
(1984) 07 KAR CK 0052
In the Karnataka High Court
Case No : I.T.R.C. No. 196/78

Commissioner of Income-tax Karnataka APPELLANT
Vs
K.N. Narayan. RESPONDENT

Date of Decision : 25-07-1984

Acts Referred:

Citation : (1985) 1 KarLJ 204

Hon'ble Judges : S. A. Hakeem, J;K. Jagannatha Shetty, J

Judgement

Jagannatha Shetty, J.-This is a reference under Section 256(1) of the Income-tax Act, 1961 at the instance of the revenue.

The following question has been referred by the Income-tax Appellate Tribunal, Bangalore Bench, for the opinion of this Court:

"Whether on the facts and in the circumstances of the case, the declaration by Sri K.N. Narayan dated 16.7.1969 throwing his interest in the partnership firms into the joint family hotch-pot was valid in law?"

K.N. Narayan was a partner in two firms, viz., M/s. Vidyut Equipment Company and M/s. Bharat Enterprises (Mysore). By a declaration dated July 16, 1969 he declared that his partnership interest in the said firms should be the joint family property and he has also thrown in to the hotch-pot his personal property with which we are not concerned.

For the assessment year 1971-72 the share income from the partnership firms was not assessed in the hands of the individual-K.N. Narayan. The Commissioner in exercise of his revisional jurisdiction set aside the assessment order and directed the I.T.O. to re-do the assessment by ignoring the declaration. According to the Commissioner under the Hindu Law one cannot make a declaration whereby the joint family has to bear the risk and liability of the business and therefore he has held that the declaration made by the assessee has to be ignored altogether. Being aggrieved by the order of the Commissioner, the assessee preferred an appeal before the Tribunal. The Tribunal allowed the

appeal and reversed the order of the Commissioner. It has followed the decision of the Income-tax Appellate Tribunal "C" Bench, Madras, in I.T.A. No. 547 (mds) of 75-76 (I.T.O. v. P. Muthuramakrishnan, Karur) and held that throwing of the property consisting of the interest in a partnership firm into the common hotch-pot of the HUF would be valid and such a declaration cannot be ignored by the I.T.O.

The short question is, whether a coparcener of a HUF can throw his interest in a partnership to the common hotch-pot of the HUF?

Under the Hindu Law blending of separate property with joint family is well settled. Property separate or self-acquired of a coparcener may be impressed with the character of joint family property if it is voluntarily thrown by the coparcener into the common stock with the clear intention of abandoning his separate claim thereon. All that is required in such a case is to establish a clear intention to waive separate rights.

The position in Hindu Law with regard to the Kartha entering into partnership with others by investing family funds for carrying on a business is also equally well settled. The partnership that is so created will be governed by the provisions of the Indian Partnership Act, 1932. Such a partnership is not between the family and the other partners, but it is a partnership between the Kartha individually and other partners. Similar would be the position of a coparcener when he invests the family funds in a partnership. He alone would be the partner and not the family.

Mr. Srinivasan, learned counsel for the Revenue, admits that the share in a partnership is an asset. Since it is an asset, the assessee's right to throw that asset into the common stock of HUF cannot then be denied at all.

Mr. Srinivasan, however, submitted that the share income in the partnership of which the assessee is entitled to as a partner, should first be brought to tax only in his individual assessment and thereafter it is open to him to put the same into the common stock. We do not find any good reason to accept this submission. We asked Mr. Srinivasan as to what should be the procedure for assessment in a case where Kartha as a partner has contributed family funds to the capital of the firm. The learned counsel frankly submitted and in our opinion rightly that the Kartha would be accountable to the joint family and that share income should be brought to tax only in the HUF assessment, and not in the assessment of the individual. If that is the correct principle, we fail to see why HUF should be denied of that benefit when the asset of a coparcener (i.e. share in the partnership) is thrown into the common stock of the joint family. The income derived by the employment of even such family funds, in our opinion, should be includible only in the assessment of the HUF.

Our view finds support from the decisions of the Gujarat High Court in *Ratilal Khushaldas Patel v. C.I.T., Gujarat* (40 I.T.R. 517) and *C.I.T., Gujarat-I v. Keshavalal Prabhudas Shah* (131 I.T.R. 229). The Madras High Court in *State of*

Tamil Nadu v. A. Sadhanandan & others (113 I.T.R. 543) and the Delhi High Court in C.I.T., Delhi v. Kishanlal (124 I.T.R. 19) have also taken a similar view.

In the result and for the reasons stated above we answer the question in the affirmative and against the revenue.

In the circumstances, we make no order as to costs.