

(1992) 10 KAR CK 0028
In the Karnataka High Court
Case No : Income Tax R.C. No. 24 of 1990

Ajit G. Saraff

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 16-10-1992

Acts Referred:

Hindu Succession Act, 1956 — Section 8
Income Tax Act, 1961 — Section 256 (1)

Citation : (1993) 109 CTR 131 : (1993) 201 ITR 388 : (1993) 37 KarLJ 128 :
(1993) 67 TAXMAN 329

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : K.S. Ramabhadran and K. Gajendra Rao, for the Appellant; H. Raghavendra Rao and M.V. Seshuchala, for the Respondent

Judgement

K. Shivashankar Bhat, J.—This is a reference u/s 256(1) of the Income Tax Act, 1961, in respect of the assessment year 1982-83. The three questions referred read as follows :

"1. Whether the properties acquired by the assessee absolutely under the will of his father, dated December 14, 1973, constituted joint family property in the hands of the son (assessee) ?

2. Whether the income from the said properties is to be assessed in the status of a Hindu undivided family ?

3. Whether the Tribunal was right in applying the principle laid down in the case of Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, as the properties had not been acquired by the assessee by intestate succession, but under a testamentary disposition ?"

2. All the three questions basically involve the same question.

3. The assessee's father left a will dated December 14, 1973. Some of the

properties belonging to the father of the assessee absolutely were bequeathed under the will. Two items of immovable properties were given to two sons respectively. The sons are Ajit and Ashok. One bungalow was directed to be kept in common by two sons and one daughter, Sarojini. The shares which were being held jointly by the deceased along with his sons were bequeathed equally to two sons. The share of the deceased in the business was to be shared by both the sons equally and they were expected to keep the business continuing for ever.

4. The assessee treated the income derived from the property obtained by him under the will as his individual income initially while filing the return. Subsequently, he filed a revised return treating the said income as also belonging to the Hindu undivided family. The claim of the assessee was not accepted by the Income Tax Officer. The Appellate Assistant Commissioner, however, accepted the claim of the assessee and held that the income from the property obtained by the assessee under the father's will also belongs to the Hindu undivided family of the assessee. The Appellate Tribunal reversed this order. The Appellate Tribunal referred to the decision of the Supreme Court reported in Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, to hold that, in such a situation, the property obtained by the assessee would be his separate property and, therefore, the income therefrom also would be his individual income and not the income of the Hindu undivided family.

5. The assessee relied on the decision of the Gujarat High Court reported in Commissioner of Income Tax, Gujarat-I Vs. Babubhai Mansukhbhai (Deceased) (by L.R. Harshadbhai B. Shah), in the said decision, it was held that where a son inherits the self-acquired property of his father, the son takes it as the joint family property of himself and his son and not as his separate property. The view of the Allahabad High Court in COMMISSIONER OF Income Tax, U. P. Vs. RAM RAKSHPAL, ASHOK KUMAR., was dissented from. This view of the Gujarat High Court certainly is no longer good law in view of the decision of the Supreme Court in the aforesaid Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, The Supreme Court has clearly laid down that the property inherited by a son which hitherto belonged to his father as his self-acquired property, again would be self-acquired property of the son.

6. The Supreme Court referred to section 8 of the Hindu Succession Act governing the fact situation. The Supreme Court also in clear terms over ruled the aforesaid decision of the Gujarat High Court.

7. Mr. Ramabhadran, learned counsel for the assessee, contended that the said decision of the Supreme Court is distinguishable because, in the instant case, the assessee obtained the property by virtue of the will of his father. It was further contended by learned counsel that, under the will, the intention was to bequeath the property to the unit of the assessee as a joint family. It is not possible for us to accept this submission. A copy of the will produced before us (translated into English) shows that the testator bequeathed the properties specifically to named person and the assessee was one such named person. No property was

bequeathed in favour of any unit treating it as a Hindu undivided family. The will nowhere expressed any intention to bequeath the property to any branch of the family which would continue as a Hindu undivided family. Therefore, it is clear that the assessee obtained the property as his separate property and consequently, income therefrom will be his individual property.

8. Before concluding, we may also refer to a decision of this court in Commissioner of Income Tax, Mysore Vs. Nagarathnamma, which also had taken a view similar to the view expressed by the Supreme Court in Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others,

9. In the result, the reference is answered in the affirmative and against the assessee.