
(1989) 03 KAR CK 0016

In the Karnataka High Court

Case No : Income-tax Reference Case No. 45 of 1983

B.T. Ravindranath Punja

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 20-03-1989

Acts Referred:

Income Tax Act, 1961 — Section 171, 263

Citation : (1989) 78 CTR 116 : (1989) 179 ITR 243 : (1990) 3 KarLJ 196 :
(1989) 46 TAXMAN 165

Hon'ble Judges : S. Rajendra Babu, J;M. Rama Jois, J

Bench : Division Bench

Advocate : G. Sarangan, for the Appellant; K. Srinivasan, for the Respondent

Judgement

S. Rajendra Babu, J.—On March 16, 1972, there was a partition between the assessee and his son. Again a partition was made by the assessee between himself, his wife and minor unmarried daughter, by a deed dated March 4, 1978 (annexure-D). This partition was recognised by the Income Tax Officer u/s 171 of the Income Tax Act and assessment was made in the status of a Hindu undivided family, though the return was filed as individual. The Commissioner of Income Tax issued a notice u/s 263 of the Act, as, in his opinion, the order of the Income Tax Officer was erroneous and prejudicial to the interests of the Revenue. The assessee filed his objections to the said notice. After considering the same, the Commissioner made an order holding that the partition in the joint family can be brought about only by coparceners and the female members, though entitled to shares on partition, cannot claim partition as of right according to Hindu law, and, in that view of the matter, cancelled the order made u/s 171 of the Act. Aggrieved by this order, the assessee appealed to the Tribunal. The Tribunal confirmed the order made by the Commissioner. Thereafter, the assessee sought for a reference and the following question of law has been referred for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was

right in holding that the partition amongst the assessee, his wife and his unmarried daughter was not valid and thus the order of the Income Tax Officer made u/s 171 recognising the partition is not valid ?"

2. The question is, when there is a single coparcener with other female members in his family, whether, under Hindu law, there could be partition between himself and other female members. Learned counsel for the assessee submitted that even assuming that there could be no partition between such a coparcener and other female members in the family, the partition deed could be treated either as a family arrangement or as a gift.

3. Inasmuch as the question arose out of an order made u/s 171 of the Act which pertains to the recognition of the partition, the question whether the document could be treated either as a family arrangement or as a gift, does not arise for consideration at all. Moreover, such a question has not been raised before any of the authorities below. Therefore, we decline to examine that aspect of the matter.

4. So far as the question referred to us is concerned, the matter is self-evident. A sole coparcener cannot divide the property with himself or grant any share in the property. In the absence of more than one coparcener, a partition is impossible. The grant of any share in the property by the sole surviving male member of the Hindu undivided family to any other family member could be only in the nature of a settlement of the property upon them in lieu of their right to maintenance and cannot, by any stretch of reasoning, be said to be partition of the property amongst them. Therefore, no partition could have taken place in such an event. Our view is supported by two decisions, one in the case T.G.K. Raman (Huf) Vs. Commissioner of Income Tax and Commissioner of Wealth-tax, and the other in the case of Sat Pal Bansal Vs. Commissioner of Income Tax, which is a Full Bench decision of the Punjab and Haryana High Court, which overruled an earlier decision of the same court.

5. In this view of the matter, we answer the question referred to us in the affirmative and against the assessee.