

(1988) 06 KAR CK 0040
In the Karnataka High Court
Case No : Writ Petition No. 22493 of 1981

G.E. Thippaiah

APPELLANT

Vs

Agricultural Income Tax Officer

RESPONDENT

Date of Decision : 22-06-1988

Acts Referred:

Income Tax Act, 1961 — Section 171

Citation : (1991) 187 ITR 668

Hon'ble Judges : S.A. Hakeem, J;S. Rajendra Babu, J

Bench : Division Bench

Advocate : G. Sarangan, for the Appellant; R.H. Chandangoudar, for the Respondent

Judgement

S.A. Hakeem, J.—This matter has come up before us on a reference by the learned single judge.

2. The petitioner has sought for quashing the notice dated June 25, 1981, issued by the Agricultural Income Tax Officer (respondent) treating the petitioner as the legal representative of the Hindu undivided family and directing him to file a return of income of the Hindu undivided family for the assessment year 1980-81.

3. Brief fact which are necessary to appreciate the question raised in this petition are as follows :-

4. The petitioner is one of the sons of the late G. B. Eregowda who died on December 15, 1975. Before his death, Eregowda and his wife, Channamma constituted a Hindu undivided family. The deceased left behind him three legal heirs including his wife and the petitioner. In the year 1970, a partition was effected among G. B. Eregowda and his sons by which the three coparceners got themselves divided in status. Thereafter, Eregowda and his sons by which the three coparceners got themselves divided in status. Thereafter, Eregowda formed a minor Hindu undivided family and was filing the return of income in respect of the agricultural income accruing to the family.

5. On the death of Eregowda on December 15, 1975, the number of members of the Hindu undivided family having reduced to unity, the Hindu undivided family ceased to exist. According to the petitioner, therefore, as the erstwhile Hindu undivided family was not in existence, he cannot be considered as a legal representative of the Hindu undivided family and liable to file the returns for the Hindu undivided family. However, the respondent issued a notice to the petitioner directing him, as one of the representatives of the deceased, To file a return. In reply to the said notice, it was pointed out that no provision having been made in the Act for the instant contingency, viz., the non-existence of the Hindu undivided family, neither the petitioner nor his window could file the return of agricultural income with regard to the Hindu undivided family of the late Eregowda as karta.

6. Reliance is sought to be placed upon the provision of section 24 of the Karnataka Agricultural Income Tax Act which pertain to the assessment of tax leviable on a deceased person which is payable by his representative. On a bare perusal of section 24 of the Act, it is clear that it applies only to a natural person who dies during an assessment year and whose legal representatives under the law will become liable to file the return in respect of the income derived during his lifetime. As such, the principle under the section cannot be extended to a situation as in the instant case. We are fortified in our view by the decision of the Madras High Court in Seethammal Vs. Commissioner of Income Tax, . In the said case, the court was considering the applicability of section 171 of the Income Tax Act in a similar situation. It is observed that "family" signifies a group and plurality of persons is an essential attribute of a family. A single person, Male or female, cannot constitute a family. Assessment in the status of a Hindu undivided family can be made only when there are two or more members of the Hindu undivided family. The continuity of the assessment of the family can come to an end by the disappearance of the family as such. If there is no family a such, then there is nothing is section 171 of the Act to create a legal fiction as to the existence of the family. Secondly, the question of the assessment of a family which is not existing cannot arise. We are in respectful agreement, with the view taken by the Madras High Court. In that view of the Matter, this writ petition has to succeed.

7. In the result, the writ petition is allowed. Rule is made absolute. The impugned notice dated June 25, 1981, issued u/s 18 read with rule 24 of the Act is hereby quashed. In the circumstances of the case, parties shall bear their own costs.