

CALCUTTA HIGH COURT

Madanlal Jajodia

Vs

Commissioner of Income-Tax

(Sinha J.)

06.09.1962

JUDGMENT

Sinha J.

1. This is a reference under section 66(2) of the Indian Income-tax Act. The assessee is Sri Madanlal Jajodia, and the year of assessment is 1948-49. The assessee was a partner in a number of firms. It was held by the Income-tax Officer that the assessee was a partner in a firm named National Trust Co. having an 8 annas share therein. The assessment of the firm of National Trust Co. was completed by the Income-tax Officer. In that assessment, Madanlal Jajodia contended that he was not a partner in his individual capacity, but that he represented the firm of Madanlal Sohanlal, and, therefore, the income was that of Madanlal Sohanlal. This contention was rejected. Before the Appellate Assistant Commissioner the assessee succeeded. The Appellate Assistant Commissioner held that the income should be allocated to Madanlal Sohanlal. The Appellate Tribunal, however, did not agree with this finding and held it was the income of the assessee. The question, however, that has been referred to us is in a very limited form, and runs as follows :

"Whether, on a proper interpretation of the second proviso to section 30(1) of the Income-tax Act, the Tribunal was right in holding that the finding of the Income-tax Officer in the case of National Trust Co., regarding the constitution thereof, was binding on the assessee ?"

It would, therefore, appear that the question referred is not on the question as to whether the disputed income is of Madanlal Jajodia or of the firm of Madanlal Sohanlal. The question that has been referred is in a very qualified form. The Appellate Tribunal pointed out that it has been held by the Income-tax Officer in the assessment of National Trust Co. that Madanlal Jajodia was a partner. Against that finding, either the National Trust Co. could have appealed, or Madanlal Jajodia, held as a partner, could have appealed. But, under the second proviso to section 30(1) of the Income-tax Act, Madanlal Jajodia could not in his individual assessment dispute the finding.

This is precisely what the proviso lays down. It runs as follows :

"Provided further that where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Appellate Assistant Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but in respect of matters which are determined by such order may not appeal against the assessment of his own total income."

That being so, the question that has been put before us must be answered in the affirmative. In other words, under the second proviso to section 30(1) it is not open to the assessee in his own individual assessment to dispute the finding of the Income-tax Officer as regards the constitution of the National Trust Co. The commissioner will have his costs. Certified for two counsel.

Datta J. - I Agree.

Question answered in the affirmative