

(1983) 01 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 200 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Vishnu Kumar Bhaiya

RESPONDENT

Date of Decision : 10-01-1983

Acts Referred:

Income Tax Act, 1961 — Section 171

Citation : (1983) 35 CTR 38 : (1983) 142 ITR 357

Hon'ble Judges : R.K. Vijayvargiya, J;G.G. Sohani, J

Bench : Division Bench

Advocate : R.C. Mukati, for the Appellant; A.K. Chitale, for the Respondent

Judgement

Vijayvargiya, J.—By this reference u/s 256(1) of the I.T. Act, 1961, the Income Tax Appellate Tribunal, Indore Bench, Indore, has referred the following question of law for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the finding of the AAC that from the date of marriage of Shri Vishnukumar Bhaiya, viz., May 17, 1973, the income should be determined and assessed in the hands of the HUF consisting of Shri Vishnukumar Bhaiya and his wife and that his status could not be treated as individual after his marriage ?"

2. The facts giving rise to this reference are as follows : The assessee, Vishnukumar Bhaiya, received certain assets on partition of the HUF of Shri Ramnivas Bhaiya on October 24, 1965. By order passed on April 25, 1970, the ITO recognised this partition u/s 171 of the I.T. Act. The assessee was unmarried at the time of partition. The income from the share of the joint family property received by the assessee was assessed in his individual capacity up to the assessment year 1973-74. On May 17, 1973, the assessee got married. Thereafter the assessee filed two returns for the accounting year 1973-74 in two different capacities contending that after his marriage his status was changed to that of an HUF because the income derived by him was from assets fallen to his

share in the partition of the HUF. The ITO framed a single assessment for the whole year treating the status of the assessee as individual as hitherto. On appeal by the assessee the AAC held that the assessee was liable to be assessed as an individual up to May 17, 1973 only, when he got married and that thereafter the income derived by the assessee should be assessed treating the assessee as manager of the HUF. Aggrieved by the order of the AAC the Department preferred an appeal before the Tribunal. The Tribunal upheld the order of the AAC and dismissed the appeal. At the instance of the Department the Tribunal has referred the aforesaid question of law for the opinion of this court.

3. Having heard the learned counsel for the parties we have come to the conclusion that the question referred to us has to be answered in favour of the Department. The assessee when he received the share of the joint family property in partition was unmarried and, therefore, did not constitute a joint family as held by the Supreme Court in *C. Krishna Prasad Vs. Commissioner of Income Tax*, Bangalore, . The Supreme Court refrained from expressing any opinion on the point whether an HUF may, for the purposes of the Indian I.T. Act, be treated as a taxable entity when it consists of a single member, male or female, in *Gowli Buddanna Vs. Commissioner of Income Tax*, Mysore, Bangalore, . In *C. Krishna Prasad's* case, however, the Supreme Court held that the assessment in the status of an HUF can be made only when there are two or more members of the HUF. Thus a single member, either male or female, cannot constitute an HUF. The assessee, therefore, filed returns of his income in his status as an individual up to May 17, 1973, on which date he married.

4. The question that arises for determination is whether the marriage of the assessee made any difference in his status. The answer to this question has also to be in the negative in view of the decision of the Supreme Court in *Surjit Lal Chhabda Vs. The Commissioner of Income Tax*, Bombay, . In that decision the family of the assessee consisted of himself, his wife and unmarried daughter. The assessee received income from the immovable property called "Kathoke Lodge" which was his self-acquired property. The assessee by a declaration, duly sworn, turned the said property into the family hotchpot. This declaration was accepted as genuine by the Income Tax Appellate Tribunal. The assessee claimed that as the property "Kathoke Lodge" became the property of the joint Hindu family its income should be assessed as the income of the HUF. On these facts the Supreme Court held as follows (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 make a gift of it. Even a son born or adopted after the alienation shall have to take the family hotchpot as he finds it. A son born, begotten or adopted after the alienation has no right to challenge the alienation.

Since the personal law of the appellant regards him as the owner of Kathoke Lodge and the income therefrom as his income even after the property was thrown into the family hotchpot, the income would be chargeable to Income Tax as his individual income and not that of the family."

5. Now there can be no difference in the nature of the property which was at one time the self-acquired property of a Hindu and which he threw into the common hotchpot of the family and the property which he received in partition as a single member. In the absence of a son he has the absolute power of disposal over the said property. The position would be different if the property is devolved upon a person as a sole surviving coparcener without the joint family being disrupted.

6. In the present case, as stated above, when the property was received by the assessee in partition he was a single member and did not constitute a family. His status was that of an individual. In the circumstances, the fact of his marriage did not alter the position and in the absence of a son the personal law of the assessee regards him as the owner of the property received by him in partition and the income therefrom as his income. The assessee is, therefore, liable to be assessed in his status as an individual as hitherto and the Tribunal was not justified in holding that the assessee was entitled to be assessed in the status of an HUF after his marriage.

7. The learned counsel for the assessee placed reliance upon a Division Bench decision of the Allahabad High Court in Prem Kumar Vs. Commissioner of Income Tax, , in which the assessee, who received his share of income from the joint Hindu family on partition after his marriage, claimed that the income should be taxed in the hands of the HUF consisting of himself and his wife. It was held that after the marriage of the assessee an HUF came into existence and the income derived by the assessee could not be assessed in the hands of the assessee as individual. However, the decision of the Supreme Court in Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, has not been noticed by the Allahabad High Court. We, therefore, find ourselves unable to agree with the aforesaid decision of the Allahabad High Court.

8. As a result of the discussion aforesaid our answer to the question referred to us is in the negative and in favour of the Department. In the circumstances, the parties shall bear their own costs of this reference.