
(1988) 03 KAR CK 0012

In the Karnataka High Court

Case No : Income-tax Referred Case No. 165 of 1982

G.N. Sunanda

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 19-03-1988

Acts Referred:

Income Tax Act, 1961 — Section 148, 2 (31), 256 (1)

Citation : (1988) 73 CTR 33 : (1988) 3 KarLJ 385

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

Bench : Division Bench

Advocate : G. Sarangan, for the Appellant; K. Srinivasan, for the Respondent

Judgement

S. Rajendra Babu, J.—One Murugappa who held partnership interest in three firms died on November 17, 1972, leaving his widow, minor son and a minor daughter. During his lifetime, the income from each of these three firms was assessed in his hands in the status of a Hindu undivided family. After his death, his wife, the applicant herein, became a partner in the firms in which he was a partner in his individual capacity. The Income Tax Officer initiated proceedings u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), to assess such share income in the hands of the applicant and her children as an association of persons. The applicant filed her return declaring that she had no income in that status. Her case was that her income should have been assessed as that of a Hindu undivided family. But the Income Tax Officer rejected this plea and brought to tax the income in question in the hands of an association of persons. The applicant took up the matter in appeal and the Appellate Assistant Commissioner held that the applicant and her children inherited the business interest of the deceased, Murugappa, as co-heirs and succeeded to it in their individual capacity and such property did not constitute Hindu undivided family property and, therefore, he confirmed the assessment made by the Income Tax Officer. On further appeal to the Appellate Tribunal, it held that though the applicant succeeded to the interest of late Murugappa in the said firms, she was

a partner and the income derived by her would belong not only to her but to her minor children under the Hindu Succession Act, 1956, and since the source of income is business, the income derived by the applicant was not only on her behalf but on behalf of the minor children and, therefore, the orders of the Income Tax authorities must be upheld and thus the appeal was dismissed. Aggrieved by the said order of the Tribunal, the applicant sought for reference u/s 256(1) of the Act for the opinion of this court and the following question has been referred to us :

"Whether, on the facts and in the circumstances of the case, the assessment of the share income from the three firms in the hands of the association of persons or a body of individuals for the year 1974-75 is valid in law ?"

2. The expressions "association of persons" and "body of individuals" have been considered in several decisions of the Supreme Court and the High Courts and a survey of the same is to the following effect :

3. In order to constitute an association of persons, there must be a joining together in a common venture, the object of which is to produce income, profits or gains. Though a body of individuals is not identical with an association of persons, they have similarities. An association of persons may consist of non-individuals, but a body of individuals consists of only human beings. "Body" in "body of individuals" would mean association for some common purpose or object and there must be unity under some common tie or occupation. A mere collection of individuals without a common tie or aim will not constitute a body of individuals u/s 2(31) of the Act and u/s 47(ii) of the Act. A body of individuals must be capable of holding income-producing assets or assets that produce income.

4. A group of persons may come together in the following situations :

(i) members joining together for income-producing activity;

(ii) group of individuals irrespective of the object which brought them together and what they do;

(iii) group of individuals happen to have come together to carry on some activity with a view to earn income.

5. Of these, the last group alone would constitute a body of individuals. However, a combination of individuals who merely receive income jointly without doing anything further cannot constitute either an association of persons or body of individuals.

6. In the present case, the question is whether by the mere fact that the applicant and her two children were joint inheritors and the applicant carried on business during the minority of the children and on their behalf they can be assessed as a body of individuals or an association of persons.

7. In the case of Commissioner of Gift Tax, Kerala Vs. R. Valsala Amma, , the

Supreme Court had to consider a case where the assessee and her sister received as legatees under the will of their mother certain immovable property, each of them having a half share in the same. The property not having been partitioned, they, in turn, jointly gifted the said immovable property to their brother by a single gift deed and the question which was considered for the purpose of the Gift-tax Act was whether the assessee and her sister could be assessed in respect of the gift as separate individuals or as an association of persons or body of individuals. The Supreme Court answered this question in the following manner (p. 830) :

"Now the question is in what capacity the gift was made by the assessee. Did they do it as an association or as a body of individuals or as individuals. The property received by the assessees under the will of their mother was admittedly received by them as co-tenants. Each one of them had half share in that property. The question whether they divided that property or not is not a material question. In law, each one of them had half right in the property that they gifted to their brother. They were holding that property as tenants-in-common and not as joint tenants. Hence, they made the gift as tenants-in-common and not as joint tenants. Each one must be held to have made a gift of her share of the property though the gift is made through one single document. It is surprising that the Income Tax Officer or the Appellate Assistant Commissioner or the Tribunal should have ever thought that the gift in question was by an association or by a body of individuals. The Gift-tax Act did not change the general law relating to the rights of property. It merely sought to tax a gift of the property owned by a person. As mentioned earlier the property with which we are concerned in this case is a property owned by two persons as tenants-in-common, each one having a definite share".

8. Relying on this decision, it was contended on behalf of the assessee that under the Hindu Law, the applicant in this case and her two children have equal shares in the business interest that devolved upon them from the deceased, Murugappa. The applicant carried on the business in her individual capacity and also as guardian or trustee of her minor children and, therefore, they cannot but be assessed as individuals.

9. Sri Srinivasan, learned counsel for the Revenue, submitted that though in view of the decision in Valsala Amma, the applicant and her children inherited the property as individuals, in view of the fact that the applicant became a partner in the business and she having carried on the business on her behalf and on behalf of her minor children, a body of individuals or an association of persons was certainly constituted. He also submitted that in the case of immovable property, all that happens is that they merely inherit the property and receive the income; whereas in the case of business, the individuals have to come together and carry on business and several transactions have to be entered into in connection there with. Therefore, they act in concert certainly amounting to a body of individuals or an association of persons.

10. In the present case, all that happened is that the applicant has merely carried on the business as it was done earlier and there is no overt act or tacit act on her part to indicate that she was not carrying on the business as partner of the firm in her own capacity and on behalf of the minors in a representative capacity as guardian. There is no material placed before the court to infer a conduct on the part of the applicant that she had given her consent on behalf of the minors to carry on the business either as an association of persons or as a body of individuals. Her conduct is consistent with the fact that she could as well have carried on the business in a dual capacity on her own behalf and on behalf of the minors in a representative capacity. There could be no unity of interest in this case as the partnership interest is certainly divisible and the applicant and her children had defined shares in the same and could receive profits in the same ratio.

11. However, Sri Srinivasan, placed strong reliance on three decisions, firstly, on the decision in *Deccan Wine and General Stores Vs. Commissioner of Income Tax*, . Even in that case, while expounding the meaning of the expression "body of individuals", their Lordships observed that the same may not include a case of co-heirs inheriting the shares or securities and laid down a test that it should be wide enough to include a combination of individuals who have unity of interest. In the next decision relied on by him, this view was followed by the Gujarat High Court in the case of *Commissioner of Income Tax, Gujarat III Vs. Harivadan Tribhovandas*, and in the third decision referred to, rendered by the Punjab and Haryana High Court in the case of *Meera and Company Vs. Commissioner of Income Tax*, In these two cases, the High Courts of Gujarat and Punjab and Haryana have adopted the reasoning of the Andhra Pradesh High Court in *Deccan Wine and General Stores Vs. Commissioner of Income Tax*, . But, in *Deccan Wine and General Stores Vs. Commissioner of Income Tax*, , the true effect of the decision in the case of *Commissioner of Gift Tax, Kerala Vs. R. Valsala Amma*, was not considered by the Andhra Pradesh High Court. Their Lordships distinguished the case on the ground that it is a case under the Gift-tax Act and not under the Income Tax Act though this aspect was criticised by the Gujarat High Court but they adopted the reasoning of the Andhra Pradesh High Court. The test of unity of interest is absent in the present case. Therefore, these three decisions cannot be of any assistance to Sri Srinivasan.

12. However, Sri Srinivasan, contended that in view of the decision in the case of *M. M. Ipoh Vs. Commissioner Of Income Tax, Madras.*, , it is possible and permissible for a minor through her guardian to become a member of a body of individuals or an association of persons, but such expression or assent could be given by acting through the guardian. As stated earlier, in the present case, there is absolutely no material to indicate that the applicant had given her assent on behalf of the minors to carry on the business, jointly or together or as a body of individuals or as an association of persons. However, Sri Srinivasan, contended that even persons holding a representative capacity while as a guardian could become members of an association of persons and all the three capacities are in

one and the same person so that she could act not only on her own behalf but also as guardian of the two minors. He strongly relied on the decision in the case of N.V. Shanmugam and Co. Vs. The Commissioner of Income Tax, Madras, , in which it was held by the Supreme Court that the business carried on by the three receivers on behalf of different groups of persons in a partnership business had been stopped only to be reopened and conducted for the purpose of winding up. The profits in their hands could be assessed in the status of an association of persons, inasmuch as the receivers represented the interest of the several partners and the business was carried on by them on behalf of the erstwhile partners in their concern, the control and management in their hands as receivers being a unified one. The receivers had joined in a common purpose and had acted jointly and, therefore, they had a common interest created by the order of the court and were on that account an "association of persons". The existence of a specific or a defined interest in the profits did not make any difference. But, this decision is not applicable to the situation arising on the facts of the present case because in that case, a partnership business which was carried on by the erstwhile partners came to be stopped and that business was continued in the course of winding up. Therefore, certainly, there was a unity of purpose and the receivers had acted jointly. Such a situation does not arise here at all in the present case. Now, it is necessary to refer to two more decisions firstly, the case of Commissioner of Income Tax Vs. C. Karunakaran and Others, , where a sole proprietor of a business died and his widow and children succeeded to the same. The mother and the daughters executed a deed of relinquishment giving up all their rights in the business. The High Court held, in those circumstances, that the heirs should be assessed as an association of persons, because of their common object or common activity. However, one factor is significant in that case, i.e., the mother and the daughters relinquished all their rights in the business so that the sons could together carry on the business, the consent of the mother as guardian being inferable from the conduct of the parties. No such material is available in the present case. Secondly, in the decision in N.P. Saraswathi Ammal and Others Vs. Commissioner of Income Tax, Madras, , on the death of her husband, Saraswathi Ammal, along with her minor children, succeeded to the business of a bus service which she operated even after the minors attained majority. The Madras High Court held that even after they attained majority, they continued the business together and the integrity of the business continued showing a clear indication that the mother and children were keeping in step as a body of individuals. Considering the nature of the business in that case and that even after attaining majority, they continued the business together, these were positive indications of unity of interest in the group. So, the facts and circumstances and the principles applicable in such a case can have no bearing on the case on hand. Therefore, we are of the opinion that the question has to be answered in the negative and in favour of the assessee.