

(1977) 09 AP CK 0025

In the Andhra Pradesh High Court

Case No : Income-tax Case No's. 130 and 131 of 1977

Commissioner of Income Tax

APPELLANT

Vs

A. Krishna Murthy

RESPONDENT

Date of Decision : 06-09-1977

Acts Referred:

Income Tax Act, 1961 — Section 256(2), 263

Citation : (1978) 113 ITR 133

Hon'ble Judges : Obul Reddi, C.J.; Ramachandra Raju, J

Bench : Division Bench

Advocate : P. Rama Rao, for the Appellant; S. Dasaratharama Reddy, for the Respondent

Judgement

S. Obul Reddi, C.J.—In these two applications filed by the Commissioner of Income Tax u/s 256(2) of the Income Tax Act, 1961, he seeks reference of the following two questions :

"(1) Whether, on the facts and in the circumstances of the case, the declaration made by the assessee throwing his interest in the partnership firm into the hotchpot of the joint family is valid in law ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in holding that the share income arising from the partnership firm is the income of the joint family?"

2. The facts leading to the filing of the applications u/s 256(2) of the Act are these: The assessee is a partner in Messrs. Hyderabad Gas Company, Hyderabad, The income derived by the assessee from the partnership firm as also the capital standing to his credit were being treated by the Income Tax Officer as belonging to him as "individual" and assessments were accordingly made. On December 31, 1969, the assessee abandoned his rights in the partnership firm both with regard to the capital put in by him as also the profits arising therefrom and threw the same into the common hotchpot of the Hindu

undivided family which consisted of himself, his minor son, daughter and wife. On the basis of the declaration made by the assessee, the Income Tax Officer treated the income arising from the partnership firm as the income of the Hindu undivided family for the assessment years 1971-72 and 1972-73. He, therefore, did not include the income in the individual assessment of the assessee. The Commissioner of Income Tax, in exercise of his powers u/s 263, issued a notice to the assessee to show cause why the income realised from the partnership firm should not be assessed in the hands of the assessee in the status of individual. After hearing the assessee, the Commissioner set aside the order of the Income Tax Officer and directed him to assess that income in the hands of the assessee in his individual capacity. The Tribunal on appeal reversed the order of the Commissioner and restored that of the Income Tax Officer. The Tribunal, in so reversing the order, relied upon the principles laid down by the Supreme Court in *Charandas Haridas and Another Vs. The Commissioner of Income Tax, Bombay North, Kutch, Saurashtra and Ahmedabad and Another*, which was subsequently followed by it in *Commissioner of Income Tax, Madras Vs. Bagyalakshmi and Co., Udamalpet*, .

3. Mr. Rama Rao, the learned counsel, strenuously contended that the Tribunal was in error in treating the income of the partner who happened to be a member of the joint family as income of the Hindu undivided family merely for the reason that it was blended with the properties of the Hindu undivided family. According to the learned counsel, the assessee cannot make a declaration whereby the joint family would be burdened with the risk and liability of the business of the partnership firm. It is contended that the assessee by throwing his interest in the Hindu undivided family cannot burden the joint family with losses and other liabilities and, therefore, the Tribunal was in error in not treating the income realised by the assessee from the partnership firm of which he was a member as assessable in his hands as an individual.

4. The main question to be considered is whether it is open to an assessee who happens to be the karta or a member of the Hindu undivided family to throw his interest in the partnership firm into the hotchpot or common pool of the joint family. It is well settled that any member of the joint family could throw his separate property, interest or income into the hotchpot. For that, no agreement is necessary with the other members of the Hindu undivided family. It is only the intention of such member of the family to blend his property or income that is required. It is not the case of the department that the declaration made by him that he had thrown his interest in the partnership firm into the hotchpot of the Hindu undivided family is not true. The department accepted his declaration, but it was not prepared to exclude the income in his individual hands from assessment. The ratio to be drawn from *Charandas Haridas and Another Vs. The Commissioner of Income Tax, Bombay North, Kutch, Saurashtra and Ahmedabad and Another*, is that, before the disruption of the Hindu undivided family, the income realised by the karta, who happened to be a member of a partnership firm, is an asset of the Hindu undivided family. In the words of the learned

judges :

"The Income Tax law before the partition took note, factually, of the position of the karta, and assessed him not as a partner but as representing the Hindu undivided family. In doing so, the Income Tax law looked not to the provisions of the Partnership Act, but to the provisions of Hindu law. When once the family had disrupted, the position under the partnership continued as before, but the position under the Hindu law changed. There was then no Hindu undivided family as a unit of assessment in point of fact, and the income which accrued could not be said to be that of a Hindu undivided family. There was nothing in the Indian Income Tax law or the law of partnership which prevented the members of a Hindu joint family from dividing any asset. Such division must, of course, be effective so as to bind the members."

5. The above view was endorsed again by the Supreme Court in Commissioner of Income Tax, Madras Vs. Bagyalakshmi and Co., Udamalpet, . It, therefore, follows that when once a member of the Hindu undivided family throws his interest or asset in the hotchpot, it gets blended by operation of the Hindu law and becomes an asset of the Hindu undivided family. The Tribunal was, therefore, right in holding that the Commissioner of Income Tax was in error in treating the share income arising from the partnership firm as income of an individual assessable in the hands of the assessee.

6. For the reasons recorded, we are unable to direct reference of the questions raised for our opinion. The applications are dismissed. No costs.