
(1984) 07 KAR CK 0050
In the Karnataka High Court
Case No : IT Reference Case No. 196 of 1978

Commissioner of Income Tax	Vs	APPELLANT
K.N. Narayan		RESPONDENT

Date of Decision : 25-07-1984

Acts Referred:

Citation : (1985) 20 TAXMAN 209

Hon'ble Judges : S.A. Hakeem, J;K. Jagannatha Shetty, J

Bench : Division Bench

Advocate : K. Srinivasan and H. Raghavendra Rao, for the Appellant; TV. Natarajan, for the Respondent

Judgement

K. Jagannatha Shetty, J.—This is a reference u/s 256(1) of the income tax Act, 1961 ("the Act") at the instance of the revenue. The following question has been referred by the Tribunal, Bangalore Bench, for the opinion of this Court:

"Whether, on the facts and in the circumstances of the case, the declaration by Shri K.N. Narayan dated 16-7-1969 throwing his interest in the partnership firms into the joint family hotchpot was valid in law?"

2. Shri K.N. Narayan was a partner in two firms, viz., Vidyut Equipment Company and Bharat Enterprises (Mysore). By a declaration dated 16-7-1969, he declared that his partner ship interest in the said firms should be the joint family property and he has also thrown into the hotchpot his personal property with which we are not concerned.

3. For the assessment year 1971-72, the share income from the partnership firms was not assessed in the hands of the individual-Shri K.N. Narayan. The Commissioner in exercise of his revisional jurisdiction set aside the assessment order and directed the ITO to re-do the assessment by ignoring the declaration. According to the Commissioner, under the Hindu law, one cannot make a declaration whereby the joint family has to bear the risk and liability of the business and, therefore, he has held that the declaration made by the assessee

has to be ignored altogether. Being aggrieved by the order of the Commissioner, the assessee preferred an appeal before the Tribunal. The Tribunal allowed the appeal and reversed the order of the Commissioner. It has followed the decision of the Tribunal Bench "C, Madras, in ITO v. P. Muthuramakrishnan [IT Appeal No. 547 of 1975-76] and held that throwing of the property consisting of the interest in a partnership firm into the common hotchpot of the HUF would be valid and such a declaration cannot be ignored by the ITO.

4. The short question is, whether a coparcener of a HUF can throw his interest in a partnership to the common hotchpot of the HUF?

5. Under the Hindu law blending of separate property with joint family is well settled. Property, separate or self acquired, of a coparcener may be impressed with the character of joint family property if it is voluntarily thrown by the coparcener into the common stock with the clear intention of abandoning his separate claim thereon. All that is required in such a case is to establish a clear intention to waive separate rights.

6. The position in Hindu law with regard to the karta entering into partnership with others by investing family funds for carrying on a business is also equally well settled. The partnership that is so created will be governed by the provisions of the Indian Partnership Act, 1932. Such a partnership is not between the family and the other partners, but it is a partnership between the karta individually and other partners. Similar would be the position of a coparcener when he invests the family funds in a partnership. He alone would be the partner and not the family.

7. Mr. Srinivasan, the learned counsel for the revenue, admits that the share in a partnership is an asset. Since it is an asset, the assessee's right to throw that asset into the common stock of HUF cannot then be denied at all.

8. Mr. Srinivasan, however, submitted that the share income in the partnership, which the assessee is entitled to as a partner, should first be brought to tax only in his individual assessment and thereafter it is open to him to put the same into the common stock. We do not find any good reason to accept this submission. We asked Mr. Srinivasan as to what should be the procedure for assessment in a case where the karta as a partner has contributed family funds to the capital of the firm. The learned counsel frankly submitted and, in our opinion, rightly that the karta would be accountable to the joint family and that share income should be brought to tax only in the HUF assessment and not in the assessment of the individual. If that is the correct principle, we fail to see why the HUF should be denied of that benefit when the asset of a coparcener (i.e., share in the partnership) is thrown into the common stock of the joint family. The income derived by the employment of even such family funds, in our opinion, should be includible only in the assessment of the HUF.

9. Our view finds support from the decisions of the Gujarat High Court in *Ratilal Khushaldas Patel Vs. Commissioner of Income Tax, Gujarat*, and *Commissioner of Income Tax, Gujarat-I Vs. Keshavlal Prabhudas Shah*, The Madras High Court in

STATE OF TAMIL NADU Vs. A. SADHANANDAM AND OTHERS., and the Delhi High Court in Commissioner of Income Tax, Delhi-I Vs. Kishan Lal, have also taken a similar view.

10. In the result and for the reasons stated above, we answer the question in the affirmative and against the revenue. In the circumstances, we make no order as to costs.