
(1986) 09 AP CK 0007
In the Andhra Pradesh High Court
Case No : R.C. No. 175 of 1980

Additional Commissioner of Income Tax	APPELLANT
Vs	
P. Durgamma	RESPONDENT

Date of Decision : 18-09-1986

Acts Referred:

Income Tax Act, 1961 — Section 148, 160, 161, 171, 171(1)
Wealth Tax Act, 1957 — Section 20

Citation : (1987) 64 CTR 304 : (1987) 166 ITR 776

Hon'ble Judges : Y.V. Anjaneyulu, J; B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : M. Suryanarayana Murthy and A.V. Krishna Koundinya, for the Appellant; M.J. Swamy, for the Respondent

Judgement

Y.V. Anjaneyulu, J.—Under directions from this court u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal referred the following question of law for the consideration of this court :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in canceling the assessments for the assessment years 1962-63 to 1967-68 which were made by the Income Tax Officer to give effect to the earlier finding of the Appellate Tribunal and the Appellate Assistant Commissioner for the assessment years 1962-63 and 1963-64 and 1964-65 to 1967-68, respectively?"

2. This case has a chequered history. Disputes which arose in 1947 between members of a joint family were the subject-matter of consideration in several courts and the matter eventually went right up to the Supreme Court. The question which basically fell for consideration was whether the business carried on in the plying of motor buses by Samudrala Patrudu, his wife, Durgamma, claimed that the business was the individual business of her husband and that under a will executed by her deceased husband, she was entitled to carry on the business in her own right. Durgamma was the second wife of Samudrala Patrudu.

The first wife of and also his brothers set up a contrary claim to the effect that the business related to the joint family of which Samudrala Patrudu was the "karta." It is not necessary to set out in detail the decisions of various courts : it is enough to mention that eventually the Supreme Court held that the business was that of the joint family of which Samudrala Patrudu was the "karta". The Supreme Court further held that Durgamma had no interest whatever in that business, although she had advanced some moneys to her husband to enable him to carry on the business. The Supreme Court held that the claim of Durgamma could only be for repayment of the moneys advanced by her with interest and that she had no interest in the business as such. In the civil suiz filed in the court of the Subordinate Judge, Visakhapatnam, there was preliminary decree don March 27, 1950. Thereafter, Durgamma was appointed as a receiver for the purpose of carrying on business.

3. In connection with the Income Tax assessments relating to the assessment years 1962-63 to 1968-69, the question regarding the assessment of the income derived from the plying of motor buses had come up for consideration. The assessments were made on Durgamma as an individual on the income derived from the business. There were appeals against the assessments. When appeals were filed before the Tribunal, the Tribunal cancelled those assessments holding that the income from the business could not be assessed in the hands of Durgamma in her individual capacity. The Tribunal held that the business belonged to a joint family of which Samudrala Patrudu was the "karta" and, therefore, the income was liable to be assessed in the hands of the joint family. The order of the Income Tax Appellate Tribunal cancelling the assessments made in the individual hands of Durgamma for the assessment years 1962-63 to 1968-69 is not part of the record, Neither standing counsel for the Department nor learned counsel for the assessee was able to place the said order before us. We are referring to this fact for the limited purpose of pointing out that the grounds upon which the Tribunal came to the conclusion that the income is assessable in the hands of the joint family are not clear from the records We can hazard a guess that obviously the Tribunal noticed the judgment of the Supreme Court when the appeals came up before it for disposal and consistent with the decision of the Supreme Court, the assessments made in the hands of Durgamma in her individual capacity were quashed.

4. After the assessments were set aside by the Income Tax Appellate Tribunal, proceedings were initiated for assessment of the income in the hands of the joint family. It would appear that Durgamma also died (the date of death is not known) and the assessment proceedings were continued against a unit of assessment called "Smt. P. Durgamma and others". Relevant notices were apparently served on the surviving members of the joint family for the abovesaid purpose.

5. The assessments made by invoking the provisions of section 148 of the Act against the Hindu undivided family described in the above manner were again

challenged. The appeals were dismissed by the Appellate Assistant Commissioner on a technical ground and there were further appeals to the Tribunal. Before the Tribunal, it was urged by the assessee that the joint family became extinct on the filing of a suit in 1947 or, in any event on March 27, 1950, when the Subordinate Judge passed a preliminary decree for partition. It was urged that no assessment could be made against a joint family which was not in existence in the previous years relevant for the assessment years 1962-63 to 1968-69. The Income Tax Appellate Tribunal accepted the above contention of the assessee and once again quashed the assessments made on the joint family as not maintainable. With the leave of this court u/s 256(2), the question of law mentioned at pages 777, 778 supra was referred to this court for consideration.

6. In the first place, we may point out that the question as referred does not arise out of the order of the Tribunal. It does not appear that before the Tribunal any contention was urged that these assessments were made pursuant to any finding given by the Tribunal in the earlier order and, therefore, the Tribunal could not cancel these assessments. Thus, the question referred to this court for consideration does not arise in the form in which it has been referred. The main controversy is to this effect :

"Whether, on the facts and circumstances assessments could legally be made on a Hindu joint family in respect of income derived from the business in plying of motor buses for the assessment years 1962-63 to 1968-69?"

7. We shall proceed to consider whether in terms of the question as reframed by us it can be answered by this court in accordance with the pleas urged before us.

8. Learned standing counsel for the Revenue, Sri M. Suryanarayana Murthy, contends that it is inconsequential that the Hindu undivided family filed a suit and there was a preliminary decree in March, 1950. According to learned standing counsel, whatever may be the position in general law regarding the existence of the joint family for purposes of tax law, the joint family must be deemed to be in existence for the aforementioned assessment years inasmuch as, admittedly, no partition of the joint family properties had taken place in metes and bounds. It is pointed out that, according to law, unless the joint family properties are partitioned in definite portions and an order is recorded u/s 171(1) of the Income Tax Act to the effect that on the partition of properties, the joint family ceased to exist, the joint family must be deemed to exist and assessment can be made according to that fiction. Attention, in particular, was invited by learned standing counsel to section 171(1) which is in the following terms :

"171. (1) A Hindu family hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be a Hindu undivided family, except where and in so far as a finding of partition has been given under this section in respect of the Hindu undivided family."

9. It is submitted that no order u/s 171(1) was passed in the present case and consequently the joint family must be deemed to continue. In that view of the

matter, the assessments made for the aforementioned years deeming the joint family to be in existence are, it is urged, perfectly valid and the Tribunal was in error in cancelling the assessments.

10. We are unable to agree with learned standing counsel. The contention urged as above omits to take notice of the important qualification contained in section 171(1) that it is only a Hindu undivided family hitherto assessed which shall be deemed to continue to be a Hindu undivided family, except where and in so far as a finding of partition has been given u/s 171(1). This principle does not apply in the case of every joint family, whether it is assessed for tax purposes or not. The expression "hitherto assessed" occurring in section 171(1) is significant. It puts beyond any controversy that only a Hindu undivided family which had suffered tax assessment in the past could be deemed to continue to be a Hindu undivided family till an order of partition u/s 171(1) is recorded. If a undivided family was not subjected to tax, the provisions of section 171(1) of the Act will have application.

11. Learned standing counsel does not dispute that under the general law a joint family ceases to exist even if one of the coparceners of the joint family gives a notice in unambiguous language declaring his intention to partition the joint family and claiming partition. It is more emphatically so in a case where a suit for partition is filed and a decree is passed by the court whether preliminary or final. In the present case, a suit was filed in 1947 and a preliminary decree was passed in March 1950. These steps have the necessary consequence of rendering the joint family non-existent in law and that position prevails for Income Tax purposes also as the matter is not saved by the provisions of section 171(1) of the Income Tax Act. The fiction that a joint family shall be deemed to continue, enunciated in section 171(1), is for the limited purpose of roping in cases of joint families which had hitherto been assessed. It is not possible to extend that fiction beyond the field legitimately intended by the statute. The fiction in section 171(1) must necessarily be confined to the purpose for which it was specified in that section, and for no other purposes. We cannot, therefore, accept the contention that in the facts and circumstances of the present case, the joint family continues to exist and the assessments could, therefore, be made on such joint family for the Income Tax assessment years 1962-63 to 1968-69. In this connection, we may refer to the decision of a Bench of this court, to which one of us (Jeevan Reddy J.) was a party, in *Commissioner of Wealth-tax, Andhra Pradesh Vs. Tatavarthi Rajah and Satyanarayana Murthy*, . That was a case arising under the Wealth-tax Act and the question that arose for consideration was whether in terms of section 20 of the Wealth-tax Act, a joint family could be deemed to continue in a case where an order of partition is not recorded. While considering that proposition, this court distinguished the provisions contained in section 171(1) of the Income Tax Act in contradistinction to the language of section 20 of the Wealth-tax Act making it abundantly clear that for purposes of Income Tax, the provisions of section 171(1) of the Income Tax Act would apply only in cases of joint families hitherto assessed, while the position may be

different for purposes of the Wealth-tax Act. The aforesaid view clearly sets at rest the controversy in the present case that section 171(1) of the Income Tax Act, 1961, can have no application.

12. It is not the endeavour of the Revenue that these assessments can be sustained on any other basis except on the fictional existence of the joint family in the relevant assessment years. Inasmuch as we have come to the conclusion that the joint family cannot be deemed to be in existence in the previous years relevant to the assessment years 1962-63 to 1968-69, the conclusion reached by the Tribunal that the assessments made in the hands of the joint family were improper, is correct and we accordingly uphold the same.

13. We are distressed to note the casual manner in which this case was dealt with by the Department. Initially, when the appeals relating to the assessments made in the hands of Durgamma came up for consideration before the Tribunal, the attention of the Tribunal should have been drawn to the fact that Durgamma was carrying on business in her capacity as a receiver appointed by the court and, therefore, she was liable for assessment in her representative character as a receiver, under sections 160 and 161 of the Income Tax Act. Learned standing counsel is unable to state whether any such plea was raised before the Tribunal to sustain the assessments made in the hands of Durgamma individually as, in effect, assessments, in the hands of Durgamma, as a receiver, so that the subsequent fresh assessments could have been founded on that basis. Even when the impugned assessments came in appeal before the Tribunal, no contention appears to have been urged before the Tribunal by the Department that if these assessments also have to be quashed, a suitable finding or direction for making assessments in the hands of Durgamma as a receiver be given. The result is that by the time the matters reached this court u/s 256 of the Act, the Revenue had exhausted all the remedies open to it to make proper assessments in respect of the business admittedly carried on by Durgamma as a receiver appointed by the court. The incomes assessed are fairly large and the Revenue lost substantial revenue.

14. In the result the question as reframed is answered in the negative, i.e., in favour of the assessee and against the Revenue. There shall be no order as to costs.