(1982) 07 MAD CK 0007

In the Madras High Court

Case No : Tax Case No. 978 of 1977 Reference No. 671 of 1977

Commissioner of Income Tax APPELLANT

Vs

P.M. Muthuramakrishnan RESPONDENT

Date of Decision : 19-07-1982

Acts Referred:
Income Tax Act, 1961 — Section 64

Citation : (1986) 157 ITR 654

Hon'ble Judges : R. Sengottuvelan, J;G. Ramanujam, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; T.V. Natarajan, for the Respondent

Judgement

Ramanujam, J.—The assessee in this case was a partner in a firm ""M/s. Metro Handlooms"". By a declaration dated March 12, 1973, the

assessee threw his individual interest in the partnership in the family hotchpot of the Hindu undivided family consisting of his father, himself and his

brothers. In respect of the assessment year 1973-74, the income tax Officer negatived the assessee''s claim that he has thrown his interest in the

partnership into the hotchpot of the family and impressed the same with the character of joint family property and, therefore, his share of income

from the partnership has to be assessed in the hands of the family and assessed the entire share income from the partnership in his individual

assessment.

Aggrieved against the said assessment, the assessee filed an appeal to the Appellate Assistant Commissioner, who held that the assessee was at full

liberty to throw his interest in the firm into the common hotchpot and impress it with the character of joint family property and that the assessee having done so by a declaration dated March 12, 1973, the income attributable to his share in the partnership should have been considered as the

income of the Hindu undivided family subject to the provisions of section 64 of the Partnership Act. Against the order of the Appellate Assistant

Commissioner, the Revenue appealed to the income tax Appellate Tribunal. The Tribunal also sustained the view taken by the Appellate Assistant

Commissioner and held that after the assessee''s declaration dated March 12, 1973, the income attributable to the assessee''s share in the

partnership should be taken to be the income of the joint family and assessed as such and that it cannot be taken to be exclusively the individual

income of the assessee. Aggrieved by the decision of the Tribunal, the Revenue sought and obtained a reference to this court on the following

question of law:

Whether, on the facts and in the circumstances of the case, the assessee could be said to have legally thrown his interest in the firm of Metro

Handlooms into the joint family hotchpot?

2. It is well established that if a coparcener having separate property, voluntarily throws it into the joint stock with the intention of abandoning all

separate claims upon it, then it becomes joint family property with all its usual incidents. As has been observed in Commissioner of Income Tax,

Delhi-I Vs. Kishan Lal, (headnote):

It is settled law that a coparcener, who is a member of a Hindu undivided family, has a right to throw his self-acquired property in the common

hotchpot. The property, separate or self-acquired, of a member of a Hindu undivided family, may be impressed with the character of joint family

property if it is voluntarily thrown by the owner into the common stock, with the intention of abandoning his separate claims therein.

3. It is not in dispute, in this case, that the assessee, had, in fact, executed a deed of declaration dated March 12, 1973, impressing his share in the

partnership with the character of the joint family property. The truth and genuineness of the said declaration is not disputed by the Revenue. If this

declaration is valid, then his share in the partnership belongs to the Hindu undivided family as and from March 31, 1973. After that date, the

income attributable to the assessee''s share in the partnership should be treated as the income of the Hindu undivided family.

4. Before the Tribunal, it was contended on behalf of the Revenue that the assessee was a partner in his individual capacity in Messrs. Metro

Handlooms, that there was a possibility of the firm incurring future liabilities that, therefore, it would not be proper for an individual to impress his

interest in the partnership with the character of joint family property as that will amount to fastening a liability on the Hindu undivided family, and

that since there is a possibility of a part of the liability of the partnership being fastened on the Hindu undivided family, an interest of a partner in a

partnership cannot at all be thrown into the common hotchpot of the joint family.

5. Per contra, the assessee contended that there is nothing in the provisions of the Partnership Act which barred a partner throwing into the

common hotchpot his interest in a firm which is definitely an asset of the partner, that the firm in this case was quite solvent on the relevant date,

that there was no question of any liability being fastened on the Hindu undivided family by impressing the assessee''s interest in the partnership with

the character of joint family property and that, therefore, the assessee''s declaration dated March 12, 1973, should be duly given effect to by the

Revenue.

6. The Tribunal, after due consideration of the matter, held though under the law of partnership, a partner is jointly and severally liable with the

other partners to the firm''s debts, on the day the interest of the assessee in the firm was thrown into the common hotchpot, the firm had no

liabilities at all, and the fact that there is a possibility of there being a future loss cannot make the assessee''s declaration invalid, that the possibility

of future liability cannot be taken into account as one must see the position on the day the properties were thrown into the common hotchpot and

that on that day, the partnership having been shown to have no liability, the Revenue cannot raise the bogey of a possibility of future liability while

considering the assessee''s case based on the declaration dated March 12, 1973.

7. The learned counsel for the Revenue does not dispute before us the position that though the interest in a partnership which was the self-acquired

property of a coparcener, can legally be thrown into the common hotchpot and impress the same with the character of joint family property, if it

has been done with the intention of abandoning his separate ownership. It is an essential postulate in regard to blending that what is blended and thrown into the common stock should be a beneficial interest and not a liability. He would contend that since there is always a possibility of a

business firm incurring loss in future and if the interest in a partnership of such a nature is thrown into the common stock and impressed the same

with the character of the joint family property that will adversely affect the interest of a minor coparcener, if any, at the time when the assessee''s

interest in the partnership was thrown into the hotchpot. As a matter of fact, the joint family at the relevant time consisted of the assessee, his father

and his brother, who were all majors. Therefore, the possibility of the act of blending adversely affecting the interest of the minor coparcener does

not arise in this case. Similarly, the contention of the Revenue that there is a possibility of the firm incurring loss and such loss being transferred to

the joint family by the assessee throwing his interest in the firm into the common stock does not also arise as it has been found by the Tribunal in

this case that at the relevant time the assessee''s interest in the partnership is a net positive asset without any liability.

8. Merely because there is risk or the possibility of the firm suffering losses in future, it will not convert such net positive asset into a present liability.

In Commissioner of Income Tax, Gujarat-I Vs. Keshavlal Prabhudas Shah, , an identical question arose and there also the Revenue contended

that as there is a possibility of the joint family being fastened with a future liability, the share of a partner cannot be thrown into the common stock

and it was held that a share in a firm is an asset and it is open to a coparcener of an undivided Hindu family to impress that asset which is his self-

acquired property with the character of the joint family property and there is no legal bar or impediment for such conversion, and that mere risk or

possibility of the firm suffering losses in the future will not and cannot convert the share in the firm from an asset to a liability. A similar view was

taken in Commissioner of Income Tax Vs. M. Kannappan, where the court has observed that merely because there was a possibility of incurring

of losses, it cannot be said that the shares in the partnership could not be impressed with the character of the joint family property, and that neither

the Hindu law nor general law prevents an interest in a partnership which is an asset being impressed with the character of the joint family property,

which he has done admittedly under the Hindu law. In view of the preponderance of judicial opinion on the question raised here, we have to hold that the Tribunal is right in holding that the assessee''s interest in the partnership has been thrown into the common stock and thus being impressed

with the character of the joint family and that there is no legal bar either under the Hindu law or under the provisions of the Partnership Act. In this

view of the matter, the question has to be answered in the affirmative and in favour of the assessee. The assessee will have the costs from the

Revenue. Counsel''s fee is fixed at Rs. 500.