
(1972) 11 KL CK 0021

In the High Court Of Kerala

Case No : Income-tax Referred Case No. 50 of 1970

Commissioner of Income Tax

APPELLANT

Vs

P.N. Krishna Iyer

RESPONDENT

Date of Decision : 02-11-1972

Acts Referred:

Income Tax Act, 1922 — Section 10(2), 10(5), 5

Citation : (1973) 91 ITR 434

Hon'ble Judges : P. Govindan Nair, J;K. Sadasivan, J

Bench : Division Bench

Advocate : P.A. Francis and P.K.R. Menon, for the Appellant; V. Ramachanaran, for the Respondent

Judgement

Govindan Nair, J.—The Income Tax Appellate Tribunal, Cochin Bench, at the instance of the Commissioner of Income Tax, Kerala, has drawn up a statement of the case and referred the following questions of law to this court:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the initial depreciation of Rs. 1,01,814 was not to be deducted for the purpose of computing the written down value for computing the profits u/s 10(2)(vii) of the Income Tax Act, 1922 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in applying the provisions contained in Section 10(5)(b) instead of Section 10(5)(c) ? "

2. The year of assessment was 1953-54, the corresponding accounting period being the year that ended on December 31, 1952. The assessee" was a Hindu undivided family. This family came into existence as a result of a partition in a larger Hindu undivided family which was effected on October 23, 1951. This larger family was carrying on the business of running motor vehicles as stage carriages. On partition, it appears that this business of the original Hindu undivided family was allotted to the assessee-Hindu undivided family. The

assessee contended that the original cost of the assets taken over by the assessee on partition on October 23, 1951, must be determined by adding to the written down value as shown in the accounts of the original Hindu undivided family Rs. 1,01,814 which was the initial depreciation that was allowed to the original Hindu undivided family. This contention of the assessee was accepted in appeal by the Appellate Assistant Commissioner for the assessment year 1952-53. The matter is referred to in the order of assessment for the year 1953-54, annexure " C ", at page 14 of the paper book, lines 21 to 30. Depreciation was also allowed on that figure for the year 1952-53. Some of the assets of the assessee were sold by the assessee on July 3, 1952, that is, in the accounting year relating to the assessment year 1953-54. The sale consideration was Rs. 6,89,309. This was in excess of the written down value of Rs. 6,02,115 arrived at during the assessment year 1952-53 (as indicated above) by Rs. 87,194. Under the proviso to Section 10(2)(vii) of the Income Tax Act, 1922 (hereinafter referred to as " the Act "), this sum of Rs. 87,194 was added as the profit of the assessee. The department contended in appeal that the written down value must be taken not at Rs. 6,02,115 but at Rs. 6,02,115 minus Rs. 1,01,814, the initial depreciation allowed to the original Hindu undivided family. This contention was negated by the Appellate Assistant Commissioner and in further appeal before the Tribunal.

3. Written down value has been defined for the purposes of Sub-section (2) of Section 10 of the Act in Sub-section (5) of Section 10. The relevant part of that definition for our purposes is contained in Clauses (b) and (c) of subsection (5) of Section 10 of the Act. The proviso to Clause (b) and the Explanation to Clause (c) are admittedly inapplicable. We shall read Clauses (b) and (c) of Sub-section (5) of Section 10 of the Act:

" (5) In Sub-section (2) " paid " means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section; "plant" includes vehicles, books, scientific apparatus and surgical equipment purchased for the purposes of the business, profession or vocation; and.....

(b) in the case of assets acquired before the previous year the actual cost to the assessee less all depreciation actually allowed to him under this Act, or any Act repealed thereby, or under executive orders issued when the Indian Income Tax Act, 1886 (11 of 1886), was in force.....

(c) in the case of assets acquired by the assessee by way of gift or inheritance, the " written-down value " as in the case of the previous owner or the market value thereof, whichever is the less..... "

4. Clause (c) is applicable only in a case where the assets had been acquired by the assessee by way of gift or inheritance. In the case of a partition there can be no gift involved. Every member of a joint Hindu family will have an interest in the joint family property before partition. This court held that there is no transfer

involved in the case of a partition. So the only question is whether a member of a Hindu undivided family or a smaller group in a Hindu undivided family taking property on partition of the family can be said to inherit the property from the original family. Inheritance may have a wider significance than intestate succession to property. In Black's Law Dictionary, it is stated that:

" Though " inheritance " in its restricted sense means something obtained through laws of descent and distribution from an intestate, in its popular use, it includes property obtained by devise or descent. "

5. The Shorter Oxford English Dictionary gives the meaning of the word " inheritance " in the manner :

" Inheritance....being admitted as heir etc.....:

1. The action or fact of inheriting. Hereditary succession to property, a title, etc.; a perpetual or continuing right to an estate, vested in a person and his heirs.....

2.: (a) Possession, ownership, of something as one's birthright; right of possession

(b) Natural derivation of qualities or characters from parents or ancestry.....

II. That which is inherited.....Property, or an estate, which passes by law to the heir on the decease of the possessor.....Something that one comes into possession of by right or divine grant; birthright. In biblical use applied to persons, etc., as God's possession and to possessions or blessings as received or enjoyed by such persons....."

6. Perhaps in the absence of the definition of the term of inheritance in the Act, the popular meaning of the word or, in other words, the meaning normally attributed to the word by the common man may have to be applied in understanding its scope and ambit. Even so, it is not possible to understand property taken on partition of a joint Hindu undivided family as property inherited by the member or group taking the property on partition. Clause (c) of Sub-section (5) of the section cannot have, therefore, any application. The Tribunal has applied Clause (b) of Sub-section (5) of Section 10. If that clause is applied, the result arrived at by the Tribunal must follow.

7. Clause (b) of Sub-section (5) of Section 10 only permits the deduction from the original cost, of the depreciation allowed to the assessee. The assessee in this case, as we said earlier, is the smaller group which came into existence as a different group on partition in October, 1951, The sum of Rs. 1,01,814 was not depreciation allowed to the assessee. Therefore, that sum: was not deductible from the actual cost under Clause (b) of Sub-section (5) of Section 10 of the Act.

8. In the light of the above, we answer both the questions in the affirmative, that is, in favour of the assessee and against the department. The assessee will have his costs from the department which we fix at Rs. 250.

9. A copy of this judgment under the seal of this court and under the signature of the Registrar will be sent to the Income Tax Appellate Tribunal, Cochin Bench.