
(2004) 11 AHC CK 0069

In the Allahabad High Court

Case No : IT Reference No. 156 of 1985 3 November 2004 & Income Tax R. No. 156 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Tarseem Kumar

RESPONDENT

Date of Decision : 03-11-2004

Acts Referred:

Hindu Succession Act, 1956 — Section 4, 8
Income Tax Act, 1961 — Section 256

Citation : (2005) 144 TAXMAN 63

Hon'ble Judges : R.K. Agrawal, J;Prakash Krishna, J

Bench : Full Bench

Advocate : A.N. Mahajan, J.C. Bhardwaj,, for the appearing parties;

Judgement

Prakash Krishna, J.

This reference is at the instance of the department, u/s 256(1) of the Income Tax Act, 1961. The Income Tax Tribunal, New Delhi has referred the following question for the opinion of this court.

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the share income from the firm was to be assessed in the hands of HUF and not individual ?"

2. The facts giving rise to the present reference are as follows:

The father of the assessee, namely, Shri Amar Nath was a partner in a firm M/s. Amar Handloom Factory, Sardhana. He died intestate on 4-6-1971 leaving a credit balance of Rs. 77,456 in the firm of M/s. Amar Handloom Factory, Sardhana. The deceased left behind his wife, two sons and three minor daughters. The assessee who is resident individual was unmarried at the time of death of his father, received Rs. 15,000 as his share from the credit balance of Rs. 77,456. This amount was transferred to the personal account of the assessee on 30-6-1971 in the aforesaid firm. Thereafter, the assessee along with his

brother Shri Vijay Kumar formed a new firm in the name and style of M/s. Amar Tex, Sardhana. The assessee entered into the partnership of this new firm as representing his HUF in it and transferred Rs. 15,000 from his individual account to the alleged HUF account.

3. In the course of assessment proceedings the assessee claimed that the share income of the aforesaid firm belongs to his HUF. This plea was negatived by the Income Tax Officer, Circle 2(2) on the ground that the assessee was unmarried at the time of the death of his father. There was no HUF in existence at that time and the assessee has succeeded to Rs. 15,000 as his share in his individual capacity being son of deceased and not as Karta of HUF. This order was reversed by the Appellant Asstt. CIT of Income Tax. The Tribunal has confirmed the order of the Appellate Asstt. CIT of Income Tax.

4. Heard Shri A.N. Mahajan, learned Standing counsel for the revenue in support of the reference. Shri J.C. Bhardwaj has filed his appearance on behalf of the assessee.

5. The question here is whether the income or asset which a son inherits from his father, the asset being self acquired property of father, should be assessed as income of the individual income of the son or as income of the Hindu undivided family of the son. The assessee was unmarried at the time of his father's death. He received Rs. 15,000 out of the sum of Rs. 77, 456 left by the father. The amount was credited in his personal account.

6. Before the Income Tax Officer it was submitted by the assessee that the decision of this court given in the case of COMMISSIONER OF Income Tax, U. P. Vs. RAM RAKSHPAL, ASHOK KUMAR., stands overruled by subsequent decision of the Allahabad High Court in Radhey Lal Shri Krishna v. CIT (1978) Tax 51(3) and 30.

7. But the Supreme Court in the case of Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, has approved the judgment of this Court given in the case of Ram Rakshpal Ashok Kumar (supra). The Supreme Court has noticed the divergent views of different High Courts on the point that the income from the assets inherited by a son from his father from whom he had separated by partition could not be assessed as income of Hindu Undivided Family of the son. The said controversy has been decided by the Supreme Court, in the light of the provisions of section 8 of the Hindu Succession Act, 1956. It has been held that the income received by a son from the assets inherited by him from his father shall be the income of the individual income of the son and not of the HUF of the son. It was of the view that when a male dies the succession in respect of his self acquired property shall be governed by the provisions of section 8 of the Hindu Succession Act. A son is Class their as mentioned in schedule to the Hindu Succession Act. It has been held that it would be difficult to hold that after commencement of the Hindu Succession Act that the property devolved on a Hindu son u/s 8 of that Act would be Hindu

Undivided Family in his hand vis-a-vis his own son; that would amount to creating two classes amongst the heirs mentioned in the class I. The male heirs in whose hands it will be joint Hindu family property vis-a-vis their sons and female heirs with respect to whom no such concept could be applied or contemplated. It has been held by the Supreme Court in the case of Chander Sen (supra) that

"In view of the preamble to the Act (Hindu Succession Act), i.e. to modify were necessary and to codify the law, in our opinion, it is not possible when the Schedule indicates heirs in class I and only includes son and does not include son's son, but does include son of a pre deceased son, to say that when a son inherits the property in the situation contemplated "by section 8, he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a pre deceased son and not the son of a son is intended to be excluded (sic) u/s 8 to inherit, the latter would by applying the old Hindu law, gets right by birth to the said property contrary to the scheme outlying in section 8. Furthermore, as noted by Andhra Pradesh High Court the Act makes it clear by section 4 that one should look to the Act in a case of doubt and not to the pre existing Hindu law. It would be difficult to hold today that property which devolve on a Hindu u/s 8 of the Hindu Succession Act would be Hindu undivided family property in his hands vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in Class I, male heirs in whose hands it will be joint Hindu family property vis-a-vis their sons and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in class I of the schedule u/s 8 of the Act included widow, mother, daughter of a pre deceased son, etc." ((P) 381)

8. Following the aforesaid judgment of the Apex Court, a Division Bench of this court in the case of Ramesh Chandra Vs. Commissioner of Income Tax, has held that the interest of father in a partnership firm was his individual property and so after the death of father the father's interest would devolve upon the son u/s 8 of the Hindu Succession Act as his individual property.

9. The Tribunal in the present case relied upon another judgment of the Apex Court in the case of Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, . The said ruling has no application to the facts of the present case and the law laid down therein is in a different context. In that case the assessee who was an individual brought his individual property in the hotchpotch of HUF and declared that the income from such corpus shall be the income of HUF and he also treated so. A dispute arose whether a HUF can be formed consisting of one male member his wife and unmarried daughter. The Supreme Court held that it is not necessary for the formation of the Joint Hindu Family that there should be more than one male member. In that case the fact that the assessee brought his individual property to hotchpotch of HUF was not disputed by the department. The question of status of a son succeeding to the self acquired property of his father on account of death was not at all involved therein. Therefore, the reliance

placed by the Tribunal on the judgment of the Supreme Court in the case of Surjit Lal Chhabda (supra) was misplaced one.

10. In view of the pronouncement of the Supreme Court in the case of Chandra Sen (supra), the Tribunal has committed illegality in holding that the share income from Ms. Amar Tex, Sardhana is the income of HUF of the assessee.

11. In the result, the above question is answered in negative, i.e., in favour of the department and against the assessee. No order as to costs.