

(1991) 11 PAT CK 0010

In the Patna High Court

Case No : Tax Case Nos. 154 and 155 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Deo Ram Karman

RESPONDENT

Date of Decision : 21-11-1991

Acts Referred:

Citation : (1991) 11 PAT CK 0010

Judgement

G.C. Bharuka, J.—These two references arise out of an order passed by this court u/s 256(2) of the Income Tax Act, 1961 (hereinafter to be referred to as " the Act" only), pertaining to the assessment years 1969-70 and 1970-71 involving the following question of law :

" Whether, on the facts and in the circumstances of the case, the original assessment by which the share income of the assessee from the firm, M/s. Karmandana and others, amounting to Rs. 10,636 and Rs. 21,436 for the assessment years 1969-70 and 1970-71, respectively, which were assessed as his individual income, could be revised as income from a Hindu undivided family in a proceeding u/s 147 of the Income Tax Act, 1961, in respect of the assessed income from another partnership firm, Messrs. Parmer Pictures ?"

The assessee is a partner in two partnership firms, namely, M/s. Farmer Pictures and M/s. Karmandana and others. During the assessment proceedings, the assessee took the stand that he was a partner in the firm, M/s. Karmandana and others, as the karta of his Hindu undivided family and, as such, the share income derived by him from this firm was not assessable in his hands in his status as " individual ". The Income Tax Officer rejected the plea of the assessee in this regard and assessed the share income amounting to Rs. 10,636 and Rs. 21,436, respectively, for both the assessment years, i.e., 1969-70 and 1970-71, in his hands in his status as " individual ". Aggrieved by the said order, the petitioner preferred an appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner took the view that since this question had already been decided by the Income Tax Officer pursuant to the order of remand passed by

the Tribunal in respect of the assessment year 1971-72 wherein the Income Tax Officer himself came to the conclusion that the share income from M/s. Karmandana and others is assessable in the hands of the assessee in the status of Hindu undivided family and since there were no additional facts to take a different view, he upheld the contention of the assessee. Consequently, it was directed that the share income from M/s. Karmandana and others is to be assessed as income of the Hindu undivided family of the assessee.

2. Against the aforesaid order of the Appellate Assistant Commissioner, the Department preferred an appeal to the Tribunal. The Tribunal also accepted the plea of the assessee and held that since the assessee had inherited the capital of his father in the firm, M/s. Karmandana and others, on his death on December 2, 1968, and since the income from this firm has already been treated by the Department as income of the Hindu undivided family of the assessee, it is not possible to give a different character to this very income for the assessment years under consideration.

3. It has been contended by Mr. L. N. Rastogi, learned senior counsel for the Department, that, if the capital in the firm, M/s. Karmandana and others which has been inherited by the assessee be treated as self-acquired property of the father of the assessee, then in view of Section 8 of the Hindu Succession Act, as interpreted by the Supreme Court in the case of Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, , the share income from the firm can be assessed in the hands of the assessee only in the status of individual. I am unable to accept this contention for the simple reason that, whether the capital in the firm (M/s. Karmandana and others), as introduced by the father of the assessee was self-acquired or ancestral is essentially a question of fact which was neither raised nor adjudicated upon at the stage of the Tribunal. This being a pure question of fact, it cannot be, for the first time, allowed to be raised at the reference stage. u/s 256(2) of the Act, only a question of law arising out of the facts found by the Tribunal can be considered for the purpose of rendering an opinion to the Tribunal. Keeping in view these aspects, the decision of the Supreme Court, referred to by learned counsel for the Department, is of no avail on the facts and in the circumstances of the present case.

4. Now, turning to the question as framed, it is important to note that neither the Income Tax authorities under the Act nor the Tribunal was called upon to consider whether, in a reassessment proceeding, the question of assessing any income in the hands of the assessee in his status as individual or Hindu undivided family can be agitated or not. Therefore, strictly speaking, a question of law, as raised, cannot be said to have arisen out of the order of the Tribunal. That apart, it is now well-established that, where a reassessment proceeding is initiated against a person, the original order of assessment becomes non est and it is open to the authorities to redetermine all the issues relating to the assessment of the assessee which will include the question of status as well. Keeping in view this legal aspect, in my considered view, there was nothing

wrong on the part of the appellate authorities in entertaining the objection of the assessee to the effect that his share income from the firm, M/s. Karmandana and others, could not have been legally assessed in his hands as his individual income.

5. Keeping in view the discussions made above, the question referred to this court is answered in the affirmative, i.e., against the Department and in favour of the assessee. However, there shall be no order as to costs. Let a copy of this order be transmitted to the Assistant Registrar of the Income Tax Appellate Tribunal, Patna Bench, Patna, in terms of Section 260 of the Act.

S. K. Chattopadhyaya , J.

6. I agree.