(1961) 02 KL CK 0007

In the High Court Of Kerala

Case No : O.P. No. 1149 of 1959

Commr. of Income Tax APPELLANT

Vs

M/s. K.P. Mohammed and Others RESPONDENT

Date of Decision : 08-02-1961

Acts Referred:
Income Tax Act, 1961 — Section 3

Citation : (1961) KLJ 621

Hon'ble Judges : M.A. Ansari, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : G. Rama Iyer, for the Appellant; K.V. Suryanarayana Iyer, K.S. Subramonia Iyer and C.M. Devan, for the Respondent

Final Decision : Dismissed

Judgement

M.A. Ansari, C.J.—Following are the facts necessary for deciding this application, which is u/s 66(2) of the Indian Income Tax Act. On November 18, 1954 one Unnikammoo Saheb died, leaving behind as heirs his wife, two sons, and four daughters. On November 27, 1954 the widow and the four daughters executed a power of attorney in favor of the two sons for the future conduct of the management of all the properties and to represent the estate on their behalf. It is not disputed that the properties inherited consist of house property, landed property such as forest lands, vacant sites, and shares in companies. A return of income for November 19, 1954, to May 5, 1955 was voluntarily filed, and the Income Tax Officer made assessment on the heirs as an association of persons. The assessee appealed to the Appellate Assistant Commissioner, and contended that as there was no association, the assessment should be only on the shares of all the legal heirs in their separate hands. The Appellate Assistant Commissioner held that all the heirs formed an association of persons, and were producing the income liable to tax; but he excluded from such assessment house income. The assessees being dissatisfied, appealed to the Appellate Tribunal; and the Tribunal agreed with the Appellate Assistant Commissioner that an association of persons was formed to produce the income, but held that, as no effort was put to procure incomes from shares and the ground rent of vacant sites, these should be excluded from the assessment of the heirs as an association of persons. Thereafter the Department applied for the following legal questions to be referred:

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in bolding that the dividend income and ground rent were not includable in the assessment made in the status of association of persons.

But the Tribunal declined on the short ground of the question being one of fact. Hence this application u/s 66(2) of the Indian income tax Act, wherein the same question is asked to be referred.

The learned Government Pleader has urged that consistently with the conclusion of the heirs having formed themselves into an association for managing the estate, part of the estate ought not to be excluded from the assessment of the association. We, however, think the rule covering the question has become well settled by the pronouncement in Commissioner of Income Tax, Bombay North, Kutch and Saurashtra Vs. Indira Balkrishna, . There the question was whether joint receipt by co-widows of income from deposits and property, constitutes them an association of persons for purpose of assessment to income tax, and S.K. Das J. after observing what constitutes association of persons, has concluded with these words :-

The only finding is that they have not exercised their right to separate enjoyment, and except for receiving the dividends and interest jointly, it has been found that they have done no act which has helped to produce income in respect of the shares and deposits. On these findings it cannot be held that the three widows had the status of an association of persons within the meaning of Section 3 of the Indian Income Tax Act.

It follows that without some effort, more joint receipt of income would not constitute the recipients an association of persons. In other words, there must be some effort jointly made to earn the income, and the finding of the Tribunal in the case is about no such effort having been made to earn the income from the items of the estate, which had been excluded from the assessment. In these circumstances, we feel no useful purpose would be served in directing the question to be referred to us with a statement of the case. This petition is accordingly dismissed with costs, counsel''s fee Rs. 100/-.

