(1976) 11 MAD CK 0016

In the Madras High Court

Case No : Tax Case No. 276 of 1972 (Reference No. 63 of 1972)

Additional Commissioner of Income Tax — APPELLANT

Vs

V.R.A. Manicka Mudaliar (Decd.) (By L.Rs.) — RESPONDENT

Date of Decision : 17-11-1976

Acts Referred:
Hindu Succession Act, 1956 — Section 8

Citation : (1978) 114 ITR 521

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : A.N. Rangaswamy, for the Appellant; K. Srinivasan, K.C. Rajappa and R. Janakiraman, for the Respondent

Judgement

Ismail, J.—The Income Tax Appellate Tribunal, Madras Bench, u/s 256(1) of the Income Tax Act, 1961, at the instance of the Additional

Commissioner of Income Tax, Madras-II, has referred the following question for the opinion of this court:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee''s share in the partnership firm

of M/s. Erode Service constituted his separate and individual property and not the property of the joint family consisting of himself and his five sons

?

2. There was one Angappa Mudaliar, the father of the assessee. He had five sons, including the assessee. There was a complete partition between

Angappa Mudaliar and his five sons and that partition took place in 1943. The said partition was also accepted by the Income Tax department u/s

25A of the Indian Income Tax Act, 1922, Angappa Mudaliar died on January 25, 1962, leaving behind a sum of Rs. 2.5 lakhs. Under the provisions of Section 8 of the Hindu Succession Act, 1956, naturally his divided sons were entitled to inherit the same. The firm, M/s. Erode

Service, was commenced with effect from April 1, 1963. The assessee became a partner thereof by investing Rs. 50,000. This sum of Rs, 50,000

came out of Rs. 51,000 which the assessee took from the estate of his deceased father. It is with reference to these facts that the question arose

whether the assessee''s share of the loss in M/s. Erode Service should be treated as the assessee''s individual loss or the loss of the Hindu

undivided family of which the assessee was the karta. The Tribunal held that the capital of Rs. 50,000 was the separate property of the assessee

and that, therefore, the loss which accrued as a result of his membership in the partnership of M/s. Erode Service was also his personal loss and

was not the loss of the Hindu undivided family. For the purpose of coming to this conclusion the Tribunal relied on two decisions, namely,

COMMISSIONER OF Income Tax, U. P. Vs. RAM RAKSHPAL, ASHOK KUMAR., and GHASIRAM AGARWALLA Vs.

COMMISSIONER OF GIFT-TAX, ASSAM., . It is the correctness of this conclusion of the Tribunal that is challenged in the form of the

question referred to this court, extracted above.

3. The learned counsel for the department contends that, since the assessee obtained the sum of Rs. 50,000 by way of inheritance from his father,

the said sum of Rs. 50,000 should be treated as an amount belonging to the joint family of himself and his five sons and not belonging to him

absolutely. According to the learned counsel, the provisions of the Hindu Succession Act, 1956, and in particular Section 8 thereof, have not

changed this position of the Hindu law. However, the Allahabad High Court has held in COMMISSIONER OF Income Tax, U. P. Vs. RAM

RAKSHPAL, ASHOK KUMAR., , referred to by the Tribunal itself, that in view of the provisions of the Hindu Succession Act, 1956, the

property inherited, by the son from his father, from whom he has separated, is his individual property and cannot be assessed as the income of the

Hindu undivided family of himself and his son. The same view has been taken by the Assam High Court in the other decision referred to already.

No decision of any court taking a contrary view has been brought to our notice. The learned counsel for the department was also not able to persuade us, on the basis of any principle of Hindu law, to take. a view different from the one taken by the Allahabad High Court and the Assam

High Court in the. decisions referred to above. Under these circumstances, in view of the two decisions referred to above, it will follow that the

conclusion of the Tribunal is correct. Accordingly, we answer the, question referred to us in the affirmative and in favour of the assessee. The

assessee is entitled to his costs of this reference. Counsel''s fee Rs. 500.