

IN THE HIGH COURT OF JUDICATURE AT PATNA
TAX CASES No.126 of 1982

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Alok Goenka, Son of late Lok Nath Goenka, Resident of 42/1-122, Gaya
Prasad Lok Nath and Sons Marwari Bazar, Ward No.21, P.O. Samastipur, P.S.
Town Thana, District- Samastipur.

... .. Petitioner/s

Versus

Commissioner of Income Tax, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D. V. Pathy, Advocate
For the Respondent/s	:	Mr. Rishi Raj Sinha, Advocate
		Ms. Shilpi Keshri, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-11-2020

The Income Tax Appellate Tribunal, Patna Bench, Patna
has made the instant Reference under Section 256 (1) of the
Income Tax Act, 1961 on the following substantial question of
law:-

“Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the share income of the two minor sons of the assessee, namely, Shri Alok Kumar Goenka and Shri Atul Kumar Goenka including the interest to the extent of Rs. 38,944/- was assessable in the hands of the assessee father Shri Loknath Goenka in the assessment year 1976-77 under section 64(1)(iii) of the Income-tax Act 1961, as amended by the Taxation Laws (Amendment) Act, 1975, with effect from 1-4-76 when the accounting year of the firm ended on 31-12-75 ?”



The nature and scope of reference made to the High Court under Section 256 of the Income Tax Act, 1961 (Section 66) is now well settled.

In **Keshav Mills Co. Ltd. v. CIT, (1965) 2 SCR 908** (7 Judge bench), the Court held as under:

“14. Section 66(4) must be read with Section 66(1) and Section 66(2), and so read, it did not empower the High Court to raise a new question of law which did not arise out of the Tribunal's order or direct the Tribunal to investigate new and further facts necessary to determine the new question which had not been referred to it under Section 66(1) or Section 66(2) of the Act and direct the Tribunal to submit, supplementary statement of case.”

It is for the Tribunal to decide questions of fact, and the High Court in a reference under Section 66 of the Act cannot go behind the Tribunal's findings of fact. The High Court can only lay down the law applicable to the facts found by the Tribunal. The High Court and the Supreme Court in an appeal against the judgment of the High Court given in a reference under Section 66 of the Act, are not constituted courts of appeal against the order of the Tribunal. These courts only exercise advisory jurisdiction in such references. [**Rameshwar Prasad Bagla v. CIT, (1973) 3 SCC 575**]

In **Premier Breweries Ltd. v. CIT, (2015) 11 SCC 695** :



2015 SCC OnLine SC 196 at page 698, the Court observed:

“9. The second issue raised is the jurisdiction of the High Court to set aside the order of the Tribunal in the exercise of its reference jurisdiction. The point is no longer res integra having been settled in C.P. Sarathy Mudaliar v. CIT [C.P. Sarathy Mudaliar v. CIT, (1966) 62 ITR 576 (SC)] wherein this Court has taken the view that setting aside the order of the Tribunal in exercise of the reference jurisdiction of the High Court is inappropriate. This Court had observed that while hearing a reference under the Income Tax Act, the High Court exercises advisory jurisdiction and does not sit in appeal over the judgment of the Tribunal. It has been further held that the High Court has no power to set aside the order of the Tribunal even if it is of the view that the conclusion recorded by the Tribunal is not correct.”

(Emphasis supplied)

The facts recorded in the reference and the contentions of the parties leading to the framing to the question of law and the reference made are reproduced as under:-

“By this reference application made under section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as the said Act), the applicant assessee requires us to refer certain questions of law said to arise out of the order dated 15-4-81 of this Tribunal in I.T.A. No. 423 (Pat) of 1980 relating to the assessment year 1976-77 to the Hon’ble High Court of Judicature at Patna. As, in our opinion, a question of law does



arise out of the order of the Appellate Tribunal, we draw up a statement of the case.

2. From the order of the Appellate Tribunal it is evident that the accounting period of the assessee ended on 13-10-75. The Income-tax Officer assessed the income of the assessee relating to the share income from various firms. He also included the income of minor sons of the assessee, namely, Shri Alok and Shri Atul who were partners in the firm M/s. Vijay Kumar Pradeep Kumar relating to their share income from this firm. The share income of the two minors sons of the assessee came to Rs. 38,944/- which was added in the total income of the assessee under section 64 of the said Act. Copy of the assessment order of the Income-tax Officer forms part of the statement of the case and is annexure 'A'.

3. On appeal, the Appellate Assistant Commissioner agreed with the finding of the Income-tax Officer and dismissed the appeal. Copy of the order of the Appellate Assistant Commissioner forms part of the statement of the case and is annexure 'B'.

4. Being aggrieved by the order of the Appellate Assistant Commissioner the assessee filed I.T.A. No.423 (Pat) of 1980 on the ground that the Appellate Assistant Commissioner erred in law in upholding the application of section 64 and that the amended provision came into force with effect from assessment year 1976-77.

5. The learned departmental representative supported the orders of the lower authorities.

6. The learned counsel for the assessee filed a copy of the assessment order relating to the registered firm M/s. Vijay Kumar Pradeep Kumar. It showed that Shri Alok and Shri Autl had 20% share each in the firm and the share income was to the extent of Rs 13,475/- each and they also earned interest of Rs. 6,440/- and Rs. 5,554/- respectively and thus the total income of each of these two minors came to Rs. 19,915/- and Rs. 19,021/- respectively. The accounting year of this firm ended on 31-12-75. Copy of this assessment order, forms part of the statement of the case and is annexure 'A1'.



7. The learned counsel for the assessee also filed a copy of the order of the Income-tax Officer under section 185(1) of the said Act which showed that the present firm came into existence with effect from 1-1-75 on the basis of the partnership deed dated 2-1-75 in which the minors were admitted to the benefits of the partnership. Copy of this order of the Income-tax Officer forms part of the statement of the case and is annexure "C".

8. The learned counsel for the assessee also filed a copy of the partnership deed dated 2-1-75 which showed that the firm came into existence from 1-1-75 and the accounting period of the firm was to end on 31st December of each year. The deed also showed in clause 4 that the capital required to run the firm was to be contributed by the parties and the minors and they were to get interest at 9% per annum on the capital. Copy of this partnership deed also forms part of the statement of the case and is annexure 'D'.

9. The learned counsel for the assessee submitted that the accounting period during which the minors earned the share income and the interest ended on 31-12-75 and section 64(1) (iii) of the said Act was amended from 1-4-76 by Taxation Laws (Amendment) Act, 1975, which laid down that in computing total income of any individual there shall be included all such income as arises directly or indirectly to a minor child of such individual from the admission of the minor to the benefits of the partnership in a firm. It was argued before the Tribunal that the provision came into force from 1-4-76 and so it applies only to such partnership firm which admitted a minor to the benefits of the partnership on and from 1-4-76 or at least to the accounting period which starts on or after 1-4-76 and so the amended law does not apply to the accounting period which ends before 1-4-76.

10. The Tribunal relied on the consolidated order dated 11-9-79 of this Tribunal in I.T.A. No. 254 (Pat) of 1979 and C.O. No. 23 (Pat) of 1979 and the order dated 15-12-79 in I.T.A. Nos. 836 to 838 (Pat) of 1979 and also on the consolidated order dated 11-12-80 in I.T.A. No. 255 (Pat) of 1979 and



C.O. No. 25 (Pat) of 1979. Copies of these orders form part of the statement of the case and are annexures 'E', 'E1' and 'E2' respectively. For the detailed reasons mentioned in all these years and relying on various rulings the Tribunal held that section 64(1)(iii) as amended from 1-4-76 will apply to the assessment year 1976-77 and so the Tribunal held that the Appellate Assistant Commissioner had taken a correct legal view in the matter and the share income earned by the minors in the accounting period which is calendar year 1975 was rightly added in the total income of the assessee in the assessment year 1976-77.

11. The learned counsel for the assessee also submitted before the Tribunal that the interest income earned by the minors should not be added in the income of the assessee as it does not arise due to admission of the minors to the benefits of the firm. The Tribunal for the detailed reasons mentioned in paras 9 to 11 came to a finding that the minors contributed the capital in the firm M/s Vijay kumar Pradeep kumar on 1-1-75 as they were required to contribute capital under clause 4 of the partnership deed. The Tribunal, therefore, held that the Income-tax Officer was justified in adding the share income of the minors including the interest to the extent of RS 38,944/- in the income of the assessee father under section 64(1)(iii) of the said Act and the Tribunal dismissed the appeal of the assessee. Copy of this order of the Tribunal forms part of the statement of the case and is Annexure 'E3.'

In view of the doubt having arising with respect to the observations made by a co-ordinate Bench of this Court in **Badri Prasad & ors. vs. Commissioner of Income Tax (1990)** **Volume 185 ITR 307**, the matter was referred to a Larger Bench (three-Judge Bench). The said Bench, considering the law laid down by the Constitution Bench of the Apex Court in



Kesoram Industries and Cotton Mills Ltd. vs. Wealth Tax Commissioner (Central), Calcutta, AIR 1966 SC 1370, as also the observations made by yet another Constitution Bench of the Hon'ble Apex Court in **Karimtharuvi Tea Estate Ltd Versus State of Kerala, AIR 1966 SC 1385**, has observed in paragraph 19 as under:-

“19. The Amending Act introduced a new Section 64(1) (iii) in the Income Tax Act with effect from 1.4.1976. The tax liability under the said provision could therefore be charged on the assessee, in the assessment which was to be made for that accounting year i.e. 1976-77, which would be done in the assessment year 1977-78. The Amending Act introducing a new tax liability which came into force with effect from 1.4.1976 could not be given a retrospectivity and be made applicable to the previous accounting year i.e. 1975-76 corresponding to the assessment year i.e. 1976-77.”

Thus, in view of the observations made by a three-judge Bench of this Court in its judgment dated 01.08.2019, relevant portion whereof stands extracted hereinabove, it cannot be said that the income including the component of interest of the two minor sons, namely Shri Alok Kumar Goenka and Shri Atul Kumar, would be assessable in the hands of their father, namely Lok Nath Goenka, for the reason that the amendment making such income taxable in the hands of father, came into effect with effect from 01.04.1976, the period prior to the accounting year



ending on 31st December, 1975.

The Reference is, accordingly, answered in the negative.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

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CAV DATE	
Uploading Date	
Transmission Date	

