(2000) 07 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Income Tax Ref. No. 17 of 1982

Ashok Kumar	APPELLANT
Vs	
The Commissioner of Income Tax	RESPONDENT

Date of Decision : 19-07-2000

Acts Referred:
Income Tax Act, 1961 — Section 37

Citation : (2000) 246 ITR 261

Hon'ble Judges : B.P. Saraf, C.J;N.A. Kakru, J

Bench : Division Bench

Advocate : None, for the Appellant; Sr. Central Govt. Standing Counsel and Anil Bhan, for the Respondent

Judgement

B.P. Saraf, C.J.—By this reference u/s 256(1) of the Income Tax Act, 1961 (""Act""), the Income Tax Appellate Tribunal, Amritsar Bench,

Amritsar (""Tribunal"") has referred the following three questions of law to this Court for opinion at the instance of the assessee :

1. Whether, on facts and circumstances of the case, the Tribunal was right in holding that agreement between the assessee, karta of the HUF and

his wife is an invalid agreement?

2. Whether, on facts and circumstances of the case, the Income Tax Officer as an outsider, has a right to challenge the validity of an agreement

entered between the assessee as karta of H.U.F. and his wife and whether the Tribunal was right in looking into the validity of the said agreement?

3. If the above questions are answered in affirmative, whether on facts and circumstances of the case, the Tribunal was right in disallowing salary

paid to the assessee in his individual capacity by the H.U.F. for looking after the interests of H.U.F. in the firm in which he is a partner on behalf of the H.U.F?

2. Material facts necessary for deciding the controversy in this case, briefly stated, are as follows. The assessee is a Hindu undivided family. In its

return for the assessment year 1978-79, it made a claim for deduction of a sum of Rs.6, 000/- paid as salary to its karta, Shri Ashok Kumar, for

looking after the interest of the Hindu undivided family in the partnership firm M/S Tirath Ram Lal Chand which was engaged in the business of

cloth. Shri Ashok Kumar, who was the karta of the Hindu undivided family with effect from 6th August, 1969, was a partner in the said firm

representing the Hindu undivided family. No remuneration, however, was allowed to him by the Hindu undivided family for looking after its interest

in the partnership. The Hindu undivided family consisted of Shri Ashok Kumar, karta, Smt. Madhu Balla, wife of the karta, Master Suman, son of

Ashok Kumar, a minor aged eight years and Miss Anupam, daughter of Ashok Kumar, a minor aged nine years. In its assessment for the

assessment year 1978-79, the assessee- Hindu undivided family claimed that it had paid Rs.6, 000/- as salary at the rate of Rs.500/- per month to

its karta, Sri Ashok Kumar, for looking after the interest of Hindu undivided family in the firm M/S Tirath Ram Lal Chand. The payment was made

pursuant to an agreement between Sri Ashok Kumar, the karta of the Hindu undivided family as party of the first part and Smt. Madhu Balla, wife

of the first party, as party of the second part. The terms of the agreement were incorporated in an ""Agreement Deed"" drawn on 20th April 1977.

In its return for the assessment year 1978-79, the assessee- Hindu undivided family claimed deduction of the said amount in computation of its

income, as business expenditure. The Income Tax Officer turned down the claim of the assessee as, in his opinion, it was the normal obligation of

the karta to look after the interest of the family. The Income Tax Officer also observed that there was no particular circumstance or development

that entitled the karta to claim remuneration for looking after the interest of the family in the partnership firm in the relevant assessment year. The

assessee appealed to the Appellate Assistant Commissioner who did not agree with the findings of the Income Tax Officer and reversed the same.

He was of the view that the karta Sri Ashok Kumar, who was working whole heartedly for safeguarding the interest of the Hindu undivided family in the firm, M/S Tirath Ram Lal Chand, was definitely entitled to claim remuneration. He, therefore, held that the assessee- Hindu undivided family

was entitled to claim deduction of Rs.6, 000/- paid as salary to its karta for looking after the interest of the family in the partnership firm where he

was a partner in his representative capacity as its karta . Aggrieved by the order of the Appellate Assistant Commissioner, revenue appealed to the

Income Tax Appellate Tribunal (""Tribunal""). The Tribunal was of the opinion that the agreement between the karta of the Hindu undivided family

and his wife for payment of salary to the karta was an invalid agreement. The Tribunal, therefore, reversed the order of the Appellate Assistant

Commissioner and disallowed the salary paid to the karta Sri Ashok Kumar for looking after its interest in the firm in which he was a partner on its

behalf. Hence this reference at the instance of the assessee.

3. None appears for the assessee. Mr.Anil Bhan, Advocate appears for the revenue.

4. We have heard Mr. Anil Bhan, learned counsel for the revenue and perused the order of the Tribunal as also the orders of the Appellate

Assistant Commissioner and the Income Tax Officer. Admittedly, the payment of salary at the rate of Rs. 500/- per month to Shri Ashok Kumar,

the karta, was in pursuance of the following agreement between the karta and his wife, who was the only other major member of the family at the

material time, the other two members being their minor son and daughter :

AGREEMENT DEED

This deed of agreement made this 20th day of April, 1977 in the city of Srinagar between Shri Ashok Kumar son of Sh. Lal Chand r/o Srinagar,

hereinafter called party of the Ist part and Smt. Madhu Bala wife of Sh. Ashok Kumar r/o Srinagar, hereinafter called party of the 2nd part.

Whereas party of the Ist part is the Karta of the Hindu Undivided Family consisting of the following members :

1. Sh. Ashok Kumar (Self) Karta age 56 years.

2. Smt. Madhu Bala Wife of Karta age 28 years.

3. Master Soman Son of Karta age 8 years and

4. Miss Anu Puma Daughter of Karta age 9 years.

Whereas party of the Ist part is a partner in M/S Tirath Ram Lal Chand representing the Hindu undivided family and as such is looking after the

interest of the Hindu Undivided Family in the said partnership; and

Whereas in pursuance of an oral agreement of 13.4.1977 it is desired by the parties that the terms of the agreement be put into writing. It is,

therefore, mutually agreed as under :

1. That the party of the Ist part as karta of the Hindu Undivided Family shall continue to represent the Hindu Undivided Family as Partner in M/S

Tirath Ram Lal Chand;

2. That in consideration of looking after the interest/interests of the Hindu Undivided Family it is mutually agreed that party of the Ist part shall draw

a salary of Rs.500/- P.M. from 13.4.1977 from the funds of Hindu Undivided Family which can be increased with mutual consent of parties of the

Ist and 2nd part, but it shall in no case be more than 25% of the net income earned by the Hindu Undivided Family.

3. That party of the Ist part shall not do any business in his individual capacity in competition with the partners of the firm M/S Tirath Ram Lal

Chand where he is a partner representing the Hindu Undivided Family or shall not do anything in his individual capacity which will in any way deter

the interest of the Hindu Undivided Family.

In witness whereof the parties have signed this deed of agreement in presence of the witnesses.

5. On perusal of the above agreement and the facts and circumstances of the case, the Appellate Assistant Commissioner was satisfied that Shri

Ashok Kumar, the karta of the family, had been working whole heartedly to protect the interest of the family which had paid dividend to the

family.He recorded a categorical finding to that effect. The Tribunal has not reversed that factual finding of the Appellate Assistant Commissioner.

The Tribunal agreed with the contention of the assessee that the karta of a Hindu undivided family is entitled to vote himself the salary for the pains

he undertakes and the investment of the time he makes in looking after the affairs of the joint family and it does not require any agreement to

authorise such a payment. The Tribunal, however, was of the opinion that in the instant case, the agreement between the karta and the major

member of the family, who happened to be his wife, was an invalid agreement, because the interests of the minors were not taken care of while entering into the agreement. The Tribunal, therefore, held that the agreement in question was invalid and disallowed the claim of the assessee-Hindu

undivided family for deduction of the amount of salary of Rs.6, 000/- paid to the karta pursuant thereto as a deduction in computation of its

income.

6. There is thus no dispute in the present case about the genuineness of the payment. Nor is there any dispute about the fact that the payment was

made by the Hindu undivided family for the services rendered to it wholly and exclusively for the purpose of its business. What is in dispute is the

validity of the agreement between the karta and the major member of the family by which it was agreed that the karta would be entitled to a salary

of Rs.6, 000/- per annum for looking after the interest of the family in the firm in which he was a partner in his representative capacity as the karta

of the family. Some important questions of law arise for consideration. First, whether the agreement in question is void or voidable? Second, if it is

voidable, whether the authorities under the Income Tax Act can go into the validity of the same, or declare the same as void? Third, whether the

remuneration paid to a karta of a Hindu undivided family for managing the family's business, or looking after the interest of the family in a

partnership, where he is a partner representing the Hindu undivided family, is eligible for deduction as a business expenditure in computing the

income of the Hindu undivided family?

7. So far as the validity of alienation by the karta or manager of a Hindu undivided family or a joint Hindu family is concerned, law is well- settled

that an alienation by the karta or the manager of joint Hindu family, even if without legal necessity, is voidable and not void. The karta of a Hindu

undivided family has power and authority to alienate the joint family property so as to bind the interests of both the adult and minor coparceners in

the property; provided that the alienation is made for legal necessity, or for the benefit of the estate. When alienation is made by the manager

without legal necessity, but with the consent of all other coparceners, they being all adults, the alienation is valid in its entirety. The alienation by a

manager of a joint family made without legal necessity is not void, but voidable, at the option of the other coparceners - they may affirm or

repudiate it. But a third party cannot repudiate it.

8. In Raj Kumar Raghubanchmani Prasad Narain Singh Vs. Ambica Prasad Singh (Dead) by Lawyers and Others, , the Supreme Court has held

that in any event an alienation by the manager of the joint Hindu family even without legal necessity is voidable and not void.

9. In Commissioner of Income Tax Vs. Gangadhar Sikaria Family Trust and Kamakhya Rice Mill Trust, , the Gauhati High Court was called upon

to decide whether the Income Tax Officer can challenge the validity of an alienation by the karta of a Hindu undivided family. The High Court held

that under the Hindu Law, the karta of a Hindu undivided family has an unfettered right to alienate the joint family property for legal necessity and

for the benefit of the estate or the family. It was further held that even if a transfer by the karta were not for legal necessity or for the benefit of the

estate, it would be only voidable and not void ab-initio.

10. It is clear from the above discussion that alienation by the karta or manager of a joint family is voidable, but not void. Hence, a third party

cannot repudiate it, except in cases where there is a suggestion that it was in fraud on creditors.

11. In view of the above, in the instant case, it is clear that the Income Tax Officer and the Tribunal had no power to treat the agreement between

the karta and the major member of the family for payment of salary of Rs.6, 000/- per year to the karta for looking after the interest of the Hindu

undivided family in the firm in which he was a partner on behalf of the Hindu undivided family as invalid for reasons more than one. First, the

payment of salary to the karta for looking after the interests of the Hindu undivided family in the firm was for the benefit of the Hindu undivided

family and the estate. The interest of the Hindu undivided family in the partnership firm is an asset of the family and part of its estate. Looking after

the same is looking after the interest of the estate of the family. Salary for looking after the same is remuneration for the service rendered to the

family. It is not for any service rendered to the firm. The payment of salary of Rs.500/- per month to the karta was thus wholly and exclusively for

the purpose of the business of the Hindu undivided family. Moreover, even if the payment made to the karta was not for legal necessity or for the

benefit of the family or the estate, the agreement would be voidable on that count but not void. The Income Tax authorities have no power or authority to repudiate the same. The contention of the revenue that the agreement was entered into between the major members of the family

without proper representation of the two other members who were minors is also without any merit. The agreement for payment of salary to the

karta for the services rendered by him to the family was entered into between the karta and the only other adult member of the family competent to

act on behalf of the family, the other two members being minors. There is no legal infirmity in such an agreement. The remuneration payable under

such an agreement has to be held to be expenditure incurred in the interest of the family and consequently a business expenditure deductible u/s 37

of the Act in computation of the income of the family. Secondly, law is well-settled that the junior members of the family or the karta can be paid

remuneration for carrying on family business, provided it is under some agreement and such remuneration is a business expenditure u/s 37 of the

Act, deductible in computing the income of the assessee.

12. Identical controversy came up for consideration before the Supreme Court in Jugal Kishore Baldeo Sahai Vs. Commissioner of Income Tax,

U.P., Lucknow, . In that case also, the Supreme Court was called upon to decide whether the salary paid to a karta of the family for looking after

the family's business was a permissible deduction u/s 10(2)(xv) of the Indian Income Tax Act, 1922 (corresponding to section 37 of the Income

Tax Act, 1961). The Supreme Court referred to its earlier decision in Jitmal Bhuramal Vs. Commissioner of Income Tax, Bihar and Orissa, ,

where it was held that a Hindu undivided family can be allowed to deduct the salary paid to a member of the family ,and observed :

We do not consider that the decision given by this court in that case needs to be given a narrow interpretation so as to confine the right of

deducting the remuneration paid by a Hindu undivided family to junior members only. There seems no reason at all why if a karta is paid

remuneration he should be in a position different from that of any junior member.

13. The Supreme Court further observed :

It is true that a karta has a right to manage the property of the Hindu undivided family on behalf of all the coparceners but there is no obligation or

duty on him to carry on a particular business of the family. It is well-established that any member of a Hindu undivided family including a karta can have a separate personal source of income if that income is earned independently of the Hindu undivided family assets or business. It is primarily on

this basis that it has been held that the salary or remuneration paid to the junior member of the family for the services rendered to the family

business becomes his separate income, and, consequently, a deductible expenditure u/s 10(2)(xv) of the Act when computing the income of the

family. In similar circumstances, if a karta offers his services to the family instead of choosing an independent career to earn his separate income

and receives remuneration from the family, there is no reason why the remuneration so paid to him cannot be treated as an expenditure for carrying

on the business of the family and consequently expended wholly and exclusively for the purpose of the business and deductible u/s 10(2)(XV) of

the Act [corresponding to section 37(1) of the 1961 Act].

14. The legal position was summed up by the Supreme Court thus (at p. 242):

â?¦[T] he general view expressed by commentators on Hindu law as well as in decided cases is that the karta of a family can be paid remuneration

for carrying on family business, provided it is under some agreement. There seems to be no reason why, if all persons competent in a Hindu

undivided family to enter into an agreement on its behalf consider it appropriate that the karta should be paid remuneration and enter into an

agreement to pay remuneration to him, that remuneration should not be held to be an expenditure deductible u/s 10(2)(xv) of the Act

[corresponding to section 37(1) of the 1961 Act].

15. The facts and circumstances of the present case are identical to the facts and circumstances of the case before the Supreme Court (Jugal

Kishore Baldeo Sahai v. CIT, supra). In the present case also, both the members of the Hindu undivided family, who were the only persons

competent to enter into an agreement on its behalf, considered it appropriate that the karta should be paid salary at the rate of Rs. 500/- per month

for looking after its interest in the partnership in which it had a substantial interest because its karta was a partner therein as its representative , and

entered into an agreement to pay salary to him for the services rendered to the family. The ratio of the above decision is, therefore, applicable to

the present case. Accordingly, the salary paid to him has to be held to be an expenditure incurred in the interest of the family .The expenditure having been incurred under a valid agreement , bonafide , and in the interest of and wholly and exclusively for the purpose of the business of the

Hindu undivided family, is allowable as a deductible expenditure u/s 37(1) of the Act in computing the income of the Hindu undivided family.

16. In view of the above, Question No.1 is answered in the negative, i.e., in favour of the assessee and against the revenue.

17. We have already held above that an agreement between the karta of the Hindu undivided family and its member for alienation of the property

of the Hindu undivided family being voidable, can be repudiated only by the members of the Hindu undivided family and not by a stranger. That

being so, we are of the opinion that on the facts and in the circumstances of the case, the Income Tax Officer had no right to challenge the validity

of the agreement between the karta of the Hindu undivided family and his wife. The Tribunal too was not justified in looking into the validity of the

said agreement and holding it to be invalid. Therefore, Question No.2 is also answered in the negative, i.e., in favour of the assessee and against

the revenue.

18. So far as question No. 3 is concerned, it does not arise in view of our answers to questions 1 and 2 being in the negative. Otherwise also, the

view taken by the tribunal that a karta of a Hindu undivided family, by reason of his being a karta ,is under a legal obligation to manage all the

business of the family without being entitled to any remuneration for the service rendered by him is not correct in view of the decision of the

Supreme Court in Jugal Kishore Baldeo Sahai v. CIT (supra).We have already held that on the facts and in the circumstances of the case, the

tribunal was not right in disallowing the salary paid by the Hindu undivided family to its karta Sri Ashok Kumar for looking after the interest of the

family in the firm in which he was a partner on its behalf. Question No 3 , therefore , need not be answered. It is returned unanswered.

19. This reference is disposed of accordingly with no order as to costs.

