
(1982) 08 KAR CK 0006

In the Karnataka High Court

Case No : Income-tax Referred Case No's. 251 and 252 of 1979

Commissioner of Income Tax

APPELLANT

Vs

N.S. Shankara Shetty

RESPONDENT

Date of Decision : 17-08-1982

Acts Referred:

Income Tax Act, 1961 — Section 256 (1)

Citation : (1985) 152 ITR 536

Hon'ble Judges : M.N. Venkatachaliah, J;M. Rama Jois, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; G. Sarangan, for the Respondent

Judgement

Venkatachaliah, J.—In the reference under s. 256(1) of the I.T. Act, 1961, the Income Tax Appellate Tribunal, Bangalore Bench, Bangalore, has stated a case and referred the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the share income of N.R. Shankara Shetty from the firm of M/s. Sri Balaji Jaggery Trading Co. is the income of the Hindu undivided family of which he is the karta ?"

2. The reference relates to the assessment to Income Tax for the assessment year 1974-75. Originally, a certain Sri N. R. Satyanarayana Shetty was assessed in the status of and as representing a "HUF" whose income included the income received by the said Satyanarayana Shetty as partner in a firm carrying on business under the name and style "M/s. Sri Balaji Jaggery Trading Co., Mandya".

3. It is not disputed and is indeed a common ground that Satyanarayana Setty was a partner in the said firm in his capacity as the karta of the joint family and, accordingly, the income in his hands received as partner of the said firm was includible in the income of the HUF for the earlier assessment year.

4. Sri Satyanarayana Shetty died on April 4, 1973. His son, Sri N.S. Shankara

Shetty, became a partner of the firm with effect from April, 5, 1973. The firm was, on that day, reconstituted, by taking Shankara Shetty as a partner in place of Satyanarayana Shetty. This is evidenced by a deed dated April 5, 1973.

5. On May 27, 1973, the said Shankara Shetty made a declaration to the following effect :

"I joined on 5-4-73 in partnership with S.Jayalakshmamma, B. Lakshmaiah, G. Raganatham and B. Nagaraj. S. Muralinath, minor son of S. Balaramaiah, was admitted to the benefits of a partnership into our firm. The name of our firm is "Sree Balaji Jaggery Trading Company", Mandya. I have in the said firm 30% share in profits and 37% share in losses. I hereby declare that on 5-4-73, I took 30% share in profits and 37% share in losses in the said firm of M/s. Sree Balaji Jaggery Trading Company, Mandya, for the benefit and enjoyment of my HUF consisting of myself, my wife Venkatalasmamma alias Rajyalakshmi, my son Balaji Nagendra Prasad, and unmarried daughters Naga Padmanjali, Sailaja and Suneetha.

I further declare that I now hold the said 30% share in profits and 37% share in losses in the said firm M/s Sree Balaji Jaggery Trading Company, Mandya, for the benefit of my HUF described above."

6. For the assessment year in question, the assessee claimed that the share income from the firm in his hands was the income of the "HUF", but the ITO did not accept this claim. The ITO construed the declaration made by the assessee on May 27, 1973, as amounting to an attempt at blending Shankara Shetty's share and interest in the firm, which was otherwise his separate property, with the character of a joint family property and held that such a blending, having regard to the nature of the interest of a partner, involving as it did the risk of loss, was not permissible in law. He, accordingly, treated Shankara Shetty's income as partners of M/s Sree Balaji Jaggery Trading Co. as his individual income and made an order dated March 18, 1977, accordingly.

7. Aggrieved by this, the assessee preferred an appeal to the Appellate Assistant Commissioner. Before the appellate authority, it was urged for the assessee that there was no question at all of throwing into the family hotchpots what was otherwise an individual property as, what had happened was merely that Shankara Shetty stepped into the shoes of his father in the firm as the Successor-karat and that from the very inception the share income from the firm was the HUF property. It was urged that the declaration dated May 27, 1973, merely placed this position beyond doubt.

8. The AAC accepted the assessee's contention and allowed the appeal. He held that the share income from the partnership was the income of the HUF.

9. The Revenue did not accept this decision. It preferred a second appeal before the Income Tax Appellate Tribunal. In the appeal, it was contended for the Revenue that after the death of Satyanarayana Shetty, the capital standing to his

credit in the books of the firm was held only as a credit balance and that since Shankara Shetty did not contribute any new capital of his own, and as there was nothing to show that the assessee's induction into the partnership caused any determined to the joint family estate, the inference that Shankara Setty merely stepped into the shares of his father would become in firm and left the inference that he joined the firm merely as a working partner on his own account was renewed inescapable. It was argued that a separate interest of a coparcener as a partner of a firm was not susceptible of being impressed with the character of a joint family property as it involved a risk of losses. It was also sought to be pointed out that the share income was credited to the account of Sri Shankara Shetty in the books of the firm, even though there was a separate katha for the HUF indicating that the share income was the individual income of Shankara Shetty. The Tribunal did not accept the contentions urged for the Revenue and dismissed the appeal. Thereafter, an application was made by the Revenue under s. 256(1) of the Act seeking a reference of the following four question, said to be of law and to arise out of the appellate order of the Tribunal for the opinion of this court :

"(1) Whether, on the facts and in the circumstance of the case, the Appellate Tribunal is right in law in holding that the status of the assessee is a HUF and not an individual ?

(2) Whether it is permissible under the Hindu law to make a declaration that the share of profits as well as share of losses in a partnership firm, in which a person became a partner, were for the benefit and enjoyment of his HUF consisting of himself, his wife and children ?

(3) Whether a person who is already karta of a family, consisting of himself, mother, unmarried sisters, wife and children can validly throw his interest in a firm into the hotchpot of the smaller HUF consisting of himself, wife and children ?

(4) Whether a Hindu can become a partner in a firm without introduced any capital at all still contend that his share income should be assessed in the status of a HUF, even though he is working partner and no HUF funds have been invested in the firm as his capital ?"

10. The Tribunal, however, referred only one question, referred to and excerpted earlier, as in the opinion of the Tribunal that question covered the entire gamut of the controversy as reflected by all the four questions.

11. Sri K. Srinivasan, learned senior standing counsel for the Revenue, sought to point out that the Tribunal's finding is that Satyanarayana Setty was a partner representing the HUF consisting of himself, his son (Shankara Shetty) "and other members of the family", and that it is also implicit in the third question formulated in the application under s. 256(1) that Satyanarayana Shetty left behind his widow and some unmarried daughters besides Shankara Shetty. Sri Srinivasan says that if that be so, the share income from the firm is the income of that larger family consisting of Shankara Shetty and his branch, his mother

and his unmarried sisters. But the declaration dated March 27, 1973, made by Shaukara Shetty, so proceeds the argument, would say that the income is to be treated as that of the family consisting of himself and his branch alone, leaving out his mother and unmarried daughters which would mean that the income is claimed to be that of a similar branch of the family or a sub-family. It is, accordingly, contended that, as admittedly, no nucleus for the partnership interest came from this smaller family nor was there any determent to its estate, the income could not be that of the branch. The logical outcome of this position, says counsel, is that any claim that the share income in question was that of the larger family was clearly ruled out and the choice of the entity to which the income belonged was only as between the joint family of Shankara Shetty's branch of Shankara Shetty alone as individual. Sri Srinivasan says that if the choice was so confined, the view of the ITO opting for the latter would be unexceptionable as, indeed, the only other alternative claim that the income was of the sub-family, would, in view of the admitted facts, be quite inconceivable.

12. Sri Sarangan, however, says that the whole argument of the Revenue proceeds on the premise that the expression "the other members of the family" occurring in the course of the Tribunal's order must need after only to the "widow and unmarried daughters" of Satyanarayana Shetty. He says that there is no material on record to make this factual assumption. He says that the "other members of the family" might as well refer to the members of Shankara Shetty's branch itself.

13. On a consideration of the matter, it appears to us that the contention urged for the Revenue wears thin. The question whether the share income from the firm was the income of the smaller HUF, of shankara shetty's branch, never arose before the ITO. The choice before the ITO was whether the said income was the individual income of Shankara shetty or was that of the HUF of which satyanarayana shetty was the former kearta. The further subtle distinction, Sri Srinivasan now seeks to make, as to the existence of a further alternative as between a larger family and a similar branch was never in the contemplation of the ITO. It is no doubt true that there is some discussion by the Tribunal as to the said share income having been impressed with the character of joint family property. This discussion was wholly unnecessary. It appears to us that the declaration dated May 27, 1973, does not admit of the under standing that the partnership interest was, otherwise, the individual asset of shankara Shetty and that by declaration the latter sought to impress that asset with the character of a joint family property. That declaration meant nothing more that that Shankara Shetty declared that the partnership interest held by him was and contained to be the property of the HUF and that he, Shankara Shetty, held that interest on behalf of the HUF. We do not find any material on record to assume that Satyanarayana Shetty also left behind a widow and unmarried daughters surviving him and that, even if he did, the declaration dated May 27, 1973, sought to confine the partnership interest only to a sub-family of which such widow and unmarried daughters were not members. The argument of Sri

Shrinivasan proceeds on the factual assumption that there were widow and unmarried daughters and, further, that the HUF and not the main HUF and not the main HUF, which latter was the earlier assessable entity in whose hands the share income was being assessed in the earlier years. Consequently, there appears to be no scope for development of any argument on the lines that there was any such alternative open to the ITO. The facts and circumstances suggest that the partnership interest was the asset of the "HUF" of which Satyanarayana Shetty was the karta, and of which after the farmer's death, Shankara Sheety became such karta. This is what appears to have been reaffirmed by Shankara Sheety in his declaration dated May 27, 1973. We must, therefore hold that the HUF in whose hands said share income was required to be assessed for the year 1974-75 was the same HUF in the hands of which the said share income was assessed in the earlier years. The fact that the share of profits was credited to Shankara Shetty's karta in the books of the firm is only consistent with the circumstances that, so far as firm was concerned, Shankara Shetty, was the partner that need not necessarily detract from the position that the partner, in turn, represented, a HUF.

14. In this view of the matter, the question referred requires to be and is hereby answered in the affirmative and against the Revenue.

15. Sri K. Srinivasan, learned senior standing counsel for the Revenue, is permitted to file his memo of appearance within two weeks from today.