

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX, JALANDHAR,—Applicant.

versus

MAL CHAND,—Respondent.

Income Tax Reference No. 60 of 1984

May 1, 1989.

Income Tax Act (XLIII of 1961)—S. 64(1)(iii)—Assessee having no income under individual status—Income Tax Officer adding profit earned by minor sons from partnership firm as assessee's income—Such profit—Whether can be treated as assessee's income.

Held, that the share income relating to the three minor sons of the assessee, who were admitted to the benefits of partnership in the firm in which the assessee was a partner as a Karta of the H.U.F., has to be assessed in the hands of the assessee in his individual capacity under S. 64(1)(iii) of the Income Tax Act, 1961.

(Para 4)

Reference under Section 256 (1) of the Income-tax Act, 1961, by the Income-tax Appellate Tribunal (Amritsar Bench), Amritsar, to the Hon'ble High Court of Punjab and Haryana at Chandigarh, for its opinion on the following question of law arising out of the order of Tribunal's order dated 7th November, 1983, in R.A. No. 12 (ASR)/1984, in I.T.A. No. 212 (ASR)/1983, Assessment Year 1979-80:

“Whether on the facts and in circumstances of the case, the I.T.A.T. is right in law in holding that share of income arising to the three minor sons of assessee, who were admitted to the benefits of the partnership in the firm in which the assessee was also a partner, can not be included/assessed in the hands of the assessee in his individual capacity under Section 64(1)(iii) of the Income-Tax Act, 1961?”

L. K. Sood, Advocate, for the appellant.

Hemant Kumar, Advocate, for the respondent.

Gokal Chand Mital, J.

(1) Mal Chand was a partner in firm M/s Ram Chand Mal Chand as a representative of his H.U.F. His three minor sons were admitted to the benefits of partnerships. The question arose whether the income of the minor sons was to be clubbed with the income of the father in his individual status for the assessment year 1979-80.

In his individual status, the assessee had no income. Whatever profit three minor sons got from the firm, was treated as the income of the father and was brought to tax by the Income Tax Officer. The Appellate Assistant Commissioner upheld the order but on further appeal, the Income Tax Tribunal, Amritsar held that section 64(1) (iii) of the Income Tax Act, 1961, (hereinafter called 'the Act') will have no application when an individual has no income at all for the purpose of computing the total income as is required by the opening lines of section 64(1) of the Act. In these circumstances, the Tribunal has referred the following question for the opinion of this Court, at the instance of the revenue :—

“Whether on the facts and in the circumstances of the case, the I.T.A.T. is right in law in holding that share of income arising to the three minor sons of the assessee, who were admitted to the benefits of the partnership in the firm in which the assessee was also a partner, cannot be included/assessed in the hands of the assessee in his individual capacity under section 64(1) (iii) of the Income Tax Act, 1961 ?”

(2) It is true that the decision of this Court in *C.I.T. v. Anand Sarup* (1), helps the assessee but that decision was rendered on the law as it stood before 1st April, 1976. Section 64 was amended with effect from 1st April, 1976 by the Taxation Laws (Amendment) Act, 1975. Before the amendment was brought about with effect from 1st April, 1976, the relevant portion of section 64 was as follows :—

“64. Income of individual to include income of spouse, minor child, etc.

In computing the total income of any individual there shall be included all such income as arise directly or indirectly :—

(i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner ;

(ii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm in which such individual is a partner.”

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(3) With effect from 1st April, 1976, the relevant portion of section 64 reads as follows :—

“64. Income of individual to include income of spouse, minor child etc.

(1) In computing the total income of any individual, there shall be included all such income as arises directly or indirectly—

(i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner ;

(ii) to the spouse of such individual by way of salary, commission, fees or any other form of remuneration whether in cash or in kind from a concern in which such individual has a substantial interest :

Provided that nothing in this clause shall apply in relation to any income arising to the spouse where the spouse possesses technical or professional qualifications and the income is solely attributable to the application of his or her technical or professional knowledge and experience ;

(iii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm.”

(4) While for the spouse no change has been made in clause (i), although a new clause (ii) has been added in regard to the spouse; and the minor child has been dealt with in clause (iii) in the amended provision. While in the unamended provisions, it was necessary that the admission of a minor child to the benefits of the partnership in the firm in which such an assessee was a partner, was a pre-requisite for including the income of the minor child in the income of the father, under the amended provision it is no longer necessary. That means the income of the minor has to be considered as the income of the father. A similar point arose before the Andhra Pradesh High Court in *C.I.T., Visakhapatnam v. G. Gopal Rao, and others* (2), and it was held that even if the assessee does not have any income in his

individual status, yet under the amended law, the income of the minor child is to be considered as his income. Following the reasons recorded therein, with which we are in agreement, we hold that the share income relating to the three minor sons of the assessee, who were admitted to the benefits of partnership in the firm in which the assessee was a partner as a Karta of the H.U.F., has to be assessed in the hands of the assessee in his individual capacity under section 64(1) (iii) of the Act.

(5) For the reasons recorded above, we answer the referred question in favour of the revenue, in the negative, with no order as to costs.

P.C.G.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

SASHI BALA,—Appellant.

versus

PUNJABI UNIVERSITY, PATIALA AND OTHERS,—Respondents.

Letters Patent Appeal No. 1426 of 1988

July 20, 1989

Letters Patent, 1919—Clause X—Advertisement for filling two posts of lecturers—Appellant placed at No. 2 for appointment by Selection Committee—Selection approved by Syndicate—Second post of Lecturer converted into the post of Reader—Second post of Lecturer—Whether deemed to be filled—Right of the appellant on the second post.

Held, that the appellant's selection was approved by the Syndicate. The respondent cannot deny appointment to the appellant. The denial amounts to abuse of process of law and has to be remedied. The learned Single Judge is in error in declining relief to the appellant on the ground that she has no right to the post. There is absolutely no justification to deny the appointment once her selection has been approved by the Syndicate. Respondent Nos. 1 and 2 failed to bring any material on record to justify their action of refusing appointment to her. Mere selection does not confer a right on the selectee for an offer of appointment. But if the selection has been approved by the highest body, the Syndicate, then it can only be refused for strong compelling reasons which have not been pointed out. It appears none exists. The second post of the lecturer could not have been filled by appointment of the third respondent.

(Para 4)