per the will. In other words, the Tribunal was of the view that this was not a case of disbursement of income after having earned by Smt. Prabha but transfer of income at source by operation of will, as head of her husband. On this finding shares of daughters were directed to be deducted from the income of Smt. Prabha Gupta now through her legal representative and only her share was allowed to be taxed in her hands.

3. The application of revenue under section 256(1) for referring the aforesaid question of law has been rejected by the Tribunal by a common order. Therefore, the question as raised by the revenue is not a referable question of law and it is totally a question of fact.

4. Having heard learned counsel, we are in agreement with the Tribunal that in the facts and circumstances of the case, no question of law arises as the Tribunal has decided the issue only on facts.

Both the applications stand rejected.

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