(1982) 02 MP CK 0004

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 558 of 1979

Commissioner of Income Tax APPELLANT

Vs

Krishna Kumar RESPONDENT

Date of Decision : 16-02-1982

Acts Referred:

Citation : (1981) 25 CTR 334 : (1983) 143 ITR 462 : (1982) 10 TAXMAN 292

Hon'ble Judges : G.P. Singh, C.J;J.S. Verma, J;C.P. Sen, J

Bench : Full Bench

Advocate : B.K. Rawat, for the Appellant; B.L. Nema, for the Respondent

Judgement

G.P. Singh, C.J.—This is a reference made by the Income Tax Appellate Tribunal, referring for our answer the following question of law :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in accepting the status of the assessee as Hindu undivided family?"

2. The reference arises out of the protective assessment of the assessee for the assessment year 1972-73. The assessee received property on a partition of a bigger HUF. The validity of that partition is in question in the assessment of Seth Gopaldas (HUF). The High Court has held the partition to be invalid,--but the case is pending in appeal before the Supreme Court Seth Gopaldas (H.U.F.), Icchawara Vs. Commissioner of Income Tax, M.P., Bhopal, against the judgment of the High Court, which is reported as Commissioner of Income Tax Vs. Seth Gopaldas (H.U.F.), . The assessee''s family consisted of himself and his wife. The assessee submitted his return in the status of an HUF. The assessee was assessed by the ITO in the status of an individual. The AAC confirmed the order of the ITO that as the assessee had no living child, he and his wife could not be said to constitute an HUF. The Tribunal, in further appeal, held that the assessee and his wife constituted an HUF and the assessee should be assessed in the status of an HUF.

3. There can be no doubt that the Tribunal was right in holding that the assessee

was entitled to be assessed in the status of an HUF. Although the assessee had no son and the wife had no interest in the properties of the family, yet, for purposes of status, the assessee with his wife constituted an HUF. In Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore, , the Supreme Court held that under the Hindu law it is not necessary for constituting an HUF that there must be more than one male member and that such a family may consist of a male member and his wife and daughters. Similar is the case of N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, . These cases were referred to by us in Controller of Estate Duty Vs. Smt. Rani Bahu, and Ramratan Vs. Controller of Estate Duty, .

4. For the reasons given above, our answer to the question referred is that the Tribunal was right in law in accepting the status of the assessee as an HUF. There will be no order as to costs of this reference.

