

(2001) 07 KAR CK 0012

In the Karnataka High Court

Case No : Income Tax R.C. No's. 128 to 130 of 1998

Commissioner of Income Tax

APPELLANT

Vs

D.C. Basappa and Others

RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Income Tax Act, 1961 — Section 147, 256 (1)

Citation : (2001) 169 CTR 499 : (2001) ILR (Kar) 4028 : (2001) 251 ITR 673 : (2001) 119 TAXMAN 682

Hon'ble Judges : D.V. Shylendra Kumar, J;A.M. Farooq, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; S. Parthasarathy, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—This reference is at the instance of the Revenue u/s 256(1) of the Income Tax Act, 1961, seeking for an answer to the following two questions :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that D. C. Basappa was assessable in the status of individual in respect of the income from properties retained to his share vide partition deed dated March 15, 1975 ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that D. C. Basappa was not assessable in the status of a Hindu undivided family even after the partition dated March 15, 1975 ?"

2. The statement of case drawn up in the context of reference to this court by the Income Tax Appellate Tribunal indicates that for the assessment year 1979-80, the assessee had filed a return of income claiming the status of an individual based on a partition dated March 15, 1975, which had taken place amongst the husband, wife and daughters who constituted a joint Hindu family up to that point of time. The assessee who had been assessed in the status of a

Hindu undivided family hitherto pursuant to the said partition dated March 15, 1975, and for the assessment years 1975-76 onwards, claimed the status of an individual and was filing the return in that capacity and accordingly, for the assessment year 1979-80 also.

3. It also transpires that the assessee's status as an individual had been recognised by effecting the said change as per the provisions of Section 171 of the Act accepting the claim of partition said to have been made on March 15, 1975, as regards the husband, wife and members of the family. Subsequent to the passing of the order u/s 171 regarding partition and effecting change in the status of the assessee from Hindu undivided family to individual, it appears that there was an attempt on the part of the Revenue to have the order passed u/s 171 rectified by having recourse to Section 154 of the Act. Though a rectification order was passed it did not last long as the assessee appealed against this order and the order of rectification was set aside by the appellate authority.

4. The Revenue having failed in its attempt to alter the status of the assessee, at least from the assessment year 1979-80 onwards wanted to bring about this change by having recourse to the provisions of Section 147 of the Act. Notice was issued u/s 148 of the Act calling upon the assessee to file a revised return on the premise that the income returned for the assessment year 1979-80 had been assessed at a lower rate resulting in loss to the Revenue. The assessee did not respond to this notice but filed a nil return indicating that the Hindu undivided family did not have any property or income and was not assessable.

5. The Assessing Officer being of the view that a partition amongst the husband, wife and daughters of a Hindu undivided family was not recognised under the Hindu law nor was permissible and further by recognising or allowing the claim of the assessee on the basis of such a partition and by effecting change in the status of the assessee from Hindu undivided family to individual, the Revenue having been put to loss by the fact that the tax liability of the assessee if assessed in the status of an individual being less than the liability if it is assessed as a Hindu undivided family proceeded to pass an order holding that the assessee should have been assessed only as a Hindu undivided family and not in the capacity of an individual and on such premise called upon the assessee to pay the difference of tax and issued a demand notice for payment of a sum of Rs. 4,041 in respect of the assessment year in question.

6. The assessee appealed to the Appellate Commissioner and by an order dated November 3, 1998, the Appellate Commissioner allowed the appeal purporting to follow a decision of the Income Tax Appellate Tribunal, Hyderabad Bench in *Premchand Chaganlal/Sardarilal v. ITO* [1983] 3 ITD 768. The Appellate Commissioner following this view taken by the Appellate Tribunal, allowed the appeal and after setting aside the order of assessment directed the Income Tax Officer to complete the assessment in respect of the assessee in the status of an individual only.

7. The Revenue being aggrieved by this order, further appealed to the Income Tax Appellate Tribunal. However, the Appellate Tribunal did not agree with the contentions urged on behalf of the Revenue and dismissed the appeal by an order dated July 22, 1992. The Revenue being not satisfied sought for referring the question of law said to have arisen after the decision" of the Tribunal and, accordingly, the Tribunal has referred the two questions mentioned above for our opinion.

8. Sri Seshachala, learned counsel appearing for the Revenue, has submitted before us that under Hindu law there cannot be a partition between the husband, wife or the daughters of the couple and, as such, the so called partition dated March 15, 1975, said to have been effected amongst the members of the Hindu undivided family, namely, husband, wife and daughters, who it is claimed were the members of the Hindu undivided family at that time was not a partition recognised in the eye of law and, as such, it is null and void, If that is so, the said partition does not bring about any change in the status of the assessee and in the absence of any partition either valid or permitted in law, the status of a Hindu undivided family is not disrupted and as such for the purpose of the Income Tax Act also the assessee's status continues to be Hindu undivided family. It is also submitted by learned counsel that due to some technical reasons though the Revenue could not assess the income of the assessee in the status of an individual for the assessment years 1975-76, 1976-77, 1977-78 and 1978-79 as they could not invoke the provisions of Section 147, as it was beyond the permitted time limit, it is open to the Revenue to correct the status of the assessee by having recourse to the provisions of Section 147 of the Act for the years permitted by law under this provision and when once in a proceeding u/s 147 of the Act the correct status of the assessee is determined, the tax liability based on such status can be quantified and the assessee called upon to pay the same.

9. Learned counsel has relied upon the decision of our High Court in the case of N.D. Hanumatharayappa Vs. Commissioner of Wealth Tax, , in support of the submissions made on behalf of the Revenue. Learned counsel has placed reliance on the proposition of law as recognised by the Division Bench which is as under (page 398):

"A female member of a Hindu family is not a coparcener ; she has no right to seek partition ; her membership of the joint family arises by virtue of her marriage with a male member of the family or being a daughter born to a male member of the family. As a daughter, she continues to be a member of the father's family till her marriage."

10. Learned counsel based on this proposition submits that the partition claimed by the assessee in the year 1975 being between husband, wife and daughters cannot be recognised under law and as such there is no disruption of the status of the Hindu undivided family.

11. Sri Sarangan, learned senior counsel appearing for the assessee, on the other hand, submits that the Revenue is not entitled to get over an order passed under the provisions of Section 171 recognising the status of an assessee based on the claim made and the facts placed before the Assessing Officer at the time of passing orders u/s 171 of the Act by recourse to the provisions of Section 147 of the Act. The submission of learned counsel in this regard is that there is no dispute that an order had come to be passed u/s 171 of the Act recognising the partition made in the year 1975 and based on the same altering the status of the assessee from Hindu undivided family to an individual. It is also submitted that in fact, the Revenue being of the view that it had committed a mistake in permitting the change in the status of the assessee based on the partition dated March 15, 1975, sought to get over it by having recourse to rectification proceedings in which it was not successful. It is the submission of learned counsel for the assessee that when once an order u/s 171 of the Act has been made and the assessee's status has been determined the other consequences automatically follow and in a proceeding u/s 147 purporting to reopen an assessment on any ground of loss of revenue, the Revenue cannot get over an order already in existence u/s 171 and cannot convert the proceedings u/s 147 as if one for passing a different order u/s 171 of the Act. In support of this submission, learned counsel has relied upon the decision of the Supreme Court in the case of Joint Family of Udayan Chinubhai, etc. Vs. Commissioner of Income Tax, Gujarat, . Learned counsel is well supported in his submission by the decision of the Supreme Court rendered in this case. In the decision relied upon by learned counsel, the apex court has very categorically held that when once an order is passed under the provisions of Section 25A (which was the corresponding provision under the 1922 Act to the present Section 171 of the 1961 Act), the said order determining the status of the assessee cannot be in any way altered or got over by having recourse to reopening of the assessment u/s 34 which was the corresponding provision to present Section 147 under the present Act. The Supreme Court has very clearly ruled that the status accorded to the assessee under an order passed u/s 25A cannot be interfered with by reopening the assessment order which in turn is only an assessment following the status which has already been determined under the provisions of Section 25A.

12. The situation is identical here. In the instant case also the status of the assessee had earlier been determined in accordance with the provisions of Section 171 of the Act and that has become final. That status cannot be altered by having recourse to the provisions of Section 147 of the Act as per the ruling of the apex court.

13. Applying the ratio of the decision in Joint Family of Udayan Chinubhai, etc. Vs. Commissioner of Income Tax, Gujarat, , we are bound to answer the questions referred to us in the affirmative and against the Revenue. Reference answered accordingly. Parties to bear their own costs.

14. The questions referred for our answer in ITRC No. 129 of 1998 and ITRC No. 130 of 1998 are also the same as in ITRC No. 128 of 1998. ITRC No. 128 of 1998 pertains to the assessment year 1979-80 whereas ITRC No. 129 of 1998 and ITRC No. 130 of 1998 relate to the assessment years 1980-81 and 1981-82, respectively. In the light of our decision in ITRC No. 128 of 1998, the questions referred for our opinion in these two references are also answered in the affirmative and against the Revenue. No costs.