

(1980) 03 DEL CK 0027

In the Delhi High Court

Case No : Income-tax Reference No. 101 of 1972

Brij Mohan (Huf)

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 16-03-1980

Acts Referred:

Citation : (1986) 158 ITR 14

Hon'ble Judges : Leila Seth, J; D.K. Kapur, J

Bench : Division Bench

Judgement

This Judgment has been overruled by : Brij Mohan Vs. Commissioner of Income Tax, New Delhi, AIR 1993 SC 2602 : (1994) 116 CTR 64 : (1993) 201 ITR 831 : (1993) JT 491 Supp : (1993) 3 SCC 518 Supp : (1993) 69 TAXMAN 523

D.K. Kapur, J.—The following question has been referred to us for our decisions :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the salary received by Shri Brij Mohan was to the extent of Rs. 12,000 assessable in the hands of the assessed-family ?"

2. The assessed who has sought a reference is Shri Brij Mohan, a Hindu undivided family. The said Hindu undivided family has Shri Brij Mohan as its karta and consists of himself, his wife and children. There is a partnership firm known as Sant Ram Nikka Mal in which the karta Shri Brij Mohan is a partner. The statement of case made by the Income Tax Appellate Tribunal sets out the history of the joint Hindu family which has been partitioned in various stages. Initially, the firm consisted of Shri Sada Nand and Shri Parma Nand who were brothers. After the death of Shri Sada Nand, the partnership consisted of Shri Parma Nand and the widow of Shri Sada Nand, i.e., Shrimati Raj Kumari. Later, Shri Ram Lubhaya became a working partner and the firm was reconstituted. Shri Brij Mohan was a minor admitted to the benefits of the partnership and got an allowance of Rs. 250 per month. His brother, Shri Man Mohan, was not given any allowance. They, are the sons of late Shri Sada Nand.

3. In 1952, a fresh deed was drawn up by which Shri Brij Mohan became a full-fledged partner. His salary in November, 1952, was Rs. 300 per month. Then Shri Parma Nand retired from the firm and there were other changes resulting in the salary of Shri Brij Mohan being raised to Rs. 400 and his brother, Shri Man Mohan, got an allowance of Rs. 200 per month.

4. Finally, the partnership was reconstituted on September 7, 1957, and the partnership deed has been annexed to the statement of the case. The partners at this stage are Shri Brij Mohan, his brother, Shri Man Mohan, and his mother, Shrimati Raj Kumari. The share of profits and losses of Shri Brij Mohan is 44%, that of his brother, Shri Man Mohan 31% and of Shrimati Raj Kumari, the mother 25%. The salary of the two brothers, Shri Brij Mohan and Shri Man Mohan, is stated to be Rs. 400 and Rs. 200 per month, respectively.

5. The crucial fact which gave rise to the present reference is that with effect from April 1, 1965, the salaries of Shri Brij Mohan and Shri Man Mohan were increased by Rs. 1,000 each month to Rs. 1,400 and Rs. 1,200, respectively. Initially, till the assessment year 1966-67, Shri Brij Mohan filed his return as an individual showing both the share income and salary as individual income. In the years 1967-68 and 1968-69, he showed the income as well as salary as being that of the family and this was accepted by the Department. In the assessment year 1969-70, Shri Brij Mohan claimed that the income from the share in the partnership belonged to the Hindu undivided family while the salary income belonged to him individually. He claimed he was a working partner and he had systematically gained experience in business. The salary was claimed by him on account of the services rendered to the firm and not on account of the invested capital.

6. The Income Tax Officer rejected the claim and included the entire income from shares as well as salary in the hands of the assessed-family. This position was accepted by the Appellate Assistant Commissioner who also came to the conclusion that the sudden jump in the salary after April 1, 1965, was due to the control of the assessed in the business as a partner. He confirmed the view of the Income Tax Officer.

7. On appeal to the Tribunal, it was held that the sum of Rs. 1,400 received by Shri Brij Mohan could be divided into two portions. It was observed that the previous salary of Rs. 400 was compensation for services rendered by him and the additional sum of Rs. 1,000 was by way of return on the capital investment. Therefore, the Tribunal came to the conclusion that the salary income should be included in the Hindu undivided family assessment to the extent of Rs. 12,000. In reaching its decision, the Tribunal had acted on the principles laid down by the Supreme Court in *Shri Raj Kumar Singh Hukam Chandji Vs. Commissioner of Income Tax, Madhya Pradesh*,) and *Mathura Prasad Vs. Commissioner of Income Tax, Uttar Pradesh*,).

8. Learned counsel for the assessed contends that the decision of the Tribunal is

not correct and the answer to the question should be that the entire sum received by way of salary is the personal income of Shri Brij Mohan and is not to be included in the income of the assessed-family. It is contended that the sum of Rs. 400 which was being received previously by Shri Brij Mohan, for a number of years, was increased, in the light of the experience he had, to Rs. 1,400 monthly and, Therefore, the entire amount had to be excluded from the assessable income of the family.

9. In support of the submission, reliance has been placed on a number of decisions including the two previously cited and the decisions in Prem Nath and Others Vs. Commissioner of Income Tax, Delhi and Rajasthan, , delivered by the Supreme Court as well as two decisions of this court, viz., The Commissioner of Income Tax, Delhi Vs. B.N. Bhaskar (H.U.F.),) and another unreported case also decided by this court, viz., CIT v. Bhai Tarlochan Singh.

10. In all these decisions, the principles settled by the Supreme Court have been applied to various circumstances. The question for consideration in all these cases was whether the income had been derived by utilisation of the funds of the Hindu undivided family or was due to the personal services of the assessed, i.e., the partner in question. In the case of Mathura Prasad, the sum received by the partner who was acting as manager was Rs. 1,500. There was a finding by the Tribunal that Mathura Prasad had become a member of the partnership with the help of the joint family funds and the allowance was directly related to the investment. The Tribunal and the High Court had followed the judgment of the Supreme Court in The Commissioner of Income Tax, West Bengal Vs. Kalu Babu Lal Chand, , and, Therefore, there was no question of further reference to the High Court.

11. In Shri Raj Kumar Singh Hukam Chandji Vs. Commissioner of Income Tax, Madhya Pradesh, , the Supreme Court held that where a karta had become managing director in a company on account of shares owned by the joint Hindu family, then the question to be determined would depend on ascertaining whether the income was received as a result of the investment by the family or whether it was received as compensation for services rendered by the individual coparcener. It was held on the facts that the managing director no doubt represented the family who owned shares in the company but he was elected by the board of directors and he received salary for his personal services. Hence, the income had to be treated as the income of the individual and not of the family. These principles have been applied by this court in the case of The Commissioner of Income Tax, Delhi Vs. B.N. Bhaskar (H.U.F.), and Bhai Tarlochan Singh.

12. We have now to discover from the facts of the present case whether the income in question has been derived on account of the personal services of Shri Brij Mohan or on account of investment of the funds owned by the Hindu undivided family of Shri Brij Mohan. On this point, the question to be answered appears to be settled by the reasoning adopted by the Tribunal.

13. The reasoning is as follows. At first, Shri Brij Mohan was getting a remuneration of Rs. 250 which was increased to Rs. 400 which had remained from November 1, 1955, till it was suddenly raised to Rs. 1,400 on April 1, 1965. The Tribunal held that the sum of Rs. 400 was undoubtedly received for the services rendered by Shri Brij Mohan as opposed to being a return on account of the investment by the joint family.

14. However, it was concluded that the sudden increase of Rs. 1,000 monthly in the case of Shri Brij Mohan and Shri Man Mohan from April 1, 1965, was not motivated for remunerating these partners for services rendered. The following were the reasons given by the Tribunal :

"In this connection, it may be mentioned that the deed of partnership in operation during the year of account continued to be the deed dated September 7, 1957, which stipulated only a salary of Rs. 400 per month to Shri Brij Mohan. There was no amendment in this partnership deed. Learned counsel for the assessed was unable to bring to our notice any resolution of the partnership providing for an increase in the salary or the basis thereof. The reasons for the increase in the salary of both the partners by Rs. 1,000 p.m. which was a very big jump from the previous salary is a mystery that remains unexplained. We are clear in our minds that the extra remuneration was not intended to be a compensation to the partners for the services rendered by them. In view of this conclusion, we have no hesitation in holding that to the extent of Rs. 1,000 p.m., the payment made to Shri Brij Mohan was not for the services rendered by him. It is unnecessary for us to speculate on the reasons that prompted the change but it is clear that the change was not made to regulate the relations between the firm and its employee, Shri Brij Mohan, but rather to adjust the rights of the partners' interests. It, Therefore, appears to us that to the extent of Rs. 1,000 p.m., the salary received by Shri Brij Mohan represents a compensation not to him in his capacity as a partner. To this extent, Therefore, the remuneration has to be taxed in the hands of the family while the balance of Rs. 4,800 should, for the reasons stated already, be considered in the hands of the individual. We, Therefore, reduce the inclusion of the salary in the assessment from Rs. 16,800 to Rs. 12,000."

15. This reasoning appears to contain several conclusions of fact. The Tribunal held that the sum of Rs. 1,000 p.m. received by Shri Brij Mohan after April 1, 1965, was not on account of any services rendered by him, but had something to do with the fact that he himself along with his family members were the three partners. It is significant that the two partners who got the increase in the salary by Rs. 1,000 monthly were Shri Brij Mohan and Shri Man Mohan and the third partner was the mother. This lends support to the conclusion of the Tribunal that this increase was not on account of any additional services rendered.

16. Learned counsel for the petitioner has made a strong plea that the increase was occasioned by the fact that Shri Brij Mohan had got experience. But, there are no facts to show that his experience was of such a nature that there should

be a sudden increase of Rs. 1,000 p.m. in the salary. Moreover, in order to justify the increase, it would have to be demonstrated either that the services were more strenuous than before or there were some special circumstances justifying a large increase by about 250%.

17. Normally, in such cases, the question for determination is whether the salary or remuneration in question is being derived as a result of the services of the individual concerned or on account of the investment of the joint family in the firm of which it is a partner through its karta. This question leads inevitably to one answer, i.e., the whole sum is treated as being on account of services rendered or on account of being derived from the investment in question. This is also the result in this case. As regards the sum of Rs. 400 which was being received by Shri Brij Mohan up to April 1, 1965, any reasonable increase in this remuneration would also have been similarly treated. It is the fact that there is a sudden Jump of Rs. 1,000 in Shri Brij Mohan's remuneration as well as Shri Man Mohan's remuneration which has led to the conclusion that this additional sum is not paid on account of additional services but in order to pass on the profits of the firm. There being a conclusion of fact on this point, it must be held that this court would have no jurisdiction to hold that the sum of Rs. 1,000 p.m. also is to be included in the personal income of Shri Brij Mohan and not in the assessable income of the joint family. It must also be said here that this case should not be treated as a precedent for allowing a bifurcation of the sum being paid as a salary to a karta into two portions. It so happens that the jump from Rs. 400 to Rs. 1,400 in the one case and from Rs. 200 to Rs. 1,200 in the case of the other brother was so steep that it cannot be justified as being on account of rendering of personal services and, Therefore, this case is in a sense exceptional, as part of the remuneration has been treated as being on account of the services rendered and the balance is treated as a return on the capital invested. In view of the findings of the Tribunal, the answer has to be given against the assessed.

18. The answer, to the question referred to us is in the affirmative, in favor of the Commissioner of Income Tax and against the assessed. The Department will get costs. Counsel's fee Rs. 250.