
(1969) 09 AHC CK 0018

In the Allahabad High Court

Case No : Income Tax R. Miscellaneous Case No. 836 of 1963

Commissioner of Income Tax

APPELLANT

Vs

Gauri Shanker Chandra Bhan

RESPONDENT

Date of Decision : 18-09-1969

Acts Referred:

Income Tax Act, 1922 — Section 25(3), 25A, 25A(1), 28, 28(1)

Citation : (1972) 83 ITR 83

Hon'ble Judges : V.G. Oak, C.J.; T.P. Mukherjee, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Oak, C.J.—This is a reference u/s 66(1) of the Indian Income Tax Act, 1922 (hereinafter referred to as the Act). The assessee was a Hindu undivided family. At one time the family consisted of Gauri Shanker and his three sons. The family was assessed to Income Tax for the assessment year 1946-47. The corresponding accounting period was from 13th April, 1945, to 2nd April, 1946. On 19th March, 1957, an application was moved before the Income Tax Officer claiming that a partition had taken place in the family on 22nd June, 1956. The Income Tax Officer was satisfied on this point. On 26th March, 1962, he recorded an order u/s 25A(1) of the Act to the effect that partition had taken place with effect from 22nd June, 1956.

2. In the meanwhile, penalty proceedings were initiated against the Hindu undivided family. On 15th March, 1957, the Income Tax Officer issued a notice to the assessee to show cause why penalty u/s 28(1)(c) of the Act should not be imposed on the assessee. After hearing the assessee, a penalty of Rs. 26,000 was imposed by the Income Tax Officer on 20th March, 1958. In appeal the penalty was reduced to Rs. 15,000. The assessee went up in appeal before the Appellate Tribunal. A number of points were urged before the Tribunal. One of the points urged for the assessee was that, in view of the partition of the joint family with effect from 22nd June, 1956, the order dated 20th March, 1958,

imposing penalty was illegal. This contention was accepted by the Appellate Tribunal. The order imposing penalty was cancelled.

3. At the request of the Commissioner of Income Tax, U.P., the Appellate Tribunal has referred the following question of law to this court:

" Whether, in the facts and circumstances of the case, the imposition of penalty u/s 28(1)(c) on the Hindu undivided family after it had disrupted within the meaning of Section 25A is bad in law. "

4. In view of the form of the question referred to this court, we have, merely to consider the effect of the partition, dated 22nd June, 1956, It was urged for the assessee that no penalty could be imposed on the joint family after its partition. On the other hand, it was pointed out for the department that the partition was not recognised by the Income Tax Officer until 26th March, 1962.

5. Section 25A of the Act provides for assessment after partition of a Hindu undivided family. Section 25A consists of three sub sections. Sub-section (1) enables the Income Tax Officer to record an order to the effect that partition has taken place. Sub-section (2) provides for assessment, in a case where such an order has been passed under Sub-section (1). Although Sub-section (2) provides for assessment of Income Tax, it does not expressly refer to any proceeding for imposing penalty. Sub-section (3) is important. Sub-section (3) of Section 25A states :

" Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family. "

6. The main question for consideration in the present reference is whether the order imposing penalty is protected by Sub-section (3) of Section 25A of the Act.

7. In *S. A. Raju Chettiar and Others Vs. Collector of Madras and Another*, it was held by the Madras High Court that in order that proceedings u/s 28 of the Act for imposing penalty on Hindu undivided family may be instituted, two requirements have to be satisfied:--

(1) The family must be in existence when the proceedings are initiated ; and

(2) It must also be in existence on the date the order imposing the penalty on that family as a person is passed.

8. In *Commr. of Income Tax Vs. Sanichar Sah Bhim Sah*, it was found that the Hindu undivided family did not exist on the date the Income Tax Officer initiated proceedings u/s 28(1)(c) and also on the date on which penalty was imposed. It was held that penalty proceedings were invalid.

9. In *Joint Family of Udayan Chinubhai, etc. Vs. Commissioner of Income Tax, Gujarat*, ; their Lordships of the Supreme Court observed on page 422 that once an order u/s 25A(1) has been recorded, Clause (3) of Section 25A has no

application.

10. In JAGANNATH RAMESHWAR PRASAD Vs. COMMISSIONER OF Income Tax, U. P., it was held by this court that Section 25A(3) applied to a case where either no claim u/s 25A(1) has been made, or such a claim having been made, has been rejected, and the Income Tax Officer has declined to make an order recording the partition alleged. It does not contemplate a case where a claim has been made u/s 25A(1), and that claim is pending consideration.

11. In COMMISSIONER OF Income Tax, PUNJAB. Vs. MOTHU RAM PREM CHAND., it was held by the Punjab High Court that the mere fact that prior disruption of the family was recognised by the Income Tax authorities subsequent to the imposing of penalty, would not disentitle the family to claim that the imposition was illegal so long as the proceedings for imposition of penalty had not become final.

12. In Kalwa Devadattam and Others Vs. The Union of India (UOI) and Others, ;their Lordships of the Supreme Court pointed out on page 172 that if no order is recorded under Sub-section (1) of Section 25A by virtue of Sub-section (3), the family shall be deemed, for the purposes of the Act, to continue to remain a Hindu undivided family.

13. In C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, it was explained by the Supreme Court that the legislature by enacting Section 44 of the Act has provided that assessment proceedings may be commenced and continued against a firm whose business is discontinued, as if discontinuance has not taken place. In that case the court had to consider the nature of assessment proceedings against a firm. The court relied upon Section 44 of the Act. That case is of little assistance for interpreting the true effect of Section 25A of the Act.

14. In Commissioner of Income Tax, Andhra Pradesh Vs. Bhikaji Dadabhai and Co., ;it was explained by the Supreme Court that penalty imposed upon a person under a taxing statute in view of his dishonest conduct was in the nature of an additional tax.

15. In Additional Income Tax Officer, Cuddapah Vs. A. Thimmayya and Others, it was explained by the Supreme Court that an Income Tax Officer may assess the income of a Hindu family hitherto assessed as undivided, notwithstanding partition, if no claim in that behalf has been made to him, or if he is not satisfied about the truth of the claim that the joint family property has been partitioned in definite portions or if on account of some error or inadvertence he fails to dispose of the claim. In all these cases his jurisdiction to assess the income of the family hitherto assessed as undivided remains unaffected, for the procedure for making assessment of tax is statutory. Any error or irregularity in the assessment may be rectified in the manner provided by the statute alone, and the assessment is not liable to be challenged collaterally.

16. In the present case we are concerned with the validity of penalty imposed for the assessment year 1946-47, and accounting period 1945-46. Admittedly, the family was joint throughout from 1945 to 1947. Penalty proceedings were initiated in the year 1951. The Tribunal has found that there was concealment of income.

17. Prima facie, there should be no serious difficulty about imposing penalty for the concealment. The assessee relies on the fact that the family was partitioned on 22nd June, 1956, and penalty was not imposed until 22nd March, 1958. We must, however, bear in mind that the partition was not recognised by the Income Tax Officer till he recorded an order u/s 25A(1) of the Act on 26th March, 1962. The position in 1958 was that no order had by that time been passed by the Income Tax Officer u/s 25A(1) of the Act. In the year 1958 the Income Tax Officer was fully entitled to the benefit of Sub-section (3) of Section 25A of the Act. The decision of the Supreme Court in *Additional Income Tax Officer v. A. Thimmayya* is a clear authority for the view that the Income Tax Officer had jurisdiction to pass an order on 20th March, 1958, imposing penalty.

18. It is true that the matter was open for reconsideration in appeal. The Tribunal disposed of the appeal before it on 6th March, 1963. By this time the Income Tax Officer had passed on 26th March, 1962, an order recognising a partition with effect from 22nd June, 1956. But, if the order dated 20th March, 1958, was a valid order when it was passed, it would not be rendered invalid by the mere fact that on 26th March, 1962, the Income Tax Officer passed an order recognising partition with effect from 22nd June, 1956. The Appellate Tribunal was wrong in taking the view that the order dated 20th March, 1958, was illegal. The true position is that the order dated 20th March, 1958, imposing penalty was a valid order.

19. We answer the question referred to the court in the negative and against the assessee. The Commissioner of Income Tax Shall receive from the assessee Rs. 200 as costs of the reference.