

Cit Vs. Vimal Chand Golecha

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Court : Rajasthan

Decided On : Feb-04-2002

Reported in : (2002)174CTR(Raj)638

Appeal No. : IT Ref. Appln. No. 16 of 1983 4 February 2002 A.Y. 1976-77

Appellant : Cit

Respondent : Vimal Chand Golecha

Advocate for Pet/Ap. : J.K. Singhi, for the Revenue J.K. Ranka, *for the Assessee*

Judgement :

By the court

On the application filed under section 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following question for the opinion of this court :

'Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the loan accounts of the minors in the books of the firm M/s Ratnalay will not lose its character and will not partake the character of capital account by virtue of the fact that the share incomes of the minors were credited to their loan account ?'

2. The partnership firm styled as M/s Ratnalaya started vide partnership deed dated 31-7-1968, and it was constituted by the two major partners namely, Smt.

Kanchan Devi Golecha and Shri Satish Chandra Bothra. Two minors Master Pankaj Kumar and Peeyush Kumar were admitted in the partnership to the benefit of the partnership. These minors are sons of the assessee. Shri Peeyush Kumar Golecha according to the assessee deposited a sum of Rs. 5,000 on 15-10-1968, and a sum of Rs. 10,000 on 14-3-1969, with the firm. Similarly Pankaj Kumar is said to have been deposited a sum of Rs. 14,000 on 15-10-1968 with the firm. Interest was paid to the minors on this count and that was credited to their account accordingly. The income falling to the share of these two minors from the firm was also credited to such account of the minors in the books of the firm, so the account of Master Peeyush Kumar and Pankaj Kumar swelled up to Rs. 97,280 and Rs. 96,798 respectively as on 1-4-1976. The assessment year is 1976-77. The Income Tax Officer has invoked the provisions of section 64(1)(iii) and held that the amount which is credited in the account of minors is includible in the income of the assessee, while assessing the total income of the assessee and he added that amount in the income of the assessee.

In appeal before the Commissioner (Appeals), the Commissioner (Appeals) has also confirmed the view taken by the Income Tax Officer. In appeal before the Tribunal, the Tribunal has found the fact that minors were admitted to the benefit of the partnership firm, they were not under any obligation to contribute any capital, therefore, there is no question of clubbing their income from the firm in the income of the assessee under section 64(1)(iii) of the Act.

3. At the outset, learned counsel for the assessee placed reliance on the decision of their lordships in the case of CIT v. Jwala Prasad Agarwala : [1967]66ITR154(SC) and the decision of Gauhati High Court in the case of CIT v. Smt. Savitri Devi Dhandharia .

In the case of CIT v. Jwala Prasad Agarwala (supra) at page 159, their lordships observed as under :

'The High Court observed that 'from the account books it appears that Rs. 74,721 were taken as the minor's deposit in the account books and, further, that the minor was admitted to the benefits of the partnership. There is no evidence to show that he was admitted to the benefits of the partnership because he had undertaken to

deposit the sum of Rs. 74,721 given to him by his father in the firm.' We agree with these observations.

But Mr. S.T. Desai, the learned counsel for the appellant, complains that there could be no evidence on the record because this point was not raised before the Income Tax Officer and the assessee had been accepting the past assessments. We find, however, that the point was raised before the Appellate Assistant Commissioner and if the department was so minded, evidence could have been led before the Appellate Assistant Commissioner and even before the Tribunal after obtaining its permission.'

In the case of CIT v. Savitri Desai Dhandhaila (*supra*), at p. 282 their lordships observed as under :

'This would only mean that the amount of Rs. 95,743.19 was the absolute property of the minor kept in deposit with the partnership firm. Admittedly, the father who was the natural guardian was not a party to the agreement. Besides, we do not find any evidence on record to show that there was any agreement by the natural guardian to convert the said deposit of the minor to capital.'

4. The facts are not in dispute that the minors were entered into partnership to the benefit of the partnership and they were under no obligation under the partnership-deed to contribute any capital and when the amount of profit was credited in their account, they were the absolute owners of that profit, which was credited in their account. There is no agreement contrary to the ownership of that amount with the minors.

In view of these facts, no interference is called for in the order of the Tribunal.

In the result, we answer the question in affirmative i.e., in favour of assessee and against the revenue.