

Shanta Devi v. Commissioner of Income Tax (D. S. Tewatia, J.)

know about the estimated value whether as a result of the communication from the Wealth Tax Officer or on his own and in writing accepts estimated value to be the correct value.

(15) For the reasons aforementioned, we answer the question referred to us in the negative i.e. against the Revenue and in favour of the assessee and remit the case back to the Tribunal to deal with it in accordance with law.

R. N. R.

*Before D. S. Tewatia and S. S. Sodhi, JJ.*

SHANTA DEVI,—Applicant.

*versus*

COMMISSIONER OF INCOME TAX,—Respondent.

*Income Tax Reference No. 53 of 1978.*

October 5, 1987.

*Income Tax Act (XLIII of 1961)—Sections 68 and 69—“Books of an assessee”—Meaning of such books—Books of partnership firm—Such books—Whether can be considered to be the books of individual partner.*

*Held, that in relation to the expression “books” the emphasis is on the word “assessee”. In other words, such books have to be the books of the assessee himself and not of any other assessee. The books of the accounts of the partnership firm herein cannot be considered that of an individual assessee herein and, therefore, Section 68 of the Income Tax Act, 1961 would not be attracted to the present case.*

*(Paras 5 and 7)*

*Reference under Section 256(1) of the Income-tax Act, 1961, preferred by the Income Tax Appellate Tribunal (Chandigarh Bench) for seeking the opinion of the High Court in the following question of law arising out of I.T.A. No. 571 of 1976-77 for the Assessment year 1963-64 R.A. No. 5 of 1978-79.*

*Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the books of account of the firm in which the assessee is a partner should be considered to be the assessee's own books of account in terms of section 68 of the Income-tax Act 1961 and thereby confirming the addition of Rs. 8,400 found to have been credited in the a/c of the assessee in the books of the firm ?*

*Rakesh Kumar Jain, Advocate, for the Petitioner.*

*L. K. Sood, Advocate, for the Respondent.*

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**JUDGMENT**

*D. S. Tewatia, J. (Oral)*

(1) The Appellate Tribunal referred the following question of law for the opinion of this Court:—

“Whether, on the facts and in the circumstances of the case the Tribunal was right in law in holding that the books of account of the firm in which the assessee is a partner should be considered to be the assessee’s own books of account in terms of section 68 of the Income-tax Act, 1961 and thereby confirming the addition of Rs. 8,400 found to have been credited in the a/c of the assessee in the books of the firm?”

The facts bearing upon the question posed above may be stated thus:

The assessee is the partner of Messrs Partap Finance Company (Regd.) Budhlada. Her income for the assessment-year 1963-64 was being assessed for the purpose of the income-tax and a sum of Rs. 38,400 was sought to be brought to tax by the Income Tax Officer from undisclosed sources. This amount represented cash credit entry of 9th December, 1961, in the accounts of the said partnership firm. The books of account of the said firm were treated as that of the assessee and the said amount was brought to tax in terms of section 68 of the Income-tax Act.

(2) On appeal, the appellate Assistant Commissioner accepted the explanation of the assessee, which had been disbelieved and rejected by the Income Tax Officer and deleted the said income from undisclosed source from the taxable amount. The Tribunal on appeal, however, accepted the explanation of the assessee only regarding Rs. 30,000 and did not accept the assessee’s explanation regarding the remaining sum of Rs. 8,400 and, therefore, took that amount into consideration in assessing the income of the assessee for the assessment year 1963-64 under section 68 of the Income-tax Act, holding that the books of account of the partnership firm were,asmuch that of the assess-partner and, therefore, it was section 68 and not section 69 of the Income-tax Act, which was attracted.

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(3) Counsel for the assessee has argued that partnership firm is an assessable identity distinct from individual partners constituting the firm and in this regard sought support from Supreme Court decision in *Commissioner of Income-tax, West Bengal v. A. W. Figgies and company and others* (1).

The proposition that the partnership firm is an assessable identity distinct from the individual partner is not in dispute. Primary question that falls for consideration in this reference is as to 'whether the books of the accounts of the partnership firm have to be treated as that of the individual partner also'?

(4) At this stage, it would be appropriate to take notice of the two relevant provisions of sections 68 and 69 of the Income tax Act, which are in the following terms:—

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."

"69. *Unexplained investments.*—Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

It is not indisputed that in case the books of accounts of the partnership firm is not to be treated as that of the individual partner, then the amount of Rs. 8,400 which represented alleged undisclosed income, could not be brought to tax along with the income of the assessee for the assessment-year 1963-64, because in that case, provision of section 69 of the Income-tax Act shall be applicable.

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(1) (1953) 24 I.T.R. 405.

(5) Perusal of section 68 of the Income-tax Act would show that in relation to the expression "books" the emphasis is on the word "assessee". In other words, such books have to be the books of the assessee himself and not of anyother assessee.

(6) In the present case, admittedly, the assessee maintained no books of account. The cash credit entry of which the sum in question form part, was found in the books the account of the partnership-firm, which in its own right is an assessee.

(7) In the above view of the matter, the books of the accounts of the partnership firm herein cannot be considered that of the individual assessee herein and, therefore, section 68 of the Income-tax Act would not be attracted to the present case.

(8) The above view receives support from *Laxmi Narain Gupta versus Commissioner of Income-tax, Bihar* (2).

(9) No decision taking a contrary view has been brought to our notice at the Bar.

(10) For the reasons aforementioned, we answer the question in the negative i.e. in favour of the assessee and against the Revenue and dispose of the reference accordingly. No costs.

S.C.K.

*Before S. P. Goyal and Pritpal Singh, JJ.*

MEHTAB SINGH,—*Petitioner.*

*versus*

TILAK RAJ ARORA AND ANOTHER,—*Respondents.*

*Civil Revision No. 420 of 1984*

October 13, 1987.

*Code of Civil Procedure (V of 1908)—Order XXIII, Rule 1(4)—Application for eviction dismissed as withdrawn by the Rent Controller—No permission to file fresh application granted—Second application for eviction filed—Such application—Whether barred—Provisions of the Code—Whether applicable.*

(2) (1980) 124 I.T.R. 94.