
(1998) 12 MAD CK 0053

In the Madras High Court

Case No : T.C. No's. 890 and 894 of 1983 Reference No's. 455 to 459 of 1983 & T.C. No's. 890 to 894 of 1983 (Reference No's. 455 to 459 of 1983)

Commissioner of Income Tax

APPELLANT

Vs

P.S. Sridharan

RESPONDENT

Date of Decision : 19-12-1998

Acts Referred:

Income Tax Act, 1961 — Section 147, 171, 256

Citation : (2001) 249 ITR 606

Hon'ble Judges : P. Thangavel, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; V. Ramachandran, for K. Mani, for the Respondent

Judgement

N.V. Balasubramanian, J.—The assessee is a Hindu undivided family of which one P. R. Sriramulu Naidu was the karta of the family and

the family is comprised of P. R. Sriramulu Naidu and his son, P. R. Sridharan, as coparceners. The assessee owned 170 grounds of land in

Chennai which was acquired by the Government of Tamil Nadu and the karta of the joint family received the compensation for the lands acquired

during the year ended March 31, 1962, and deposited the same in the bank as under :

Rs.

24-3-1962 1,47,507.56

30-3-1962 2,89,240.00

4,36,547.56

2. After deducting a sum of Rs. 6,000, the balance was equally divided between the two coparceners of the family. Accordingly, a sum of Rs.

2,15,273 was transferred to P. S. Sridharan as his share from the bank account of the family to Sridharan's bank account. Subsequently, an

additional compensation was received in the year 1966 and a sum of Rs. 2,24,017.64 was deposited in the bank account of P. R. Sriramulu Naidu

on November 21, 1976, and a sum of Rs. 1,06,589.82 was transferred to P. S. Sridharan's bank account on November 25, 1966. The Income

Tax Officer in the original assessment completed for the assessment years 1965-66 and in 1969-70 noticed the fact that the assessee was the

owner of the lands and he also noticed the fact that the lands were acquired by the Government and the fact that the assessee offered the capital

gain for the assessment year 1962-63, as he rejected the claim of the assessee that the lands were agricultural lands. The officer has also noticed

the fact that the assessee has not brought to his attention that there was partition in the family and no order u/s 171 of the Income Tax Act, 1961,

was passed. The above facts are noticed from the order of assessment passed for the assessment year 1967-68. The same pattern of assessment

was adopted by the Income Tax Officer in the subsequent assessment orders as well. The Income Tax Officer in the original assessments made by

him included only the interest income arising out of the deposits standing in the name of the karta of the family, but did not include the interest

income said to have accrued on the deposits standing in the name of the other coparcener, viz., P. S. Sridharan. It was on the basis that the asses-

see's share was limited to 50 per cent, in the compensation amount received in the books of account and other share was credited in the name of

P. S. Sridharan. The Income Tax Officer, therefore, was of the opinion that the assessments made for all the said assessment years, viz., 1965-66

to 1969-70, should be reopened and the reasons recorded by him for reopening the assessment reads as under :

The assessee have shown only half the compensation amount received in his books of account. The other half having been wrongly credited to P.

S. Sridharan's account who is a coparcener in the existing Hindu undivided family, and, therefore, the amount of income accruing from the

investment of half the compensation amount is half the income accrued from Rs. 2,18,739 should be assessed only in the hands of the Hindu

undivided family. Since the assessee has wilfully neglected to furnish complete and accurate particulars of total income, the income has escaped

assessment. Assuming return at six per cent, of the amount invested, the amount escaping assessment is estimated at Rs. 13,124. Permission is,

therefore, sought to reopen the assessment.

3. It is found that similar reasoning was adopted for reopening all the assessments made for the assessment years 1965-66 to 1969-70. The asses-

see objected to the proceedings for reassessment initiated by the Income Tax Officer on the ground that it had disclosed full and true particulars at

the time of the original assessment. The Income Tax Officer, however, rejected the objections raised by the assessee on the ground that since an

order u/s 171 of the Income Tax Act was not passed recognising the partial partition between the karta of the Hindu undivided family, viz., P. R.

Sriramulu Naidu and P. S. Sridharan, the entire interest income is liable to be taken into account as the income of the assessee and the

nondisclosure of the interest was a non-disclosure of the primary facts leading to escapements of income. Thus, he reopened the assessment and

estimated the interest on the compensation and assessed the entire income under the head ""Other sources"" and he completed the reassessments for

the assessment years, i.e., 1965-66 to 1969-70.

4. The assessee being dissatisfied with the orders of reassessments passed by the Income Tax Officer preferred appeals before the Appellate

Assistant Commissioner and the Appellate Assistant Commissioner found that reopening of the assessment by the Income Tax Officer was not

valid as there was no failure on the part of the assessee to disclose fully and truly the relevant material facts at the time of the original assessment.

Though he upheld the submissions urged by the assessee that the reopening of the assessment was not proper, he proceeded to decide the

question on the merits of the case also and held that the view of the Income Tax Officer u/s 171 of the Act an order should be passed for

recognising the partial partition was not correct in law and, therefore, the Income Tax Officer was not justified in making the reassessment including

the interest income arising on the entire compensation in the hands of the joint

family.

5. Aggrieved by the orders of the Appellate Assistant Commissioner, the Revenue carried the matter in appeal before the Appellate Tribunal. The

Appellate Tribunal also upheld the contention of the Appellate Assistant Commissioner that the assessee had disclosed all primary facts relating to

the receipt of the compensation amount and division of the amounts between the assessee and the other coparcener, Sridharan, and the Tribunal

also found that the Department had acted upon the said facts and made the assessment on the capital gains arising on the acquisition of the

property. The Tribunal, therefore, held that the action of the officer in reopening the assessment u/s 147(a) of the Act was not valid and upheld the

view of the Appellate Assistant Commissioner on this aspect. The Tribunal also went into the question of the merits of the case and held that partial

partition need not be recognised by the Income Tax Officer by passing an order u/s 171 of the Act and, therefore, it held that the entire amount of

interest cannot be assessed in the assessee's hands. It is against this order of the Appellate Tribunal on an application by the Revenue, the

following two questions of law have been referred to us for our consideration :

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the issue of notices u/s 147(a) of the

Income Tax Act was without jurisdiction and that hence the reassessments had been rightly cancelled ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the interest accruing on the half share of the

compensation allotted to the coparcener by division in equal shares cannot be included in the assessment of the assessee-Hindu undivided family ?

6. Mr. C. V. Rajan, learned counsel for the applicant, stated that the Tribunal was not correct in holding that the assessee had disclosed all primary

facts, at the time of the original assessment proceedings and according to learned counsel for the Revenue, the assessee at the time of the original

assessment had disclosed only the interest income that accrued on half of the compensation amount received and deposited in the name of the

assessee, but there was a failure on the part of the assessee to disclose the other interest income that accrued in favour of the other coparcener,

viz., P. S. Sridharan, and since that fact was not disclosed in the original return

filed by the assessee, it cannot be said that there was a full and true disclosure of material facts by the assessee at the time of the original assessment proceedings.

7. As regards"" the merits of the case, learned counsel for the Revenue strongly placed reliance on the decision of the Supreme Court in *Kalloomal*

Tapeswari Prasad (HUF), Kanpur Vs. Commissioner of Income Tax, Kanpur, , wherein the Supreme Court held that unless there is an order

passed u/s 171 of the Income Tax Act recognising the partial partition, the income which was the subject-matter of the partial partition could be

included in the hands of the bigger Hindu undivided family and the view of the Appellate Assistant Commissioner that even without an order passed

u/s 171 of the Income Tax Act the income cannot be assessed in the hands of the assessee is not correct in law.

8. Mr. V. Ramachandran, learned counsel for the assessee, submitted that the Tribunal has recorded a clear finding to the effect that the assessee

has disclosed true and full facts at the time of the original assessment and he also brought to our notice that at the time of the assessment of ""capital

gains"", the Department was made aware that there was a division of the properties and in all subsequent assessment proceedings the Department

was made aware of the division of the properties and the income accrued after the properties were allotted in favour of the divided coparceners

and, therefore, he submitted that the Tribunal has come to a correct conclusion in holding that there was a disclosure of primary facts at the time of

the original assessment by the assessee.

9. We have carefully considered the submissions made by learned counsel for the parties. Both the Appellate Assistant Commissioner as well as

the Appellate Tribunal have recorded a finding that all the primary facts relating to the receipt of the compensation and the equal division of the

receipt between the assessee and the other coparcener, P. S. Sridharan, were on the records of the Department and the Department also acted

upon the same in the subsequent assessment proceedings. It is also seen that income chargeable to ""capital gains"" was declared in two equal half

amounts in the Income Tax assessments of the assessee and Sridharan and the Second Income Tax Officer, V Circle, Madras, assessed the

income chargeable to capital gains on the same basis. Therefore, the Tribunal

was justified in holding that the assessee has disclosed all the primary facts and in view of the finding by the Appellate Tribunal, it is not possible to hold that the assessee has failed to disclose full and true material particulars relating to his assessment at the time of completion of the original assessment. We are of the view that the finding of the Appellate Tribunal that there was a full and true disclosure of material facts at the time of the original assessment is a finding of fact and that the Appellate Tribunal arrived at the finding on the basis of the material on record. It is also relevant to note that the Appellate Assistant Commissioner had perused the records and after the perusal of the records he came to the conclusion that the assessee had disclosed all primary facts at the stage of assessment of "income chargeable to capital gains and also in the return filed separately by Sridharan. Therefore, we are of the view that there was a disclosure of full and true material particulars by the assessee at the time of the original assessments and, therefore, the Income Tax Officer had no jurisdiction to initiate the assessment proceedings for the assessment years 1965-66 to 1969-70 under the provisions of Section 147(a) of the Income Tax Act. Therefore, we are of the view that the first question of law referred to us is liable to be answered in the affirmative and, against the Revenue.

10. Since we are holding that the reassessment proceedings were not properly initiated it is not necessary to decide the question whether in the absence of an order u/s 171 of the Income Tax Act recognising partial partition the entire interest income can be assessed in the hands of the assessee of the Hindu undivided family. No doubt, the Supreme Court in *Kalloomal Tapeswari Prasad (HUF), Kanpur Vs. Commissioner of Income Tax, Kanpur*, has held that unless there is an order passed by the Income Tax Officer recognizing the partial partition, the entire income of the divided property which was the subject-matter of the partial partition should be assessed in the hands of the Hindu undivided family. Since we are holding that the Income Tax Officer had no jurisdiction to reopen the assessment under the provisions of Section 147(a) of the Income Tax Act, it is unnecessary to answer the second question of law referred to us which deals with the merits of the case.

11. Accordingly, we answer the first question of law referred to us in the

affirmative and against the Revenue. In view of the answer to the first question of law, it is unnecessary to provide any answer to the second question of law which deals with the merits of the case. In the circumstances of the case, there will be no order as to costs.