
(1994) 02 MP CK 0018
In the Madhya Pradesh High Court
Case No : M.C.C. No. 72 of 1983

Commissioner of Income Tax

APPELLANT

Vs

V.C. Gupta

RESPONDENT

Date of Decision : 01-02-1994

Acts Referred:

Income Tax Act, 1961 — Section 45, 64

Citation : (1994) 118 CTR 503 : (1994) 208 ITR 476 : (1995) 40 MPLJ 447 :
(1995) MPLJ 447 : (1994) 76 TAXMAN 323

Hon'ble Judges : U.L. Bhat, C.J.; P.P. Naolekar, J

Bench : Division Bench

Judgement

U.L. Bhat, C.J.

The following questions have been referred by the Appellate Tribunal at the instance of the Revenue u/s 256(1) of the Income Tax Act, 1961 (for short, "the Act of 1961") :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that in respect of the properties settled on the assessee by his father, the correct status of the assessee was Hindu undivided family ?

(ii) Whether, on the facts and in the circumstances of the case and in view of the fact that the wife of the assessee was, in any case, the member of the Hindu undivided family, the Tribunal was correct in excluding the income from capital gains from the assessment of the assessee?"

The respondent herein, the assessee, in the returns submitted during the period 1957-58 to 1971-72 declared his status to be individual. He did not file returns for the period 1972-73 to 1974-75. When notices were sent to him u/s 139(2) and Section 148 of the Act of 1961, he submitted returns as an individual but specifically pleaded that his status is a Hindu undivided family and not an individual. The Assessing Officer overruled this contention and also added to the income the capital gains derived on the sale of a plot of land which had been

purchased by or in the name of the assessee's wife. The Commissioner in appeal upheld the view taken by the Assessing Officer. The Appellate Tribunal, however, held the status of the assessee to be Hindu undivided family and consequently held that the/capital gains derived by his wife could not be added to the assessee's income u/s 64 of the Act.

The assessed is governed by the Mitakshara law. The father of the assessee owned certain immovable properties as well as business of printing and publication of books and business in provisions as his self-acquisitions. He entered into a settlement deed dated April 24, 1954, with his wife, major son, three minor sons and two minor grandnephews. Immoveable properties are described in schedule A of the deed and movable properties are described in schedule B. He settled items Nos. 6 and 9 of Schedule A in favour of the assessee. Schedule B contains three items, namely, the printing press machinery, movables of the publication business and all the assets of the commission agency relating to provisions. He settled schedule B items on himself, his wife and four sons in equal shares. In other words, he settled 1/6th share in the business enterprises on his wife and each of his children. The settlement deed recites that each of the parties is entitled to 1/6th share. The settlement deed further states that the two business enterprises should be continued as partnership firm, with the settlor, his wife and major sons as partners and the minor sons being admitted to partnership.

Following the decision of the Bombay High Court in *Kisansing Mohansing Balwar and Others Vs. Vishnu Balkrishna Jogalekar*, the Tribunal held that the settlement of the business enterprises was in favour of the Hindu undivided family. The Bombay High Court had taken the view that when the father makes a division of his self-acquired property between his sons, the transaction is really in three parts, namely, creation of separate status between sons, throwing into the hotchpot his self-acquired property and dividing the same amongst the sons and, therefore, the transaction does not amount to a gift requiring registration.

The controversy has been settled by the Supreme Court in *C.N. Arunachala Mudaliar Vs. C.A. Muruganatha Mudaliar and Another*, The court referred with approval to the observations of the Judicial Committee in *Rao Balwant Singh v. Rant Kishori* [1898] 25 IA 54, that the father of a joint Hindu family governed by the Mitakshara law has full and uncontrolled power of disposition over his self-acquired property and a male issue could not interfere in these rights in any way. The court further held as follows (at page 498.) :

"In view of the settled law that a Mitakshara father has absolute right of disposition over his self-acquired property to which no exception can be taken by his male descendants, it is in our opinion not possible to hold that such property bequeathed or gifted to a son must necessarily and under all circumstances, rank as ancestral property in the hands of the donee in which his sons would acquire co-ordinate interest. . . . The interest which he takes in such property must depend upon the will of the grantor. ... To find out whether a property is or is not

ancestral in the hands of a particular person, not merely the relationship between the original and the present holder but the mode of transmission also must be looked to ; and the property can ordinarily be reckoned as ancestral only if the present holder has got it by virtue of his being a son or descendant of the original owner. ... It must follow as a necessary consequence that the father is quite competent to provide expressly, when he makes a gift, either that the donee would take it exclusively for himself or that the gift would be for the benefit of his branch of the family. If there are express provisions to that effect either in the deed of gift or a will, no difficulty is likely to arise and the interest which the son would take in such property would depend upon the terms of the grant. If, however, there are no clear words describing the kind of interest which the donee is to take, the question would be one of construction and the court would have to collect the intention of the donor from the language of the document taken along with the surrounding circumstances in accordance with the well-known canons of construction."

In the case of a settlement or gift or bequest by a father governed by the Mitakshara law to his son, the question whether the disposition enures to the benefit of the son or to his branch family depends on the express provisions to that effect and in their absence, on proper construction of the deed. If there are express provisions indicating either way, the matter is beyond doubt ; if not, the intention of the donor or settlor or testator must be gathered from the various terms of the document. There is no presumption either way. Similarly, whether any separate property has been thrown into the common hotchpot depends upon whether there has been intention to waive separate rights.

There is no dispute that the assets in question belonged to V.C. Gupta exclusively as his self-acquisition. He executed a settlement in favour of himself, his wife, one adult son and three minor sons. Various items of immovable properties were gifted exclusively to one or more of these persons but not to the entire group. The two business enterprises were settled in favour of himself, his wife and four sons in equal share"s,--clearly specifying the share to be 1/6th and expressing the desire that the enterprises should be continued as partnerships. There are no express words in the document indicating any intention that the settlors should take the same with the characteristics of ancestral property. On the other hand, the express provision that they take in equal shares, the specification of the shares and the requirement that the enterprises should be continued as partnerships with specified shares clearly establish that the settlors are to take the same as co-sharers and not as members constituting a Hindu undivided family. These circumstances also establish that there was no intention to throw the assets into any common hotchpot. The view taken by the Tribunal is wholly erroneous. Question No. 1 has to be answered in the negative, i.e., in favour of the Revenue and against the assessee.

The subject-matter of question No. 2 has not been considered by the Tribunal. The question relates to the capital gains derived on sale of items of property

acquired by or in the name of the assessee's wife. According to the Assessing Officer, the consideration from the assessee by way of gift attracted Section 64 of the Act. This view was upheld by the Commissioner. The Tribunal held that in view of the finding that the status of the assessee is Hindu undivided family, Section 64 of the Act would not apply. This is not a correct approach to the facts. The real question is whether the consideration proceeded from the profits of the business enterprises or from the assessee's or his wife's separate funds or from the share of the assessee or his wife in the profits of the enterprises. The finding of the Tribunal based on the nature of the settlement that Section 64 is not attracted is erroneous. The error arose on account of failure to consider relevant aspects referred to above. The matter will have to be considered afresh by the Tribunal. Question No. 2 has to be answered in the negative, that is, in favour of the Revenue and against the assessee.

Both the questions are answered in the negative, i.e., in favour of the Revenue and against the assessee, The real controversy involved in question No. 2 will have to be decided afresh by the Tribunal.

A copy of the judgment under the signature of the Registrar and the seal of the High Court will have to be sent to the Appellate Tribunal. There will be no order as to costs.