

Commissioner of Income-tax v. Shri Prem Chand Jain
(G. C. Mital, J.)

Order 1 Rule 10 of the Code of Civil Procedure envisages. The point in issue really stands covered by; *Rohi Ram and others vs. Mukhtiar Kaur and others*, (2), where the plaintiff, sought a declaration of ownership on the basis of a Will, whereas the person impleaded as a party under Order 1 Rule 10 of the Code of Civil Procedure claimed to be the owner of the property in suit by succession it was held that the trial court was not justified in impleading the latter as a party, as it would bring in a new cause of action for the court to adjudicate upon.

(9) There can thus be no escape from the conclusion that the trial court clearly fell in error in impleading respondent—Raj Kumar, son of Tara Chand, as a party to the suit. The impugned order of the trial court is consequently hereby set aside and this revision petition is accepted with costs. Counsel fee Rs. 500.

S.C.K.

Before G. C. Mital & G. S. Chahal, JJ.

COMMISSIONER OF INCOME-TAX,—Appellant.

versus

SHRI PREM CHAND JAIN,—Respondent.

Income-tax Reference Nos. 65 to 69 of 1978.

14th November, 1990.

Income-tax Act, 1961 (XLIII of 1961)—Income from undisclosed source—Past intangible additions allocated to assessee's share—Assessee agreeing to some additions—Set off—Entitlement of—Assessee entitled to claim set-off in respect of agreed additions.

Held, that the assessee is entitled to take advantage of the past intangible additions to explain the source which was considered by the Income-tax Department as income from un-disclosed source and shall be available to the assessee for set off in respect of the agreed additions in low household expenses.

(Paras 3, 4 & 5)

Income Tax Reference against the order of the Income Tax Appellate Tribunal Amritsar, dated 31st August, 1978. The following question of law has arisen out of R.A. No. 26 to 30 of 1978-79, I.T.A. No. 860 to 864 of 1976-77. Assessment years 1967-68 to 1971-72.

“Whether, on the facts and in the circumstances, of the case, the Tribunal was right in law in holding for the assessment years 1967-68 to 1971-72, that past intangible additions made in the case of the firm and allocated to the assessee’s share could be taken into account in considering the unexplained investments of the assessee and these would also be available for set off purposes in respect of the agreed additions for low household expenses made in the five years under consideration ?”

A. K. Mital, Advocate, for the Appellant.

I. K. Sood, for the Respondent.

JUDGMENT

Gokal Chand Mital, J.

(1) This order will dispose of 5 Income Tax References Nos. 65 to 69 of 1978 relating to the same assessee, in which the Income Tax Appellate Tribunal has referred the following common question for opinion of this Court:—

“Whether, on the facts and in the circumstances, of the case, the Tribunal was right in law in holding for the assessment years 1967-68 to 1971-72, that past intangible additions made in the case of the firm and allocated to the assessee’s share could be taken into account in considering the unexplained investments of the assessee and these would also be available for set off purposes in respect of the agreed additions for low household expenses made in the five years under consideration ?”

(2) The Income Tax Officer while framing assessments relating to the five assessment years made additions of Rs. 22,804, Rs. 21,312, Rs. 36,034, Rs. 6,463 and Rs. 4,461, on account of low household expenses, interest income, un-explained costs of construction of house and other un-explained investments and costs. Out of the additions made, the addition made on account of low household expenses was agreed to by the assessee but not the other additions.

(3) Feeling aggrieved, the assessee went up in appeal before the Appellate Assistant Commissioner, who deleted all additions except

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Rs. 75 for the first assessment year by giving set off in view of the additions made in the case of the firm of which the petitioner was a partner.

The Revenue went up in appeal before the Income Tax Appellate Tribunal, Amritsar against the order of the Appellate Assistant Commissioner. The Tribunal followed decision of this Court in *C.I.T. vs. Ram Sanehi Gian Chand*, (1), and came to the conclusion that the assessee was entitled to take advantage of the past intangible additions to explain the source which was considered by the Income Tax Department as income from un-disclosed source, and after setting aside the order of the Appellate Assistant Commissioner sent back the matter to the Appellate Assistant Commissioner to examine the question of intangible addition afresh keeping in view the rival contentions of the parties. Even before the Tribunal, the question was whether he was entitled to set it off in the subsequent assessment years. On these facts, the Tribunal has referred the question quoted in the opening part of the judgment for opinion of this Court.

(4) The counsel for the department wanted to argue in the first instance that once the assessee had agreed to the addition on account of household expenses, the same could not be deleted. There is obvious fallacy in the argument because even now the assessee is not disputing the additions on account of household expenses but the argument on his behalf is whether the past intangible additions made in the case of the firm and allocated to the assessee's share could be taken into account in considering the un-explained income and thus would be available to the assessee for set off in respect of the agreed additions in low household expenses in regard to the five assessment years under consideration. Accordingly, in view of the decision of this Court in *Ram Sanehi Gian Chand's case* (supra), and decision of the Supreme Court in *Anantharam Veerasinghiah & Co. vs. C.I.T.* (2) the Tribunal was right in remitting the case to the Appellate Assistant Commissioner to redecide the appeal afresh keeping in view the dictum of law laid down in the said two decisions.

(5) The question is thus answered in favour of the assessee, that is, in the affirmative, and against the department, leaving the parties to bear their own costs.

S.C.K.

(1) (1972)86 I.T.R. 724.

(2) (1980)123 I.T.R. 457.