Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 09/09/2026

(1970) 03 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No. 35 of 1967

Damodar Hansraj APPELLANT

Vs

Income Tax Officer, Ward A RESPONDENT

Date of Decision : 24-03-1970

Acts Referred:
Income Tax Act, 1922 — Section 25A
Income Tax Act, 1961 — Section 148

Citation : (1971) 82 ITR 83

Hon'ble Judges : G.K. Misra, C.J;S. Acharya, J

Bench : Division Bench

Advocate : D. Pal, P.K. Bose and B.K. Mohanty, for the Appellant; Standing Counsel, for the Respondent

Judgement

G.K. Misra, C.J.—Deceased Damodar Hansraj had three sons : Kalyanji Damodar, Sunderdas Damodar and Govindji. Purushottam, Khatau and Haridas are the three sons of Sunderdas. Jagmohan is the son of Govindji. Kalyanji Damodar has no sons. Damodar Hansraj, with his sons, constituted a Hindu undivided family, governed by the Mitakshara School of Hindu law. On October 29, 1943, there was a partition by metes and bounds amongst Kalyanji, Sunderdas and Jagmohan as, by then, Damodar Hansraj and Govindji were dead. The deed of partition was executed on May 10, 1944. On September 23, 1944, an application was made u/s 25A of the Indian Income Tax Act, 1922, for an order to record the factum of partition. On February 28, 1945, the said application was allowed, but the date of partition was taken to be September 9, 1944, the date on which the deed of partition was registered. This order was set aside in appeal and the application u/s 25A was allowed recording the partition with effect from October 29, 1943. From 1945-46 to 1961-62, assessments were made on the three separate branches in their individual capacities. On March 29, 1965, March 30, 1965, and January 7, 1967, notices were issued u/s 148 of the Income Tax Act, 1961, for reopening the assessments for the years 1948-49, 1950-51, 1953-54, 1954-55, 1956-57, 1957-58, 1958-59, 1959-60, 1960-61, 1961-62 and

1962,63. The assessments for the intervening years, not referred to, have not been reopened. While issuing the notices, the Income Tax department did not disclose the materials on the basis of which the assessments were intended to be reopened. The Income Tax Officer, Ward-A, Cuttack (Sri S. K. Das), in paragraph 3(c) of his counter-affidavit has stated that a deed of settlement dated January 4, 1949, came to the notice of the department wherein it was stated by the three members of the partition deed that the partition in respect of which the application u/s 25A was filed, merely for the purpose of evasion of tax ; and being of opinion that the order passed u/s 25A was obtained on the basis of misrepresentation, notice was issued u/s 148 for reopening the assessment. The writ application has been filed, in which the impugned notices are attacked as being without jurisdiction Inasmuch as the order u/s 25A has not been set aside and still stands good for all subsequent years and in the face of such an order the assessment cannot be reopened under Sections 147 and 148 of the Income Tax Act, 1961.

2. The facts on the basis of which the notices were issued were also questioned.

3. At the time of hearing, Dr. Pal did not canvass any question relating to the merits of the matter and rightly ; this is not the stage at which this. court would go into the merits. We do not, therefore, propose to deal with the merits of the case.

4. The sole question for determination in this writ application is whether the notices for reopening the assessments is within the jurisdiction of the taxing authorities so long as the order u/s 25A subsists. The order u/s 25A records the partition claimed by the members of the erstwhile Hindu undivided family. If, after enquiry, the Income Tax Officer is satisfied that there has been partitions by metes and bounds, then the partition is recorded. Without such an order the divided family is not entitled to any relief even though actual partition by metes and bounds might have taken place. In order that the partition would enable the members of the family to be assessed separately in their individual capacities, an order u/s 25A is essential.

5. In this case, the order u/s 25A was passed on February 28, 1945, recognising the partition with effect from October 29, 1943. There-fore, this becomes effective for all subsequent years until it is set aside by the Commissioner, in revision, u/s 33B of the Income Tax Act, 1922, which corresponds to Section 263 of the Income Tax Act, 1961.

6. Mr. Misra, learned standing counsel for the department, concedes that the order u/s 25A has not yet been set aside. Once that order stands, any reopening of the assessment would result in two inconsistent positions so far as the department is concerned. So along as the order u/s 25A stands, the members would be taken to have been partitioned. If the assessments are reopened in respect of the years subsequent to that order, the assumption would be that they constituted members of a Hindu undivided family. The law cannot permit such a

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/damodar-hansraj-appellant-hash-…

conflicting position. Dr. Pal''s contention must, therefore, be accepted on the simple ground that a notice u/s 148 of the Income Tax Act, 1961, would be without jurisdiction so long as the order u/s 25A of the Income Tax Act, 1922, recognising partition, stands.

7. The aforesaid view is not bereft of authority.

8. The question was canvassed before the Supreme Court in Income Tax Officer, A-ward, Lucknow Vs. Bachulal Kapoor, . But, as the High Court did not express any opinion, the Supreme Court remanded the case without expressing any view.

9. The question was fully discussed by the Punjab High Court in Commissioner of Income Tax v. Ganeshi Lal Sham Lal [1966] 61 ITR 408 (P&H.). Their Lordships were clearly of opinion that the assessment cannot be reopened u/s 34 of the old Indian Income Tax Act, 1922, so long as the order u/s 25A recognising partition has not been set aside. This view was approved by the Supreme Court in Joint Family of Udayan Chinubhai, etc. Vs. Commissioner of Income Tax, Gujarat, . Their Lordships observed thus :

"In Commissioner of Income Tax v. Ganeshi Lal Sham Lal, the High Court of Punjab held that when an order recognising the total disruption of a Hindu family has been passed u/s 25A of the Indian Income Tax Act, 1922, and an order of assessment is made on the basis of such an order, it is not open to the Income Tax Officer to take proceedings for reassessment u/s 34 of the Act ignoring the earlier order u/s 25A of the Act on the ground that he has received information that the order u/s 25A was obtained by misrepresentation. The proper course for the Income Tax Officer to adopt in such a case is to move the Commissioner of Income Tax to take action u/s 33B of the Act to set aside the order u/s 25A.

We agree with the High Court of Punjab that Section 34 of the Indian Income Tax Act confers no general power of reviewing an order passed u/s 25A(1) which is, in its very nature, effective for all subsequent years."

10. Thus, on an analysis of the relevant section and on the basis of authorities, we are clearly of opinion that the notices u/s 148 of the Income Tax Act, 1961, were without jurisdiction inasmuch as the earlier order u/s 25A recognising partition still subsists.

11. In the result, the writ application is allowed with costs. A writ of certiorari be issued quashing the impugned notices. Hearing fee Rs. 200 (Rupees two hundred only.)

Acharya, J.

12. I agree.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/damodar-hansraj-appellant-hash-…