

(1981) 02 OHC CK 0007

In the Orissa High Court

Case No : Special Jurisdiction Case No's. 182 and 183 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Harish Chandra Gupta

RESPONDENT

Date of Decision : 02-02-1981

Acts Referred:

Citation : (1981) 51 CLT 285 : (1981) 132 ITR 799

Hon'ble Judges : R.N. Misra, C.J;B.N. Misra, J

Bench : Division Bench

Advocate : P.K. Misra and B.P. Das, for the Respondent

Judgement

R.N. Misra, C.J.—At the instance of the revenue and in exercise of the power u/s 256(2) of the I.T. Act of 1961, this court called upon the Income Tax Appellate Tribunal, Cuttack Bench, to state a case and refer the following question for opinion of the court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding the status of the assessee as HUF merely on the proposition of law cited by it ? "

2. The relevant assessment years are 1971-72 and 1972-73 ending on the corresponding last day of the month of March. The brief facts are that Todermal and Nanulal were two brothers. Todermal died leaving behind his widow, Smt. Mahadevi. The widow adopted Harish Chandra Gupta as son. Nanulal used to be assessed in the status of HUF consisting of himself, his brother's widow and the adopted son for the assessment years 1948-49 to 1950-51. On November 27, 1952, Nanulal died leaving behind a will in terras whereof all his properties stood bequeathed to Mahadevi for life and after her to Harish Chandra Gupta as full owner. For the assessment years 1951-52 to 1963-64, Harish Chandra filed returns treating his status as an individual and was assessed as such. For the assessment year 1964-65, he filed a revised return claiming the status of an HUF, but the revenue did not concede. For the assessment years 1965-66 to

1969-70, Harish Chandra filed the returns claiming the status of an HUF but conceded to assessments in the status of individual. For the assessment year 1970-71, the assessee's claim that his status was HUF was, however, accepted. The ITO, in the years under consideration, however, did not agree to follow the result for 1970-71 assessment year and, on the basis of materials available, rejected the claim and assessed the assessee as an individual.

3. First appeals were dismissed and the status of the assessee as individual was confirmed. Before the Appellate Tribunal in second appeals it was maintained that the property was joint family asset even when Nanulal was alive and had been assessed as such. The assertion in the will that the property belonged absolutely to Nanulal did not change the real character of the property. The assessee, therefore, was only the karta of an HUF. From the declaration made by the assessee it should have been accepted that the assessee had blended the property into the HUF stock and, therefore, could no more be treated as an individual. As against these submissions, the revenue claimed that in the will, through which the title had been obtained, there was a clear assertion that the property belonged to the testator absolutely. There was no evidence of any unequivocal intention of blending up the property. On the other hand, the assessee himself had declared his status to be that of an individual when he described himself as proprietor of the assets. The Tribunal came to hold :

"For deciding the issue whether the status of the assessee should be taken as an HUF it is enough to consider the last ground of the assessee that the properties were thrown by Harish Gupta into the common stock of the family consisting of himself and his children. The evidence for that claim is the series of returns from the assessment year 1964-65 in which Harish Gupta has declared that he was the karta of the HUF which derived income from these properties. Such declaration must be held to be an expression of an unequivocal intention of Harish Gupta to throw his properties into the common stock of the joint family. Such a position in law has been made clear in the recent decision of the hon'ble Orissa High Court dated September 2, 1975, in S.J.Cs. Nos. 222 to 230 of 1972 in the case of Autoways (India) Vs. Commissioner of Income Tax, following the decision of the Andhra Pradesh High Court in the case of Gundlapalli Mohan Rao and Others Vs. Gundlapalli Satyanarayana and Others, . The objection of the revenue that Harish Gupta was calling himself a proprietor of the business does not stand scrutiny, for, it does not derogate in the least from his declaration that vis-a-vis the family, he was holding the property as its karta and not in his individual capacity. We are, therefore, satisfied that the assessee is entitled to be assessed in the status of an HUF....."

4. This court in Autoways (India) Vs. Commissioner of Income Tax, , approved of the principle laid down by the Andhra Pradesh High Court in Gundlapalli Mohan Rao and Others Vs. Gundlapalli Satyanarayana and Others, and by the Supreme Court in the case of Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh, . In the Supreme Court decision, it has been observed (p. 678):

"The separate property of a Hindu ceases to be separate property and acquires the characteristics of joint family or ancestral property not by any physical mixing with his joint family or his ancestral property but by his own volition and intention by his waiving and surrendering his separate rights in it as separate property. The act by which the coparcener throws his separate property into the common stock is a unilateral act. There is no question of either the family rejecting or accepting it. By his individual volition he renounces his individual right in that property and treats it as a property of the family. No longer (perhaps sooner) he declares his intention to treat his self-acquired property as that of the joint family property, the property assumes the character of joint family property. The doctrine of throwing into the common stock is a doctrine peculiar to the Mitakshara school of Hindu law."

5. Once this is the process, we must say that there is sufficient evidence as found by the Tribunal for it. Year after year, the assessee had been declaring his intention and there is overwhelming evidence of the unilateral act referred to as the process by which blending takes place. In the year preceding the present assessments, the department had accepted the assessee's status to be HUF. It is true that the doctrine of *res judicata* is not strictly applicable to assessment proceedings but there can be no dispute that in regard to status, there can be no scope for treating the status of the same assessee differently in different years unless some new thing happens. The revenue has not collected any material upon the gathering of which the assessee's status can be said to have undergone a process of change. The Tribunal, in our opinion, had rightly indicated that the rubber stamp referred to in the assessment order is not a material feature for resolving the dispute in issue. We are inclined to agree that the Tribunal came to the right conclusion on the facts. The criticism of the learned standing counsel that upon a bare proposition of law, the reversing finding which had been reached by the Tribunal is not warranted. The Tribunal indicated the law, tested the facts and upon an application of the law came to the conclusion.

6. Upon such a state of facts our answer to the question referred, therefore, is :

On the facts and in the circumstances of the case, the Tribunal was justified in holding that the status of the assessee was that of an HUF. The conclusion of fact was not reached on a bare proposition of law but by applying a proposition of law to the set of facts before the Tribunal.

7. Parties will bear their respective costs of these references.

B.N. Misra, J.

8. I agree.