

(1974) 02 AHC CK 0033

In the Allahabad High Court

Case No : Income-tax Reference No. 203 of 1971 connected with No. 111 of 1973

Bajrang Lal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 01-02-1974

Acts Referred:

Citation : (1977) 108 ITR 245

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; Deokinnandan, for the Respondent

Judgement

Satish Chandra, J.—A Hindu undivided family consisted of Bajrang Lal, his wife, four sons, one daughter and mother. This Hindu undivided family owned various assets. On the first day of the previous year relevant to the assessment year 1959-60, there was a partial partition in this family. The business assets of the firm, Phool Chand Bajrang Lal, were partitioned. The assets of this firm were divided equally between Bajrang Lal, his four sons and his wife. The firm was converted into a partnership firm in which the wife did not join as a partner. Thereafter the only partners were Bajrang Lal and his two major sons, the two minor sons were admitted to the benefits of the partnership. With regard to the rest of the assets, the original Hindu undivided family continued.

2. In his individual assessment, Bajrang Lal claimed that the share which he received on partition was liable to be assessed in his hands in the status of a Hindu undivided family consisting of himself, his widowed mother and unmarried daughter. The Income Tax Officer, however, held that Bajrang Lal was liable to be assessed in the status of an individual. This view was affirmed on appeal. Bajrang Lal, the assessee, took the dispute to the Tribunal. The Tribunal held that in view of the Supreme Court decision in Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore, the position is that if a sole coparcener has received an ancestral property on partition or otherwise, he is entitled to the

status of a Hindu undivided family provided he or she represents a family as understood under the personal law of Hindus and is capable, in nature or in law, to add a coparcener to the family, who will be entitled to claim partition. The Tribunal went on to hold that the first condition is admittedly satisfied. Bajrang Lal with his widowed mother and unmarried daughter constituted a family as understood under the personal law of Hindus.

3. The Tribunal then adverted to the other question, whether any member of this family had the capacity in law or in nature to add another male coparcener to the family. The Tribunal held:

"In spite of our asking we have not been told the respective ages of the assessee, his wife and the minors so as to judge whether or not the assessee was capable to add in nature a coparcener to the family. We have, therefore, to proceed on the basis that during the material period the assessee's youngest issue was the unmarried daughter aged 13."

4. The Tribunal held that the unmarried daughter as well as his widowed mother were incapable of adding a male member to the family. The Tribunal further held that since Bajrang Lal had sons in existence, he was incapable of adding a male coparcener to the family by adoption. It held that on the facts of the case the normal presumption would be that the family as claimed had no potentiality to add a coparcener. The Tribunal observed that if they had been persuaded to accept that the family was capable to add a member to the family, they would have allowed the assessee's appeals. On this view it was held that the assessee cannot be given the status of a Hindu undivided family. At the instance of the assessee the Tribunal has referred to this court the following questions:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was not entitled to the status of Hindu undivided family for the assessment years 1959-60 and 1960-61?

2. If the answer to the first question is in the affirmative whether, on the facts and in the circumstances of the case, the interest earned by the assessee's minor sons from the firm in which they were admitted to the benefits of partnership and the assessee was a partner, was also liable to be included along with their share of income in the computation of the assessee's income?"

5. At the instance of the assessee this court directed the Tribunal to refer the following questions also for the opinion of this court:

"1. Whether the Tribunal was right in holding that before the status of Hindu undivided family could be accorded to the applicant it was necessary for the applicant to prove that he was capable of adding new coparceners to the family in nature or by law ?

2. Whether, on the facts and circumstances of the case, there was any material for the finding that the applicant was incapable of adding a new coparcener to the family ?"

6. We have thus four questions to answer.

7. The primary question is whether there was any material for the finding that the applicant was incapable of adding a new coparcener to the family. Learned counsel urged that the query as to the ages of the members of the family was raised by the Tribunal during the course of hearing of the appeals before it. No specific time was prescribed for furnishing the information. Mr. Gulati further stated that he argued the appeals before the Tribunal, Since the assessee was not present at the time of the hearing he was unable to give the required information to the Tribunal at that time. So, he made enquiries and filed an affidavit giving the ages of the respective members of the family on 27th October, 1969. It appears that on that very day the Tribunal announced its judgment. It is possible that the affidavit did not reach the members of the Tribunal on that day. In any event, we are not satisfied that it is quite correct to say that the assessee was reluctant to furnish the requisite information so that an adverse inference could be drawn from his conduct.

8. Moreover, there is no basis whatever for the view taken by the Tribunal that during the material period the assessee's youngest child was the unmarried daughter, aged 13. No one has stated that, and there is no other material from which such an inference could possibly have been drawn. The assessee had five issues. It could not be said that there will be a presumption that in nature he was incapable of producing another issue. There was no material on the record that he was medically unfit to do so. On the material the normal presumption is that the family had the potentiality to add a coparcener. We find that there was no material in support of the finding that the assessee was incapable of adding a new coparcener to the family. This question must, therefore, be answered in favour of the assessee and against the department.

9. Since the finding that the applicant was incapable of adding a new coparcener to the family cannot be sustained, the matter has to go back to the Tribunal for a fresh finding after the requisite enquiry. In this view the position is that till a proper finding is given on the question mentioned above, it must be held that the Tribunal was not right in holding that the assessee was not entitled to the status of a Hindu undivided family for the assessment years 1959-60 and 1960-61. Since this question is answered in the negative, the other question with regard to the addition to the assessee's income of the interest earned by the minors does not arise.

10. In the view that we have taken the question whether it was necessary for the assessee to prove that he was capable of adding a new coparcener to the family is also academic at this stage and we leave this question unanswered.

11. Mr. Deokinandan, on behalf of the department, urged that the view of the Tribunal that the assessee could validly constitute a family as known to Hindu law along with his widowed mother and unmarried daughter was erroneous. We are, however, unable to permit the department to challenge this finding. It was a

finding on an independent question. It was open to the department to have challenged this finding by asking for a question to be referred upon it. That was not done. In the second place, the Tribunal has held that the position that the assessee constituted a valid family along with his mother and daughter was admitted before it. The Tribunal has observed that the first condition is admittedly satisfied. If the department wished to challenge this finding it should have asked for a question challenging the view that this position was admitted by the department before the Tribunal. But this also has not been done. We are hence unable to go into the merits of this point.

12. In the result, the various questions referred are answered as mentioned above. In the circumstances, we make no order as to costs.