

IN THE HIGH COURT OF JUDICATURE AT PATNA
TAX CASES No.28 of 1986

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Smt. Narmada Devi, C/o M/s. Pradeep & Co. Arrah

... .. 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 questions of law:-

“1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in upholding the inclusion of the share income of the minor from the firm M/s. Om Prakash & Co. which had closed its accounting year on 10.8.75 in the assessment of the assessee for the assessment year 1976-77?

2. Whether the amended provision which had come into effect from 1.10.75 will apply to an income which had accrued on 10.8.75 for the assessment



to be made for the assessment year 1976-77?”

Both the questions can be answered together, for primarily it is the second question which arises for consideration.

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 questions of law and the reference made are reproduced as under:-

“3. The assessee is the mother of Dlip Kumar who being a minor admitted to the benefits of partnership in the firm M/s. Om Prakash & Co. received a share of income. In the first assessment made, share income of the minor was not included in the total income of the assessee. Subsequently, the ITO caused assessment to be re-opened u/s 147



and included the share income of master Dilip Kumar Rs.32,031/- in the assessment of the assess. The ITO acted under the effect of the provisions of Section 64(1) (iii) as amended by the Taxation Laws Amendment Act, 1975. This provision contained in Section 64 which made the inclusion of the share income of the minor in the assessment of the assessee was made effective from 01.10.1975. According to the assessee, the amendment having come into effect only on 01.10.1975 could not effect the share of income appertaining to the minor when this became due on the close of the accounting year followed by the firm on 10.08.75. He, therefore, resisted the inclusion but the ITO over ruled him on the ground that any provision which was effective on the first day of the assessment year, that is, of 1st of April was to apply notwithstanding the date of accrual within the accounting year. The disputed amendment was in effect from 1st of April, 1976, corresponding to the assessment year 1976-77 share of the minor was includible in the income of the assessee. His order forms annexure 'A' and a part of the statement of the case.

4. His order had been confirmed by the A.A.C. which has been annexed as annexure 'B' and constitutes a part of the statement of the case.
5. The Appellate Tribunal also in an appeal brought at the instance of the assessee upheld the findings of the lower authorities and dismissed the appeal of the assessee. The finding of the Tribunal is contained in para 3 of its order where it observed "The Supreme Court has already settled that although the subject of charge is the income of the previous year, the law to be applied is that in force in the assessment year and any amendment which is in force at the beginning of the relevant assessment year must govern irrespective of the fact that the amendment is made after the income under the assessment is earned." A copy of the order of the Tribunal is annexed as Annexure 'C' and forms part of the statement of the case."

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, the Appellate Tribunal was not correct, in law, in upholding the inclusion of the share income of the minor from the firm M/s. Om Prakash & Co. for it accrued on 10.08.1975, in the assessment year 1976-77, and the amendment which came into effect only on 1.10.1975 was to apply only prospectively and not retrospectively.

The Reference is, accordingly, answered in the negative.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

