

(1969) 10 KAR CK 0005

In the Karnataka High Court

Case No : Income-tax Referred Case No. 23 of 1968

Commissioner of Income Tax, Mysore

APPELLANT

Vs

Nagarathnamma

RESPONDENT

Date of Decision : 27-10-1969

Acts Referred:

Hindu Succession Act, 1956 — Section 6
Income Tax Act, 1961 — Section 171, 256 (1)

Citation : (1970) 76 ITR 352

Hon'ble Judges : G.K. Govind Bhat, J;B. Venkataswami, J

Bench : Division Bench

Advocate : S.R. Rajasekhara Murthy, for the Appellant; K. Srinivasan, for the Respondent

Judgement

Govinda Bhat, J.—This is a reference made at the instance of the Commissioner u/s 256(1) of the Income Tax Act, 1996. the question of law referred for our opinion are :

"(1) Whether, on the facts and in the circumstances of the case, the tribunal was right in excluding 4/17th share from the assessment of the Hindu undivided family for the assessment year 1960-61 ?

(2) Whether, on the facts and in the circumstances of the case the Tribunal was right in holding that by virtue of section 6 of the Hindu Succession Act, income to the extent of 4/17th share was not includible in the assessment of the Hindu undivided family for the assessment year 1960-61 ?"

2. One Ramaswamy Setty was a partner in two firms, namely, M/s. T. Seenappasetty Bros. & Co. and M/s. T. satyanarayana Rice & Oil Mills. He held shares in the said two firms in his capacity as the karta of the Hindu undivided family consisting of himself, his wife and three minor sons. The income of his Hindu undivided family. Ramaswamy Setty died on October 28, 1958, after the coming into force of the Hindu Succession Act 1956. Since Ramaswamy Setty

died intestate, his share in the joint family property devolved on his wife, daughter and three sons in equal shares. The share which devolved on the heirs of Ramaswamy Setty is stated to be 4/17th. For the assessment year 1960-61, the question arose whether the 4/17th share of income that accrued from the two partnership firms was also assessable as the income of the Hindu undivided family. The Income Tax Appellate Tribunal, Madras Bench, has held that the 4/17th share of Ramaswamy Setty devolved by succession on his widow, daughter and three sons in equal shares u/s 6 of the Hindu Succession Act and, therefore, the 4/17th share of the income is not liable to be assessed in the hands of the Hindu undivided family. The Commissioner of Income Tax sought a reference for the opinion of this court and, accordingly, the Tribunal has referred the above questions for our opinion.

3. That Ramaswamy Setty was the karta of his Hindu undivided family and that he died intestate is not disputed. His share in the joint family property is stated to be 4/17. When a male Hindu dies after the commencement of the Hindu Succession Act having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property devolves by succession on his heirs if he had left behind him a surviving female relative specified in clause (1) of the schedule to the Hindu Succession Act. For the purpose of computation or determination of the share of the male Hindu, Explanation (1) to section 6 of the Hindu Succession Act assumes that a notional partition in the family had taken place immediately before his death. Notwithstanding the death of a male member of a Hindu undivided family, the Hindu undivided family continues, but the property of the Hindu undivided family gets diminished to the extent of the share of the male Hindu dying. Therefore, on the death of Ramaswamy Setty, the share of the joint family in the two firms is reduced from 13/17th to 9/17th share. Therefore, the Tribunal was entirely right in holding that the income of the share of Ramaswamy Setty is not liable to be included in the income of the Hindu undivided family.

4. The argument advanced on behalf of the Commissioner by his learned counsel, Sri S. R. Rajasekhara Murthy, that in the absence of a partition by metes and bounds the Income Tax department cannot take notice of a mere division in status by virtue of section 171 of the Income Tax Act, 1961, is untenable. The joint family, notwithstanding the death of one of its male members, continues for the purpose of Income Tax but the share of that joint family is diminished as in the case of alienation of any of the joint family properties.

5. We answer the questions referred for our decision in the affirmative and in favour of the assessee. The Commissioner will pay the costs of the assessee. Advocate's fee Rs. 250.

6. Questions answered in the affirmative.