

CALCUTTA HIGH COURT

Commissioner of Income Tax

Vs

Sarala Devi Birla

(Ajit K.Sengupta, J.)

08.08.1989

JUDGEMENT

Ajit K.Sengupta, J.

(1.) IN this reference under Section 256(2) of the INcome-tax Act, 1961, the following questions of law have been referred to this court for the assessment year 1962-63 : " 1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the assessee was under no obligation to disclose in her return of income, the income of her minor daughter ? 2. Whether, on the facts and in the circumstances of the case, and on a correct interpretation of Section 64(4) of the INcome-tax Act, 1961, the Tribunal misdirected itself in law in holding that the INcome-tax Officer was not justified in reopening the assessment of the assessee under Section 147(a) of the INcome-tax Act, 1961, in respect of her omission or failure to disclose the income of her minor daughter in her own assessment ?"

(2.) SHORTLY stated, the facts are that, originally, the assessment was completed under Section 143(3) on November 25, 1962, on a total income of Rs. 1,14,689. Subsequently, reassessment was made under Section 147(b) on February 29, 1968, on a total income of Rs. 1,65,169. The assessee has given a gift of Rs. 1,00,011 on October 7, 1959, to her minor daughter, Kumari Manjushree Birla, and this amount was invested in shares of Kesoram Industries and Cotton Mills Ltd. and Hindusthan Motors Ltd. The Income-tax Officer was of the view that the income arising from the assets transferred to the minor child was to be treated as the income of the individual under Section 64(4) and, therefore, such income had escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Since such income was not disclosed in the original return filed on August 29, 1962, the Income-tax Officer initiated reassessment proceedings under Section 147(a) and included capital gains arising on transfer of shares at Rs. 29,274 and dividend income from the shares at Rs. 5,983 in the total income of Rs. 1,65,169 already determined. Being aggrieved, the assessee preferred an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that the Income-tax Officer had no jurisdiction to reopen the assessment under Section 147(a) of the Income-tax Act, 1961. The Appellate Assistant Commissioner followed the decision of this court in *Radheshyam Ladia v. ITO*¹ Accordingly, he set aside the order of

assessment. The Revenue preferred an appeal before the Tribunal. Following the decision of the Madhya Pradesh High Court in *CIT v. Smt Rani Duleiya*² the Tribunal upheld the decision of the Appellate Assistant Commissioner.

(3.) AT the hearing before us, a contention was raised that, in view of the two Supreme Court judgments, proceedings could not be initiated under Section 147(a) as there was no obligation on the part of the assessee to disclose the income of the minor as, at the relevant time, the form of income-tax return did not contain any such column. Our attention has also been drawn to the relevant form for filing the income-tax return under the Income-tax Act at the material time. The two decisions which are relied on by counsel appearing for the parties required to be considered in detail. ;

Cases Referred.

1[1971] 82 ITR 247

2[1972] 84 ITR 770