(1991) 04 DEL CK 0019

In the Delhi High Court

Case No : Income-tax Reference No. 214 of 1976

Commissioner of Income Tax APPELLANT

Vs

S.P. Chopra RESPONDENT

Date of Decision : 16-04-1991

Acts Referred:

Citation : (1991) 95 CTR 222 : (1991) 191 ITR 455 : (1992) 60 TAXMAN 130

Hon'ble Judges : Milap Chand Jain, C.J

Bench : Single Bench

Advocate : B. Gupta, for the Appellant; P.G. Gokhale, for the Respondent

Judgement

M.C. Jain, C.J.—This reference has been made by the Income Tax Appellate Tribunal (Delhi Bench "A"), arising out of the order of the Tribunal, in Income Tax Appeal No. 2602 of 1974-75, on the following question of law :-

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the half share of the assessed in property No. 1, Prithvi Raj Road, New Delhi, partook of the character of the property of the Hindu undivided family consisting of the assessed and his daughter right from the assessment year 1957-58 and continued to be so in the assessment year 1971-72 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in excluding the income from half share of the property No. 1, Prithvi Raj Road, New Delhi, from the taxable income of the assessed ?"

2. A few relevant facts may, briefly, be noticed. It is not necessary to state the facts in details as the same appear in the statement of the case sent by the Tribunal.

3. Up to the year 1970-71, the assessment was made on the basis that the property in question partook of the character of the property of the Hindu undivided family, but, for the assessment year 1971-72, the Income Tax Officer

took into consideration the decision of the Bombay High Court in the case of Surjitlal Chhabda Vs. Commissioner of Income Tax, Bombay City-I, and, on the basis of the decision, the Income Tax Officer assessed the income from the half share of the property in the hands of the petitioner in the status of an individual. The Appellate Assistant Commissioner, on appeal, confirmed the finding of the Income Tax Officer and the decision of the Bombay High Court was relied upon and the order of the Income Tax Officer was upheld by the Appellate Assistant Commissioner. A further appeal was preferred by the assessed before the Tribunal. The question before the Tribunal was as to whether the income from the half share of the property in question was liable to be assessed in the hands of the assessed as an individual or was liable to be assessed in the hands of the Hindu undivided family. The Tribunal reversed the order of the Appellate Assistant Commissioner and that of the Income Tax Officer in so far as the latter had assessed the income from the house in question in the hands of the assessed for the assessment year 1971-72 and the former, i.e., the Appellate Assistant Commissioner had affirmed that order of the Income Tax Officer. On a reference application against the order of the Tribunal dated April 30, 1975, the present reference has been made in respect of the assessment year 1971-72 and not in respect of any previous assessment years.

4. The question that arises for consideration is as to whether the income from one-half share of the property in question which has been thrown into the common hotch-pot by Shri S. P. Chopra is to be assessed in the hands of the assessed as having an individual status or is to be assessed as if it is income from the Hindu undivided family consisting of the assessed and his daughter. It is no doubt true that, in order to constitute Hindu undivided family property, a nucleus is not necessary and even with one male member along with another female member, a Hindu undivided family can be constituted .We have to proceed on the basis of these admitted facts that the half share in the property in question exclusively belongs to Shri S. P. Chopra which he threw into the common hotch-pot, what is to be seen is whether, even after throwing the half share of the property would be the individual income of the assessed and would be assessed as such in his individual status. In other words, even after throwing the half share in the property into the common hotch-pot, one half-share in the property would become Hindu undivided family property even in the absence of any other male member in the family. In our opinion, as contended by learned counsel for the Revenue, this question is no more rest integra and is settled by the Supreme Court in the decision, Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, . Their Lordship affirmed the decision of the Bombay High Court in Surjitlal Chhabda Vs. Commissioner of Income Tax, Bombay City-I, . The facts of that case are identical with the facts in the present case. In that case, the appellant, Surjit Lal Chhabda, had a wife and an unmarried daughter. By a mere declaration, he threw his immovable property called Kathoke Lodge into the family hotch-pot in order to impress that property with the character of joint family property and that he would be holding that property as karta of the Hindu

undivided family consisting of himself, his wife and an unmarried daughter. The question was whether the income received by Shri Surjit Lal Chhabda thereafter from the property should be assessed to Income Tax in the status of a Hindu undivided family. their Lordships held that (at p. 795) "the property which the appellant has put into the common stock may change its legal incidents on the birth of a son but until that event happens, the property, in the eye of Hindu law, is really his. He can deal with it as a full owner, unrestrained by considerations of legal necessity or benefit of the estate. He may sell it, mortgage it or take the family hotch-pot as he finds it. A son born, begotten or adopted after the alienation has no right to challenge the alienation." It was observed that (at p. 796) "since the personal law of the appellant regards him as the owner of Kathoke Lodge and the income there from as his income even after the property was thrown into family hotch-pot, the income would be chargeable to Income Tax as his individual income and not that of the family." When the income is treated to be his individual income under the person law, then in that situation, in our opinion, the income becomes assessable in the hands of the assessed in his individual status.

5. Learned counsel for the Revenue also referred to a decision of the Rajasthan High Court, S.K. Bohra Vs. Commissioner of Income Tax, . The question was examined by the Rajasthan High Court in connection with assessment to wealth-tax. The question in that case was as to what is the nature of the amount of Rs. 1,60,000 which the assessed threw into the common stock of the Hindu undivided family. Relying on the aforesaid decision of their Lordships of the Supreme Court, it was held that the amount of Rs. 1,60,000 remained the individual property of the assessed till the birth of a son. Hence, the amount was assessable as his individual wealth for the assessment years 1967-68 and 1968-69. In that case, a son was born in 1969, so it was observed that the amount was assessable as the wealth of the Hindu undivided family for the assessment years 1969-70 to 1971-72.

6. In view of the settled law as considered above, we are of the opinion that the Tribunal was not justified in excluding income from the half share in the property in question from the taxable income of the assessed. Our answer to question No. 2, Therefore, is in the negative, in favor of the Revenue and against the assessed.

7. So far as question No. 1 is concerned, as the assessments have become final, the question does not require any answer although we may state that on account of the earlier assessments, the character of the property as such is not in any way changed. The question of the character of the property has to be determined in accordance with the personal law of the assessed and not on the basis of how the property has been treated by the Revenue in respect of earlier assessment. The reference is answered as above. Let the opinion of this court be communicated to the Tribunal on the aforesaid questions.

