
(1994) 07 MAD CK 0001

In the Madras High Court

Case No : Tax Case No"s. 919 and 920 of 1981

Commissioner of Income Tax

APPELLANT

Vs

S. Balasubramanian

RESPONDENT

Date of Decision : 29-07-1994

Acts Referred:

Income Tax Act, 1961 — Section 171, 171(1), 171(3), 171(8), 256(2)

Citation : (1985) 83 TAXMAN 13

Hon'ble Judges : Thanikkachalam, J;Gulab C. Gupta, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; T. Ravikumar and T. Srinivasamurthy, for the Respondent

Judgement

Thanikkachalam, J.—In pursuance of the direction given by the High Court u/s 256(2) of the income tax Act, 1961 ("the Act"), the Tribunal

referred the following questions for our opinion:

Question in R.A. Nos. 938 and 939 of 1976-77:

Whether, on the facts and in the circumstances of the case the Appellate Tribunal is right in holding that the dividend income of Rs. 15,000

accruing to Shri S. Balasubramanian on the shares allotted to him on partial partition should be assessed in the hands of the HUF consisting of

himself, his wife and daughters excluding the minor son?

Question in R.A. No. 938 of 1976-77:

Whether, on the facts and in the circumstances of the case the Appellate Tribunal was right in holding that Shri S. Balasubramanian, the Karta of

the HUF consisting of himself, his wife, daughters and a son constitute and can claim the status of another HUF with himself again as Karta and the

other members excluding his minor son as members

The assessee was assessed to tax in the status of a HUF consisting of himself, his wife and minor daughters in respect of the assets acquired from

partial partition with his late father T.S. Srinivasa Iyer. The assessee got a son early in 1970. He effected a partial partition between himself and his

minor son as per which each of the coparceners was allotted company shares of the value of Rs. 10 lakhs. The assessee's claim of partial partition

was also accepted by the ITO in his order passed u/s 171(3) of the Act dated 28-2-1970. The dividend income of Rs. 15,000 arising out of the

shares allotted to Balasubramanian on partition was offered by him in a separate return of income in the status of HUF, consisting of himself, his

wife and minor daughters. The ITO, however, rejected the claim of the assessee regarding the smaller or the new HUF on the ground that there

cannot be more than one HUF having the same person as the karta and therefore he held that the above income is assessable with that of the

original HUF. Thus, for the assessment years 1971-72 a sum of Rs. 15,000 was also added under the head "other sources" being the dividend

returned in the file of new HUF. The ITO assessed the dividend income in the hands of the assessee on a protective and precautionary basis

without prejudice to the finding that this income should be really clubbed with that of the older HUF. On appeal, the AAC held that after the partial

partition the assessee continued to be a HUF consisting of himself, his son and the other members of the family and, therefore, he has to be

assessed in the same status in respect of the income arising out of the other assets which were not subjected to partition. But with regard to the

dividend income of Rs. 15,000 which arose from out of partial partitioned asset, viz., shares in the company, the AAC held that the ownership as

well as the enjoyment of the assets and the income accrued therefrom absolutely vests with the HUF consisting of Balasubramanian and his family

excepting his minor son. The AAC, therefore, held that insofar as the income of Rs. 15,000 is concerned, the assessee's claim that he should be

assessed in the status of a smaller-HUF should be accepted. The AAC, accordingly, deleted the addition made in the case of the original (bigger)

HUF Aggrieved by the order of the AAC, the Department went in appeal before the Tribunal against the deletion of a sum of Rs. 15,000 from the

income of the bigger HUF and also against the observation of the AAC that the assessee can constitute a separate HUF consisting of himself, his wife and minor daughters in respect of his income from dividends, The deletion of the addition in the individual assessment was also contested in appeal. The Tribunal disposed of both these appeals by a common order. The Tribunal also took the same view as that of the AAC. Thus, the Tribunal confirmed the order passed by the AAC.

2. The learned Standing Counsel for the department submitted as under:-

The Tribunal erred in holding that Balasubramanian, his wife and unmarried daughters constitute a separate HUF in respect of the shares of the value of Rs. 10 lakhs allotted to Balasubramanian on partial partition of the shares of Gemini Pictures (P.) Ltd., and Vasan Publications Ltd.

According to the learned standing counsel for the department, under Mitakshara law it is not possible to have two separate units (HUFs) with the

same Karta. The learned Departmental representative pointed out that the partition deed dated 26-3-1970 brought about a severance in the status

of the undivided family. After that date there was no HUF. There was a partition by metes and bounds and with reference to the rest of the assets

the members continue to hold the same as tenants-in-common. He further pointed out that until there is complete and total partition in respect of

the properties of the family by metes and bounds the portion of the property that fell to the share of the other coparceners should be deemed to

belong to the HUF and under the Act it should be assessed in the hands of the HUF.

3. On the other hand, the learned counsel appearing for the assessee submitted as under:-

Rs. 20 lakhs worth of shares have come out of bigger HUF as a result of partial partition which was accepted by the Department. According to

the learned counsel the bigger HUF continued to exist. The learned counsel pointed out that the Explanation to section 171(8) would elucidate

what is meant by partial partition within the meaning of the abovesaid Explanation. The partial partition was effected and accepted by the

department as per the order date 28-2-1970 passed by the ITO u/s 171. Therefore partial partition took place between Balasubramanian and his

minor son as a result of which Rs. 20 lakhs were divided between two

coparceners. According to the learned counsel, it is open to the said Balasubramanian to continue the HUF consisting of himself, his wife and minor daughters. According to the learned counsel the income arising out of the shares allotted to Balasubramanian would be deemed to be the income of the HUF consisting of himself, his wife and minor daughters. Therefore, it cannot be assessed in the hands of Balasubramanian in his individual capacity, especially when income arising out of Rs. 10 lakhs allotted to his minor son was assessed in his hands in his individual capacity. The learned counsel further pointed out that as regards the other properties which are not divided, the joint family consisting of Balasubramanian, his wife, his son Srinivasan, unmarried daughters, would always continue as the bigger HUF. Thus the learned counsel supported the order passed by the Tribunal in holding that the income arising out of Rs 10 lakhs allotted to Balasubramanian in a partial partition is to be assessed in the hands of the HUF consisting of himself, his wife and his minor daughters. The learned counsel further pointed out that under the Act there is no impediment for Balasubramanian to be the Karta of bigger and smaller HUF's.

4. We have heard the rival submissions. The points that arose for consideration in these references are (i) whether the assessee can constitute a separate HUF consisting of himself, his wife and minor daughters in respect of his income from dividends and (ii) whether there can be more than one HUF having the same karta.

5. From the assessment year 1966-67 Balasubramanian was assessed in the status of HUF in respect of his property acquired from the partial partition with his father late T.S. Srinivasa Iyer. Balasubramanian constituted a HUF consisting of himself, his wife and minor daughters. A son by name Srinivasan was born to Balasubramanian in early 1970. After the birth of a son the family of Balasubramanian consisted of himself, his wife, his minor daughters and minor son. This is referred to as the bigger HUF. A partial partition took place on 26-3-1970 between Balasubramanian and his son Srinivasan, under which shares in Vasan Publication (P.) Ltd. and Gemini Pictures Circuit (P.) Ltd. of the value of Rs. 20 lakhs belonging to the bigger HUF were partitioned between Balasubramanian and Srinivasan. under Schedule A to the said deed, Rs. 10 lakhs worth of

shares were allotted to Balasubramaian and under schedule B Rs. 10 worth of shares were allotted to Srinivasan. After this partition a claim was

made by the members of the family before the ITO u/s 171 in the course of the assessment proceedings for the assessment year 1970-71. The

ITO had passed an order on 28-2-1972 accepting the claim of partial partition u/s 171.

6. According to the learned standing counsel for the department, the said registered deed of partial partition had effected a division in the status of

the family, that after the said date there was no joint family in existence and that thereafter the property sought to be held by the members of the

family as co-tenants only. It remains to be seen that the members of the family u/s 171, in the course of the assessment proceedings for the

assessment year 1970-71, made a claim for acceptance of partial partition. According to the order passed u/s 171, evidence had been produced

before the ITO in support of the claim for partial partition. On a perusal of the evidence and after conducting enquiries the ITO recorded a finding

u/s 171 accepting the partial partition as mentioned in the deed dated 26-3-1970. This order had become final.

7. "Partition" referred to in sub-section (1) of section 171 includes a partial partition also, either as regards the persons which constitute the

undivided family or the properties belonging to it or both, in view of the provisions contained in the other sub-sections and in the Explanation. After

a partial partition as regards the property, the property divided is held by the members of the undivided family as divided members with all the

incident following therefrom and the property not so divided as members of an undivided family. The fiction enacted in section 171(1) can,

therefore, operate in such a case also because the family which has become divided as regards the property which is the subject matter of partial

partition is deemed to continue as the owner of that property and the recipient of the income derived from it, except where and insofar as a finding

of partition has been given u/s 171. As long as a finding is not recorded u/s 171. holding that a partial partition had taken place, the HUF should be

deemed for the purposes of the Act to be the owner of the property which is the subject matter of the partition, and also the recipient of the

income from such property.

8. The recitals in the partition deed dated 26-3-1970 clearly indicate that Rs. 20 lakhs worth of shares which were divided under Schedules A and

B went out of the hands of the bigger HUF. As a result of an order passed u/s 171 on the basis of the partition deed dated 26-3-1970

Balasubramanian and Srinivasan got each Rs. 10 lakhs worth of shares. According to the learned standing counsel for the department, the order

passed by the ITO u/s 171 has simply recorded a finding that shares worth Rs. 10 lakhs were taken away by Srinivasan under the partial partition

and that the balance of Rs. 10 lakhs worth of shares continued with the bigger HUF. It is not correct to state that partial partition took place

between the bigger HUF and Balasubramanian since as per the partition deed partial partition took place between Balasubramanian and Srinivasan

with regard to the shares worth about Rs. 20 lakhs. The partial partition brought about a severance in the status between Balasubramanian and

Srinivasan as per the above said deed of partial partition. But under the Act the family would be deemed to continue until complete partition with

regard to the remaining undivided properties. Before the execution of the partial partition deed, Rs. 20 lakhs worth of shares were belonging to the

bigger Hindu family. After the execution of the partial partition deed and after an order was passed by the ITO u/s 171. Rs 20 lakhs worth of

shares went out of the bigger HUF. Srinivasan would be holding shares worth about Rs. 10 lakhs in his individual capacity. He also filed a return to

this effect. So far as Balasubramanian is concerned, Rs. 10 lakhs worth of shares allotted to him in the partial partition would be deemed to have

been belonging to his smaller HUF consisting of himself, his wife and his minor daughters. In the case of Narendranath v. CIT [1969] 2 LTJ

598/14 it has been held that:

when a coparcener having a wife and two minor daughters and no son receives his share of the joint family properties on partition, such property in

the hands of the coparcener belongs to the HUF of himself, his wife and minor daughters and cannot be assessed as his individual property. The

express HUF in the WT Act is used in the sense in which a Hindu joint family is understood in the personal law of Hindus. Under the Hindu system

of law a joint family may consist of a single male member and his wife and daughters and there is nothing in the scheme of the Wealth-tax Act to

suggest that a HUF as an assessable unit must consist of at least two male members.

9. The same principle was applied by the Supreme Court in *Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore*. In that case,

one Buddappa, his wife, his two unmarried daughters and his unmarried son, Buddanna, were members of a HUF. Buddappa died and after his

death the question arose whether the income of the properties held by Buddanna as the sole surviving coparcener was assessable as the individual

income of Buddanna or as the income of the HUF. It was held by the Supreme Court that ""since the property which came into the hands of

Buddanna as the sole surviving coparcener was originally joint family property, it did not cease to belong to the joint family and income from it was

assessable in the hands of Buddanna as income of the undivided family"".

10. In *M.S.M.M. Meyyappa Chettiar Vs. Commissioner of Income Tax*, it was held that ""if the family while continuing joint parts with some of its

property either to a member or members or even to a stranger, the income from such property would not form part of the income of the undivided

family and has to be excluded from the assessment of the undivided family. Even if there is a partial partition of the properties, if the status of the

family is not affected by such partition, the properties as partitioned cease to be joint family properties, and their income cannot enter into the

computation of the income of the undivided family. The income of the family fluctuates. The income of the undivided family gets reduced by parting

with the property; but so long as the status of the family continues undivided, the income of the remaining properties owned and possessed by the

family forms the basis for the assessment for purposes of income tax.

11. After the execution of the partial partition deed and after an order was passed by the ITO u/s 171 the income earned out of Rs. 10 lakhs of

shares allotted to Balasubramanian should be assessed as income in the hands of the smaller HUF consisting of himself, his wife and minor

daughters. The said income cannot be assessed in the hands of the bigger HUF deemed to continue under the Act in the absence of complete

partition with regard to the undivided properties.

12. After the partial partition Balasubramanian constitutes a separate HUF consisting of himself, his wife and his minor daughters. He requested

that the income arising out of the shares allotted to him in the partial partition should be assessed in the hands of the smaller HUF and not in the hands of the bigger HUF; the request made by the Balasubramanian to the ITO to pass an order u/s 171 would amount to expressing his intention to treat the shares obtained under partial partition as that of his smaller HUF. Thus the share obtained in the partial partition was thrown in the common hotchpotch of the smaller HUF. In view of the order passed u/s 171 which had become final, the request made by Balasubramanian is acceptable.

13. According to the learned standing counsel for the department, Balasubramanian cannot claim to be the Karta of the bigger HUF and also Karta of the smaller HUF. While answering a similar question the Bombay High Court in the case of Commissioner of Income Tax, Bombay City I

Vs. M.M. Khanna, held as under :

Where a Hindu joint family consists of branch families each of the branch families may possess property which constitutes the joint family property

of that branch alone and in which the other branches or the main Hindu family as such have no right or interest. The smaller joint family can have a

legal existence and is capable of holding property of its own as distinct from the property of the main family while the main family remains intact.

While the main family may possess property which belongs to the entire family or in other words belongs to hotchpotch of the main family, each of

the smaller joint families existing within the main family may possess property which belongs to its own hotchpotch.

Under the Hindu law any member of a joint family can throw his self-acquired property in the hotchpotch of the family to which he belongs and

thus make it the joint family property of the said family. A member of the smaller joint family, can, therefore, impress his self-acquired property

with the character of the joint family property of the smaller family to which he belongs. He is no doubt also a member of the main joint family and

he can, if he so chooses, throw his Self-acquired property in the hotchpotch of the main family also. But that will be a matter of his volition. There

is nothing in the Hindu law or in the concept of a joint family under the Hindu law which prevents him from throwing his property in the hotchpotch

of the smaller unit to which he belongs, while the larger unit remains intact."" (p.

233)

The learned counsel for the department further submitted that so long as the family remains undivided unit, two or more members thereof whether

they be members of different branches or of one and the same, branch of the family, can have no legal existence as a separate independent unit, but

if they comprise of the members of a branch or a sub-branch, they can form a distinct and separate corporate unit within the larger corporate unit

and hold property as such. Therefore, in the present case, according to the learned standing counsel, Balasubramanian cannot constitute a separate

HUF of his own along with his wife and minor daughters excluding the son and at the same time another HUF cannot be created by himself with

his wife, daughters and minor son. The fact remains that after a son was born to Balasubramanian, there are two male members (coparceners) in

the bigger HUF. Each male member can constitute a separate HUF of his own. Srinivasan was a minor. As per the fiction created u/s 171 even

after the partial partition, the bigger HUF continues in which the minor son is also a member. So far as Balasubramanian is concerned, he

separated his branch consisting of himself, his wife and daughters excluding other coparcener. Since the smaller HUF created by Balasubramanian

consisting of all members of a branch, creation of such smaller HUF is valid in law. For the foregoing reasons it cannot be said that

Balasubramanian created a smaller HUF which is against the principles of Hindu law. Further, in the bigger HUF inasmuch as one of the

coparcener was a minor Balasubramanian acted as Karta. under such circumstances it cannot be said that Bala-subramanian cannot act as Karta

of the bigger HUF as well as the smaller HUF. In that view of the matter, we consider that the order passed by the Tribunal in holding that the

income arising out of Rs. 10 lakhs worth of shares allotted to Balasubramanian in the partial partition should be assessed in the hands of the smaller

HUF consisting of Balasubramanian, his wife and his unmarried daughters, is in order. Accordingly, both the questions referred to us are answered

in the affirmative and against the department. However there will be no order as to costs. Counsel fee is fixed at Rs. 1,000.

Reference answered in the affirmative.