Commissioner Of Income-Tax, Assam, ... vs Jwalaprasad Agarwala on 15 March, 1967

Equivalent citations: [1967]66ITR154(SC), AIRONLINE 1967 SC 31

Bench: J.C. Shah, S.M. Sikri

JUDGMENT

Sikri, J.

1. Two questions were referred to the High Court of Judicature of Assam and Nagaland, under section 66(2) of the Indian Income-tax Act, 1922, by the Income-tax Appellate Tribunal, Calcutta Bench "A" :

> "(1) Whether, under the facts and circumstances of the case, the share income of the minor son from the three firms is liable to be included in the assessment of the father under section 16(3)(a)(iv) ?
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> (2) Whether in view of the fact that there was no contribution of any sum in the Galla and Calcutta firms by the minoe son out of the gift money from the father, the share income from those two firms is liable to be included in the assessment of the father under section 16(3)(a)(iv) ?"

2. These questions arose out of the following facts : The respondent, Jwalaprasad Agarwala, hereinafter referred to as "the assessee", was a partner in Messrs. Onkarmal Jwalaprasad. He divided the balance of his capital account as partner in the books of that firm in four equal parts and made a gift of a sum of Rs. 74,721 to each of his four minor sons in July, 1953. During the accounting year relevant to assessment year 1959-60, three of his sons had attained majoprity and the fourth son, Parmeshwar Agarwala, was still a monor. Parmeshwar Agarwala has been admitted to the benefits of the partnership in the three firms : (1) Jwalaprasad Mulchand, Dhubri, (Assam) - hereinafter referred to as "the Dhubri firm", (2) Jwalaprasad Mulchand (Galla Dept.) Dhubri (Assam) - hereinafter referred to as "the Galla firm", and (3) Jwalaprasad Mulchand, Calcutta - hereinafter referred to as :the Calcutta firm." The sum of Rs. 74,721 gifted to the minor was invested in the Dhubri firm. Apparently the partnership deed did not make it a condition precedent that that the partners should contribute any capital although it was provided that the partners could lend money to the firm and would be entitled to interest at 4 1/2%. These three firms made a profit during the relevant year and the minor's share came to Rs. 22,476. The Income-tax Officer included this sum in the income of the assessee for the assessment year 1959-60.

3. The assessee appealed to the Appellate Assistant Commissioner and contended : (1) that only the interest on the original gift money and not the entire credit balance of Parmeshwar Agarwala with the firms should have been included in the appellant's assessment under section 16(3)(a)(iv); and (2) that, in any event, the amount of Rs. 22,476 should have been treated as earned income on which special surcharge could not be levied. The appellate Assistant Commissioner rejected the first contention on the ground that "since the accumulation of share of profits and interest accrued to the appellant's son in view of his investment of capital received as gifts from the appellant, I think it will be reasonable to hold it as an asset transfered by the appellant to the son "indirectly". He accepted the second contention but we are not concerned with this point.

4. The assessee appealed to the Income-tax Appellate Tribunal. The Appellate Tribunal noticed that some time during the previous year for 1957-58 assessment year a sum of Rs 11,000 out of the personal account of Parameshwar Agarwala, as appearing in the books of the Dhubri firm had been transfered to the Calcutta firm, and that no capital seems to have been invested in the name of the minor in the Galla firm. The Tribunal rejected the contention of the assessee of the following reasoning :

> "The past records of the appellant, however, indicate that this objection was never raised before. On the other hand, in connection with the assessment for 1953-54 the appellant had claimed before the Tribunal that earned income allowance be granted by the department in respect of the share income of the minor which had been assessed in the hands of the father, on the ground that the father had taken active interest in the business of the firms in which the minor is a partner. Apart from this, the fact remains that the minor had been admitted as a partner in Jwalarasad Mulchand, Dhubri, only because of the introduction of the initial capital of Rs. 74,721 in his name by his father. So far as the other two firms are concerned, it is apparent that these are allied concerns and there must be intimate financial connection subsisting between them and Messrs. Jwalaprasad Mulchand, because otherwise there could have been no earthly reason why the minor should be admitted to the benefits of partnership in respect ofJwalaprasad Mulchand (Galla Dept.), Dhubri, and the Calcutta firm. Thus, in spite of the fact that each of these firms are paying interest to the minor, we are obliged to hold that the share incomes which the minoe had bee deriving from each of these firms is directly attributable to the introduction of the original capital of Rs. 74,721 out of the gift which the appellant had given to his minor son. In view of this, the provisions of section 16(3)(a)(iv) are clearly applicable both in respect of the interest on the original capital sum of Rs. 74,721 and the share incomes of the minor as derived from the above-mentioned three firms."

5. The Tribunal, however,excluded the interest on the other accretions to the capital account of the minor as appearing in the three firms' accounts from the assessment of the appellant.

6. The High Court, on a reference, answered the questions in favour of the assessee. The Commissioner of Income-tax obtained special leave from this court and the appeal is now before us.

7. The High Court first dealt with the income of the minor form the Galla firm and the Calcutta firm. The High Court held that "merely because the minor was admitted to the benefits of these two firms and as there must be some sort of financial connection between the three firms, it cannot be said some sort financial connection between the three firms, it cannot be said that the minor's sharte of profit in these two firms is the benefit directly arising or indirectly arising to the minor from the assets transferred by the assessee to him. Section 16(3)(a)(iv) will thus not be attracted in this case." We agree with this finding. The reasons given by the tribunal for including the income from these two firms were that the three concerns were allied concerns and there must be intimate financial connection subsisting between them and further that there could have been no earthly reason why the minor should be admitted to the benefits of partnership in respect of Galla department and the Calcutta firm. In our view, these reasons are not cogent to come to a finding tha the profits from these two firms were directly attributable to the investment of Rs. 74,721 in the Dhubri firm. The High Court rightly rejected the contention of the counsel for the department that the sum of Rs. 11,000 which was admitted to have been transferred from the accounts of the Dhubri firm to the Calcutta firm must be presumed to have been contributed by the minor our of the assets transferred to him and no finding of the Tribunal that this sum of Rs. 11,000 was part of the original capital of Rs. 74,721 transferred to the minor by the father.

8. Coming to the Dhubri firm, the High Court held that the Tribunal had relied on two circumstances in support of its finding that the share of the minor in the Dhubri firm was his income arising our of the transfer of assets of the father, the assessee. The first circumstance taken by the Tribunal was been raised before. We agree with the High Court that this circumstance is not evidence of the fact that the minor's share of profits in the Dhubri firm arose out of the assets transferred by the father. It seems to us that this circumstance is wholly irrelevant for determining this point. The second circumstance relied upon by the Tribunal was that the minor had been admitted as a partner in the Dhubri firm only because of intorduction of initial capital of Rs. 74,721. We agree with the High Court that there is no evidence on record to justify a finding that the minor had been admitted as a partner in the firm, Jwalaprasad Mulchand, Dhubri, only because of the introduction of the initial capital of Rs. 74,721 in his name by the father, the assessee. 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 sum of Rs. 74,721 given to him by his father in the firm." We agree with these observations.

9. 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 Appellate Tribunal after obtaining its permission.

10. Mr. Desai further urged that the High Court had not considered the question that the share of profit arose indirectly from the gift. We see no force in this contention vecause the High Court has considered the question from all aspects.

11. In the result , the appeal fails and is dismissed with costs.

12. Appeal dismissed.