
(1978) 04 CAL CK 0067

In the Calcutta High Court

Case No : Income-tax Reference No. 56 of 1971

Commissioner of Wealth Tax

APPELLANT

Vs

Prahladrai Agarwalla Jalan

RESPONDENT

Date of Decision : 10-04-1978

Acts Referred:

Citation : (1980) 123 ITR 926

Hon'ble Judges : Dipak Kumar Sen, J; C.K. Banerji, J

Bench : Division Bench

Advocate : B.K. Bagchi and B.K. Naha, for the Appellant; None, for the Respondent

Judgement

Dipak Kumar Sen, J.—This is a reference u/s 27(1) of the W.T. Act, 1957, at the instance of the CWT, West Bengal-III, Calcutta. The facts found and/op admitted in the proceedings are, inter alia, as follows :

2. In the wealth-tax assessment of Sri Prahladrai Agarwalla Jalan in the assessment year 1964-65, the assessee claimed that his status was that of an HUF and not an individual. Following the earlier assessment in the year 1963-64, the WTO held that the status of the assessee was that of an individual. On appeal, the AAC confirmed the order of the WTO.

3. There was a further appeal by the assessee to the Tribunal. It was contended in the appeal, inter alia, that the assessee's claim to be assessed as an HUF had been made on the basis of a declaration of the assessee made before a notary public on the 31st December, 1962. The assessee contended further that in the subsequent assessment year 1965-66, the WTO had accepted the assessee's status as that of an HUF and that even in the Income Tax assessment for the assessment year 19.64-65, the AAC had accepted the assessee to be an HUF. On the basis of the aforesaid, the Tribunal held that the status of the assessee in the relevant assessment year was that of an HUF.

4. The following question has been referred at the instance of the CWT, West

Bengal-III, Calcutta, as a question of law arising out of the aforesaid order of the Tribunal:

"Whether, on the facts and in the circumstances of the case and on a proper construction of the terms of the assessee's declaration dated 31st December, 1962, the Tribunal was right in holding that the assessee's status should be taken as that of Hindu undivided family instead of an individual ? "

5. At the hearing no one appeared on behalf of the assessee. Mr. B. K. Bagchi, learned counsel for the revenue, has contended before us that the assessee should not be assessed in the status of an HUF on the following grounds:

(a) The intention of the assessee to throw his common property into hotchpot was not sufficiently expressed in the declaration.

(b) Neither a pre-existing coparcenary nor any pre-existing nucleus of coparcenary property have been shown to exist.

(c) The properties alleged to have been thrown into the hotchpot were not properly identified.

(d) Apart from the declaration there was no evidence to show that there was any blending, and lastly.

(e) The assessee having sought to throw his properties as also his liabilities into the hotchpot, which was not permitted in law, there was no change in ownership.

6. On the basis of the aforesaid, Mr. Bagchi contended that the Tribunal erred in holding that the assessee's status should be that of an HUF. In support of his contentions, Mr. Bagchi cited the following decisions:

(a) Commissioner of Income Tax, Madras Vs. M.K. Stremann, Madras, . This judgment was cited for the following observations of the Supreme Court (at page 66):

" When instructions are given that the self-acquired property is to be treated as joint family property, in our opinion, at that moment the property assumes the character of joint family property. On execution, the deed becomes evidence of a pre-existing fact, i.e., of throwing the self- acquired property into the hotchpot. "

(b) Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh, , This was cited for the following observations of the Supreme Court (at page 678-679):

" To pronounce on the question of law presented for our decision, we must first examine what is the true scope of the doctrine of throwing into the "common stock" or " common hotchpot". It must be remembered that a Hindu family is not a creature of a contract. As observed by this court in Mallesappa Bandeppa Desai and Others Vs. Desai Mallappa and Others, , the doctrine of throwing into the common stock inevitably postulates that the owner of separate property is a coparcener who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property. The existence of a

coparcenary is absolutely necessary before a coparcener can throw into the common stock his self-acquired properties. The separate property of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by him into the common stock with the intention of abandoning his separate claim therein. The separate property of a Hindu ceases to be separate property and acquires the characteristics of joint family or ancestral property not by any physical mixing with his joint family or his ancestral property but by his own volition and intention by his waiving and surrendering his separate rights in it as separate property. The act by which the coparcener throws his separate property in the common stock is a unilateral act. There is no question of either the family rejecting or accepting it. By his individual volition he renounces his individual right in that property and treats it, as a property of the family."

7. Last cited was (c) Vrajlal Trikamlal Vs. Commissioner of Income Tax, Ahmedabad, , for the following observations of the Gujarat High Court (at pages 305-306):

"The law relating to blending of separate property with joint family property is well-settled. Property, separate or self-acquired, of a member of a joint Hindu family, may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein; but to establish such abandonment, a clear intention to waive separate rights must be established. There must, therefore, be some conduct on the part of the owner which would show that he voluntarily threw his separate property into the common hotchpot of the joint family with the intention of abandoning his separate claim in it."

8. The material clauses of the declaration dated the 31st December, 1962, to be noted are as follows:

"1. That I was absolutely seized and possessed and entitled to all properties and assets (hereinafter for the sake of brevity referred to as "the said properties") set out in the balance-sheet annexed to this declaration till 31st December, 1962, and "the said properties" have been acquired by me out of my separate and self-acquired earnings.

2. The said properties were my self acquired properties and have never formed part of the properties and assets of the coparcenary property of the Hindu undivided family.

3. I declare that I have voluntarily thrown "the said properties" and liabilities as well into the common stock of the properties of HUF and/ or hotchpot, on and from 31st December, 1962 and have abandoned and/or relinquished all separate claims on the "said properties".

4. That, on and from 31st December, 1962, "the said properties" have formed part of the properties of the HUF consisting of myself, my wife, Sreemati Ginni

Devi, and my sons, Sri Ashok Kumar Jalan, Sri Prem Kumar Jalan and Sri Rajendra Kumar Jalan, all governed by Mitakshara school of Hindu law and shall from the said date be treated as such and I shall have no separate claim or interest whatsoever in respect of the said properties.

5. I hereby declare that I have waived all my right, title and interest on the said properties as the exclusive owner thereof on and from 1st January, 1963, and I shall have no right, title and/or interest on the said properties otherwise than as a member of HUF."

9. Apart from the decisions cited by Mr, Bagchi we also note the following decisions:

(a) R. Subramania Iyer Vs. The Commissioner of Income Tax, Madras, , where a Division Bench of the Madras High Court held as follows (Head Note):

" Under the Hindu law in order that a joint family may exist it is not necessary that there should be joint family property. A father and his son constitute members of a joint Hindu family and even if there was no ancestral nucleus or other joint family property there is nothing to prevent the father from impressing upon any self-acquired property belonging to him the character of joint family property. "

(b) Commissioner of Income Tax, Bombay City I Vs. M.M. Khanna, , where the Bombay High Court observed, inter alia, as follows (Head Note):

"A joint Hindu family springs from a Hindu male and every Hindu male can be the stock of a fresh descent constituting a joint Hindu family or a Hindu coparcenary."

10. It appears that the property thrown into the hotchpot has been sufficiently identified in the balance-sheet annexed to the declaration. The intention of the assessee is also sufficiently established in Clause (3). The pre-existing coparcenary has been clearly described in Clause (4). As noted in the case of Commissioner of Income Tax, Bombay City I Vs. M.M. Khanna, , on the birth of a son, the father along with the son automatically constitute a Mitakshara Hindu undivided family. The declaration itself is sufficient evidence to show that the self-acquired property of the assessee had been transformed into coparcenary property. The assessee's attempt to pass on his liabilities to the joint family is of little relevance. Either the joint family will be burdened with the liabilities or they remain as mere declarations by the assessee. It is not that the assessee has sought to lay down any condition of transfer.

11. We note that none of the points raised by Mr. Bagchi were urged before the Tribunal by the revenue and, strictly speaking, Mr. Bagchi is not entitled to agitate any of the said points at this stage which necessitate fresh investigation into facts. In any event, we find little merit in the contentions of the revenue which are not even supported by the decisions cited on their behalf. We answer the question referred in the affirmative and in favour of the assessee. There will be no order as to costs.

C.K. Banerji, J.

12. I agree.