(2004) 07 AHC CK 0150

In the Allahabad High Court

Case No : IT Ref No. 5 of 1981

Commissioner of Income Tax APPELLANT

Vs

Mahendra Kumar RESPONDENT

Date of Decision : 27-07-2004

Acts Referred:
Income Tax Act, 1961 — Section 171

Citation : (2005) 193 CTR 105

Hon'ble Judges : R.K. Agrawal, J;K.N. Ojha, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

1. The Tribunal has referred the following question of law u/s 256(1) of the IT Act, 1961 (hereinafter referred to as "the Act"), for opinion to this Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the partial partition effected on 1st Dec, 1971 was valid u/s 171 of the IT Act ?"

2. Briefly stated, the facts giving rise to the present reference are as follows :

The respondent-assessee had filed an application u/s 171 of the Act, pertaining to the asst. yr. 1973-74, claiming partial partition, effective 1st Dec, 1971, of the HUF, Mahendra Kumar, hitherto assessed as HUF in respect of the share capital invested and the right to share the profit and loss in the partnership firm Goverdhan Dass Mahendra Kumar, New Mandi, Muzaffarnagar. The remaining assets of HUF were to remain joint. The family of Mahendra Kumar HUF consisted of the following :

Mahendra Kumar, Karta | -- | | | | Pushpa Devi (wife) Master Navneet Km. Rozi (Minor Km. Munni (minor Kumar (minor son) daughter) daughter) The partition was said to have been affected in the following two groups:

Name of parties

Right allotted in the profit and loss owned by Mahendra Kumar HUF and to be continued in his name in the firm M/s Goverdhan Dass Mahendra Kumar. New Mandi, Muzaifarnagar

Capital allotted as standing with the firm M/s Goverdhan Dass Mahendra Kumar in. the name of Shri Mahendra Kumar

Mahendra Kumar. Km. Rozi and Km. Munni. as one group

1/2 of 1/3 share in profit and less as standing in the name of Sri Mahendra Kumar, i.e. 1/6

Rs. 75,917.49

Smt. Pushpa Devi and Master Navneet Kumar, an one group

1/2 of 1/3 share of profit and loss as standing in the name of Sri Mahendra Kumar

Rs. 75,917.50 Rs. 1.51,834.99

The memorandum of partial partition executed on 31st March, 1972, and signed by Mahendra Kumar alone, was placed on the file before the ITO. Mahendra Kumar was examined before the ITO but his wife was not produced for examination. It was claimed before the ITO that as a result of partial partition, two more sub-HUF had come into existence within the smaller coparcenary HUF of the respondent-assessee headed by Mahendra Kumar, The ITO after discussing case law held that since the respondent-assessee was a member of the bigger HUF consisting of his mother, elder brother and himself and in also Karta of a smaller HUF consisting of self, his wife, a minor son and two minor daughters, so long as a smaller HUF remained undivided, two or more members can have no legal existence as a separate coparcenary and partial partition in groups within the existing HUF was neither permissible nor valid under the Hindu Law. He, therefore, rejected the claim for partial partition. In appeal by the respondent-assessee, the AAC followed his earlier order dt. 8th Feb., 1979, in the case of CIT v. Shyam Lal (HUF) 2001 UPTC 777 and pointed out that though in a family partition, the daughters were not entitled to any share, they had been given share in partial partition. The respondent-assessee contended that even where a share had been allotted to an unauthorised person in partition, the partition cannot be treated as a nullity or void. The AAC held that the amount allotted to Mahendra Kumar and his minor daughters actually belonged to Mahendra Kumar alone. So far as the another group of Pushpa Devi and Master Navneet Kumar was concerned, the AAC directed the ITO to determine their status keeping in view the observation of the Tribunal, Delhi Bench ''D'', in the case of Brahm Swarup & Sons v. ITO. The ITO preferred an appeal before the Tribunal while the respondent-assessee preferred a cross-objection. The Tribunal after hearing the appeal and the cross-objection upheld the order of the AAC to the effect that there had been a partition of Shyam Lal HUF and the direction to determine the status of the two groups and dismissed both the appeal and the cross-objection.

3. We have heard Sri A.N. Mahajan, learned standing counsel appearing for the Revenue. Nobody has put in appearance on behalf of the respondent-assessee.

4. It was fairly stated by Sri Mahajan that in respect of another group of the same HUF, namely, Shyam Lal HUF, a partial partition effected under similar circumstances, has been upheld by this Court in the case of CIT v. Shyam Lal (HUF) (supra). The Tribunal has relied upon its earlier decision in the case of Shyam Lal (HUF) (supra). Since the decision relied upon by the Tribunal in the case of Shyam Lal (HUF) (supra) has been approved by this Court in the case of CIT v. Shyam Lal (HUF) (supra), we answer the question of law referred to us in the affirmative, i.e., in favour of the respondent-assessee and against the Revenue. There shall be no order as to costs.

