
(1983) 12 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Miscellaneous Income Tax Reference No. 14 of 1972

Commissioner of Expenditure Tax

APPELLANT

Vs

Baldeo Dass Rameshwar

RESPONDENT

Date of Decision : 05-12-1983

Acts Referred:

Expenditure Tax Act, 1957 — Section 3

Citation : (1984) 147 ITR 473

Hon'ble Judges : Kanta Bhatnagar, J; Dwarka Prasad, J

Bench : Division Bench

Advocate : J.P. Joshi, for the Appellant; H.N. Calla, for the Respondent

Judgement

Dwarka Prasad, J.—The assessee, M/s. Baldeo Dass Rameshwar, was assessed to expenditure tax in the status of an HUF, in respect of assessment years 1958-59 and 1959-60, referable to the accounting years ending on Diwali Samvat 2013 and 2014, respectively. The HUF, M/s. Baldeo Dass Rameshwar, consisted of Rameshwar Nathani and his sons and grandsons. Besides two businesses carried on in the name of M/s. Baldeo Dass Rameshwar and M/s, Rameshwar Nathani & Co., the HUF had a 12 annas share in a partnership business carried on in the name of M/s. Dudwala & Co., wherein the interest of the HUF was represented by its karta, Rameshwar Nathani. In the year 1943, a suit for partition was filed by Satyanarayan, one of the members of the HUF, in the original civil jurisdiction of the Calcutta High Court and a consent decree was passed by the High Court on March 18, 1944, in terms of a settlement arrived at between the parties. The relevant clauses of the settlement, which were incorporated in the compromise decree passed by the Calcutta High Court are as under:

" (1) The joint family came to an end of the 21st day of September, 1943.....

(7) The businesses carried on under the name and style of Rai Bahadur Baldeodass Rameshwar and Rameshwar Nathani & Co. shall be stopped from date hereof, but this is not to affect the partnership carried on under the name and

style of Dudwala & Co, in which Messrs. Baldeodass Rameshwar are the partners, the said partnership shall be continued as provided in Clause 10 hereof...

(10) In the firm of Dudwala & Co. the parties hereto have 12 annas share and it shall remain joint and the parties shall be entitled thereto according to the shares mentioned in Clause 3 hereof. "

2. According to Clause 3 each one of the plaintiff and the defendants were entitled to 1/6th share of the joint family properties which consisted of movable and immovable properties and the two businesses referred to above besides 12 annas share in the partnership firm, M/s. Dudwala & Co.

3. The Expenditure Tax Officer made assessments relating to expenditure tax for the assessments years 1958-59 and 1959-60, in respect of M/s. Baldeo Dass Rameshwar, in the status of an HUF. The assessments were also confirmed by the AAC of Expenditure Tax. Before the Income Tax Appellate Tribunal, Delhi Bench " C " (hereinafter referred to as " the Tribunal"), the assessments made in respect of the assessee-firm were assailed on the ground that the HUF of M/s. Baldeo Dass Rameshwar did not exist at the time of assessments and that no assessments could be made in respect of non-existing persons, as such, the assessments for the two years 1958-59 and 1959-60, were ab initio void. The Tribunal, while deciding the appeals preferred by the assessee, by its consolidated order dated September 15, 1970, in respect of the aforesaid two years, found itself in " an unenviable plight". On the one hand, there was a finding of the Tribunal in the Income Tax proceedings to the effect that the share of the HUF in M/s. Dudwala & Co. continued as an asset of the assessee-HUF and that the family remained joint to carry on the partnership in M/s. Dudwala & Co. On the other hand, there was the judgment of the Calcutta High Court in a matter relating to registration of the firm, Commissioner of Income Tax Central Vs. Dudwala and Co., wherein it was held that after the consent decree for partition was passed in the year 1943, the joint family ceased to exist. It was argued before the Tribunal on behalf of the Revenue that a combined reading of Clauses 7 and 10 of the consent decree led to the conclusion that the intention of the parties was that the family should remain joint in so far as the share in the firm, M/s. Duduwala & Co., was concerned and emphasis was laid on the use of the word "joint" in clause 10 of the compromise agreement which formed part of the consent decree of 1943. The Tribunal held that there should be an existing family on which expenditure tax could be levied and following the decision of the Calcutta High Court in Commissioner of Income Tax Central Vs. Dudwala and Co., the Tribunal came to the conclusion that as the HUF ceased to exist, no assessment of expenditure tax could be made in respect thereof. The assessments made by the Expenditure Tax Officers in respect of the two years in question were, therefore, ordered to be cancelled by the Tribunal.

4. The Commissioner of Expenditure Tax, Rajasthan, Jaipur, submitted applications before the Tribunal u/s 23(1) of the Expenditure Tax Act, 1957, for making a reference to this court on a question of law arising out of the

consolidated order of the Tribunal dated September 15, 1970, relating to the two years 1958-59 and 1959-60. The Tribunal refrained the question suggested by the Commissioner of Expenditure Tax and referred the following two questions to this court for its opinion, as arising out of the Tribunal's consolidated order dated September 15, 1970 :

" 1. Whether, on the facts and in the circumstances of the case, the Hindu undivided family of M/s. Baldeodass Rameshwar had ceased to exist as such from the date of decree in Suit No. 1436 of 1943.

2. If the answer to question No. 1 is in the affirmative, whether valid assessments under the Expenditure Tax Act could be made on the family for the assessment years 1958-59 and 1959-60 ? "

5. In respect of the first question, it may be observed that clause 1 of the terms of settlement, which formed part of the consent decree passed by the Calcutta High Court in the year 1944, clearly provided that the joint Hindu family of the parties came to an end on 21st day of September, 1943. While the other properties, movable and immovable, belonging to the joint Hindu family were divided and distributed amongst the co-sharers as detailed in Clauses 4, 5 and 6 of the deed of settlement. Clause 7 referred to the business carried on by the joint Hindu family. It was agreed by all the members of the joint Hindu family that the business of the two firms, M/s. Rai Bahadur Baldeo Dass Rameshwar and M/s. Rameshwar Nathany & Co., shall be stopped from the date of dissolution of the joint Hindu family. As regards the 12 annas share of the joint Hindu family in M/s. Dudwala & Co., a provision was made in Clause 10 of the deed of settlement, wherein it was clearly provided that the partnership shall continue and the members of the joint Hindu family shall have 12 annas share in the firm, M/s. Dudwala & Co., and that the shares of the members of the erstwhile joint Hindu family in the aforesaid firm would remain joint but the members of the Hindu joint family shall be entitled thereto according to their respective shares as mentioned in clause 3 of the deed of settlement, wherein it has been specified that each one of the members of the joint Hindu family mentioned therein shall be entitled to 1/6th share.

6. Thus, a combined reading of Clauses 1, 7 and 10 lead to the irresistible conclusion that the joint Hindu family was disrupted and came to an end with effect from September 21, 1943. Once the joint Hindu family, was disrupted, the same ceased to exist. The members of the erstwhile joint Hindu family were thereafter free to make such arrangements about the management of their properties and business in future as they may like. It is not necessary that with the disruption of the joint Hindu family, division by metes and bounds of all the joint family properties should be made. According to the principles of Hindu law, the institution of a suit for partition by a member of a joint Hindu family is an unequivocal intention to separate and consequently there is severance of his joint status from the date of the institution of the suit. Where the coparceners executed in writing with a view to effect partition and agreed to hold some of the

joint properties in denned shares as separate owners, such a writing operates in law as a partition of the entire joint family property, though the property may not be physically divided. In the present case, the deed of settlement declares on the face of it, the intention of the parties to hold the 12 annas, share in M/s. Dudwala & Co. jointly as separate owners in accordance with the respective shares and such a document is conclusive proof of partition. Learned counsel appearing for the Revenue suggested that merely a partial partition was effected between the parties on account of the consent decree of 1944 and he sought to re-enforce his submission by the fact that even after the partition was effected, the 12 annas share in M/s. Dudwala & Co. continued to remain " joint ", as provided in Clause 10 of the agreement. It may be observed in this respect that in the first place clause 1 of the deed of settlement unequivocally speaks of a complete partition among the members of the joint Hindu family both "in respect of persons as well as properties, as it states that the joint family would come to an end on September 21, 1943. In the second place, Clause 10 of the deed of settlement itself contains a recital that the parties, meaning thereby the erstwhile members of the joint Hindu family, shall be entitled to 12 annas share in M/s. Dudwala & Company according to their respective shares as mentioned in clause 3 of the deed of settlement. Thus, it is crystal clear that although the 12 annas share in M/s. Dudwala & Co. was held jointly by the erstwhile members of the joint Hindu family, yet after the dissolution of the joint Hindu family, they held the said 12 annas share as tenants-in-common, and each one of them was entitled separately to 1/6th out of the said 12 annas share.

7. In *Ramalinga Annavi v. Narayana Annavi* AIR 1922 PC 201 their Lordships of the Privy Council, approving the dictum of Lord Westbury in the case of *Appovier v. Rama Subba Aiyan*, observed as under (p. 205):

" It seems to their Lordships that in the debate before the Board the difference between a complete "partition" in a joint undivided Hindu family and a partial division of interest in respect of some specific property or part of the joint properties has been "overlooked. This distinction has been clearly pointed out in the judgment of Lord Westbury in the well-known case of *Appovier v. Rama Subba Aiyan* [1866] 11 MIA 75, and although the passage has often been cited it is desirable to reproduce it here:

But when the members of an undivided family agree among themselves with regard to particular property, that it shall thenceforth be the subject of ownership in certain defined shares, then the character of undivided property and joint enjoyment is taken away from the subject-matter so agreed to be dealt with; and in estate each member has thenceforth a definite and certain share, which he may claim the right to receive and to enjoy in severalty, although the property itself has not been actually severed and divided", (emphasis* is ours)

8. Thus, their Lordships have brought out clearly the difference between a complete partition of a joint undivided family and a partial division of interest in some specific properties. After a complete partition has been effected among the

members of the joint Hindu family, each former member would be entitled to a definite and certain share of the joint property, although the property itself has not been actually severed and divided. The settlement arrived at between the members of the joint Hindu family in the present case allowed the 12 annas share in the firm, M/s. Dudwala & Co., to continue as joint, so that the business of the firm may not be disrupted, but each one of the erstwhile members of the joint Hindu family was entitled to a share separately out of the 12 annas share in that firm, according to his respective share as specified in Clause 3 of the deed of settlement.

9. The Calcutta High Court also took the same view, in the case relating to the question of registration, of M/s. Dudwala & Co. and observed as under (p. 659):

" After the shares have been defined the members of the Mitakshara joint family may divide the property by metes and bounds or they may continue to live together and enjoy the property in common. Yet, that would affect the mode of enjoyment but not the tenure of the property. Therefore, the mere mention that the parties would be entitled to twelve annas share of the firm of Dudwala and company according to the shares specified in the terms of settlement did not make any alteration as to the real character of the property. The family ceased to be joint and the shares were defined and the necessary consequence is that any property, e.g., the twelve annas share in that firm, would be held by the members of the family as tenants-in-common. "

10. We are in respectful agreement with the view taken by the Calcutta High Court in the aforesaid case, and we hold that the view taken by the Calcutta High Court in the aforesaid case is the correct view in the facts and circumstances of the present case. We, therefore, hold that the HUF of M/s. Baldeodass Rameshwar ceased to exist as such from the date of the decree in Suit No. 1436/1943 and the answer to question No. 1 referred to us is in the affirmative and in favour of the assessee.

11. The answer to the second question does not present any difficulty. u/s 3 of the Expenditure Tax Act, 1957, expenditure tax could be charged in respect of the expenditure incurred by any individual or HUF in the previous year referable to the assessment year in question. When the HUF in dispute ceased to exist, there could be no question of any expenditure being incurred by such a HUF and consequently no expenditure tax could be charged u/s 3 for the assessment years 1958-59 and 1959-60. Thus, our reply to the second question is in the negative and in favour of the assessee and against the Revenue.

12. In our view, the Tribunal was justified in annulling the assessments in respect of the HUF of M/s. Baldeodass Rameshwar in respect of the assessment years 1958-59 and 1959-60, as the said HUF had ceased to exist earlier thereto.

13. The parties shall bear their own costs of the proceedings in this court.