

Haji Abdul Hameed Deceased By His Lrs.

Vs

Commissioner Of Income-Tax, U. P.

Civil Appeals Nos. 94 to 101 of 1974

(V. D. Tulzapurkar, Sabyasachi Mukharji JJ)

06.09.1985

JUDGMENT

TULZAPURKAR, J. -

1. There is no substance in these appeals which have been preferred by the two assesseees, Haji Abdul Hameed and Haji Abdul Shakoor, respectively who have been denied the earned income relief by the taxing authorities as well as by the Tribunal and the High Court.
2. The dispute centres round the income derived by the two assesseees as beneficiaries under the deed of wakf executed by their grandfather in 1942; the subject-matter of the wakf was bidi business and admittedly for the accounting periods relevant to the assessment years, 1957-58 and 1960-61 it was Hameed (the beneficiary) who carried on the business as sole mutawalli and in these two assessment years after the income was earned by the wakf the same was distributed between the two brothers as beneficiaries under the deed and it was in respect of such receipts in the hands of two assesseees that earned income relief was claimed under Section 2 (6-AA) (b) or (c) of the Indian Income-Tax Act, 1922.
3. Admittedly, the assessment in the sense of levying of the tax on the computed income proceeded under Section 41 (2) of the Act and not under Section 41 (1) of the Income-Tax Act, 1922 and the earned income relief was claimed either under clause (b) or clause (c) of Section 2 (6-AA). So far as the receipt of income in the hands of Haji Abdul Shakoor is concerned since the business was not carried on by him nor was the income derived by him from his personal exertions clearly, he was not entitled to earn "income relief" either under clause (b) or clause (c) and the High Court was right in declining that relief to him. Counsel for the appellants has also not pressed his case for earned income relief before us but counsel did press the case of Haji Abdul Hameed under clause (b). However, in our view the High Court was right in declining that relief to him also for valid reasons mentioned in the majority decision of the High Court.
4. Considering the claim of Haji Abdul Hameed under clause (b) the High Court took the view that the income was not assessable under the head "profits and gains of business" under Section 10 but it was assessable under the head "income from other sources" under Section 12, inasmuch as the source of the receipt was not business but the deed of wakf and hence clause (b) was not attracted. Further, while considering the claim under clause (c) the High Court has taken the view that the word "immediately" in clause (c) denotes direct connection between the personal exertions and the receipt of income in the hands of the assessee but since in the instant case Haji Abdul Hameed had undoubtedly earned the money initially as a mutawalli it was only after the distribution from the wakf that he received it as a beneficiary and therefore the case would not fall within clause (c). We

are in agreement with this view of the High Court and feel that the earned income relief was in the circumstances rightly denied to the assessees.

5. We would, however, like to point out that the position might have been different if the assessment had proceeded under Section 41 (1) instead of under Section 41 (2) of the Act but since the option is with the department to proceed against the assessee under either of those provisions and since in the instant case the assessment had proceeded under Section 41 (2) no relief is grantable to the assessees.

6. On behalf of the assessees the reliance was placed by counsel on the subsequent decision of the very High Court in the case of the very assessees for the subsequent assessment year, namely, 1961-62 in which the assessees have been granted relief by the court. After going through that judgment we are of the view that the decision does not seem to have decided the point correctly; in the first place admittedly the aspect whether the earned income relief was available to the assessee under clause (b) or (c) of Section 2 (6-AA) of the Act has not been considered by the court at all and proceeding to consider the question under clause (b) some observations have been made to the effect that after all mutawalli was an agent of the beneficiary. If the case was to be brought under clause (b), the real question to be considered was whether the profits and gains arose to the assessees directly as a result of the carrying on of the business or as a result of the intervention of a deed of wakf and if the latter was the position the relief could not be granted under clause (b) at all.

7. The appeals are therefore dismissed. No costs.

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