

(1988) 08 KAR CK 0059

In the Karnataka High Court

Case No : Income-tax Referred Case No. 65 of 1980

Gopal Ramanarayan

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 12-08-1988

Acts Referred:

Income Tax Act, 1961 — Section 171, 64, 64 (1), 64 (2)

Citation : (1988) 73 CTR 65 : (1989) 175 ITR 32 : (1988) 3 KarLJ 340 : (1988) 41 TAXMAN 75

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

Bench : Division Bench

Advocate : K.R. Prasad, for the Appellant; K. Srinivasan, for the Respondent

Judgement

Rajendra Baby, J.—The assessee in this case has, by a declaration dated January 5, 1971, treated his property, that is, "investment and partnership interest to the extent of 31 paise in a rupee in the firm of "RAMCO SWADESHIS, COIMBATORE" as the property of the Hindu undivided family consisting of himself, his wife, his three sons and one daughter. On January 10, 1937, a partial partition was effected which was reduced into writing by a memorandum. In the said partial partition, it was provided that "general journal" entries be made in the books of the Hindu undivided family to the effect that Rs. 50,000 be allotted to each of the three sons and Rs. 25,000 be allotted to the daughter, while Rs. 1 lakh be allotted to the smaller Hindu undivided family consisting of the assessee and his wife, Jawahar, one of the sons of the assessee, attained majority on January 30, 1973. However, in spite of the declaration made on January 5, 1971, and the partial partition made on January 10, 1973, the balance in the name of the assessee remained unchanged in the books of the firm.

2. We are concerned in this case with the assessment for the year 1974-75. In that year, the assessee claimed that to the extent of a sum of Rs. 2,75,000, there was a partial partition in the Hindu undivided family and requested for an order u/s 171 of the Income Tax Act, 1961 (hereinafter called "the Act"). The

Income Tax Officer rejected this claim. He held that the assessee having thrown his interest in the firm into the common hotchpot of the Hindu undivided family as indicated above, section 64 of the Act was attracted, and assessed such income in his hands.

3. On appeal, the Appellate Assistant Commissioner upheld the claim of the assessee of partial partition and directed the Income Tax Officer to pass a separate order recognising such partition. However, the other contentions raised by him were rejected, particularly, those based on the provisions of sections 64(1) and 64(2) of the Act. He preferred a further appeal to the Tribunal. Since the contentions were common in the assessee's appeals for the years 1973-74, 1974-75 and 1975-76, the same were consolidated and decided together by the Tribunal by an order dated February 23, 1979. The Department also filed an appeal against the order for the years 1974-75 and 1975-76 challenging the acceptance of the partial partition. These appeals were also considered together with the consolidated cases and the said appeals of both the assessee and the Department were dismissed. While for the assessment year 1973-74, a return of income of the Hindu undivided family was filed showing the previous year as ending on March 31, 1973, the Income Tax Officer made a protective assessment in respect of the Hindu undivided family, but included the entire income of the said Hindu undivided family in the hands of the assessee as an individual. For the assessment year 1974-75, the Hindu undivided family filed a return of income showing the previous year as ending on January 9, 1974. Again, the Income Tax Officer made a protective assessment and brought the same as an individual. Entire income of the Hindu undivided family to tax in the hands of the assessee as an individual. For both these years, the only income shown by the Hindu Undivided family is the share income from Ramco Swadeshis and interest income from the same. In respect of all the questions that arise for consideration in this case, the Tribunal has held against the assessee. Hence, the assessee sought reference of several questions, but the Tribunal has referred to us the following questions for our opinion :

"1. Whether, on the facts and in the circumstances of the case, any part of the share income including interest from the firm of Ramco Swadeshis was includible in the hands of the assessee ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that interest paid to the members of the Hindu undivided family should not be deducted to ascertain the share income from the firm of Ramco Swadeshis for the purpose of applying the provisions of section 64(2) read with section 64(1) ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the income from the converted property for the purpose of inclusion u/s 64(1) in the hands of the assessee should be determined without taking into account the provision to be made under Hindu law for the maintenance and marriage of the unmarried daughter ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the share of income accruing to the minor Hindu undivided family consisting of the assessee and his wife was includible in the hands of the assessee u/s 64(1) read with section 64(2) ?

5. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in rejecting the claim for deduction of interest of Rs. 14,056 ?

6. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of section 64 are applicable also in relation to accretions to the converted property subsequent to the date of conversion of such property ?"

4. Now, we shall take up the first question for consideration. The answer to the problem depends upon the interpretation of section 64 of the Act. Hence, an analysis of the provisions of section 64(2) of the Act is necessary which falls in the following conspectus :

(1) The individual must have thrown his self-acquired property into the common stock of the joint family or impressed his self-acquired property with the character of joint family property on or after December 31, 1969. The property so thrown into the Hindu undivided family hotchpot or impressed with the character of joint family property is termed as converted property.

(2) It would be deemed that the individual has transferred assets through the family to the members of the joint family for being held by them jointly.

(3) Such converted property or any part thereof, in so far as it is attributable to the interest of the individual in the property of the family, is declared to be an asset belonging to that individual.

(4) Under Explanation (2), the interest of the member in the converted property would be equal to the share in the property of the joint family assuming that there is a total partition of the family property on the relevant valuation date. The individual share of a member of the joint family property is a proportionate share in the family property.

(5) Under clause (c), the proportionate share attributable to the spouse or minor son in the family property would be a deemed transfer by the individual to the spouse or minor son and will be includible in the net income of the transferor as per sub-section (1) of section 64 of the Act above even if there is no partition.

(6) Under the latter part of clause (c), if there is a partial or total partition of the converted property, then the share of such converted property received by the spouse or minor children will be includible in the net income of the transferor as provided in the sub-section.

5. This is exactly the view expressed by this court in respect of an analogous provision in section 4(1A) of the Wealth-tax Act, in the decision reported in K.S. Muthukali Chettiar Vs. Commissioner of Wealth Tax, Karnataka, Bangalore,

Therefore, in our view, the matter is concluded by the said decision. However, Sri Prasad, learned counsel for the assessee, earnestly and seriously raised several contentions and asked for our due consideration. Considering the seriousness and anxiety with which the arguments were submitted, we propose to deal with the contentions raised by him.

6. Sri Prasad submitted that section 64(2) of the Act provides for certain fictions and they are mutually destructive of each other, so that, the whole sub-section becomes unworkable and inoperative. His submission is that when an individual throws his separate property into the the common hotchpot of the Hindu undivided family, such converted property will be deemed to be transferred either to the family or to the members of the joint family as provided in section 64(2) (a) of the Act. He contends that if the transfer is to the family, there is no question of any income being derived from the family property attributable to the interest of the individual in the property of the family as there is no defined share in so far as the individual or minor son and spouse is concerned, and hence section 64(2)(b) and the prior part of section 64(2)(c) of that Act become unworkable. If the deemed transfer in clause (a) of the said section is to the members of the Hindu undivided family, then there is no income derived from family property to be attributed to the individual as set out in clause (b) and there can be no question of partition as set out in the latter part of clause (c). The arguments, in our view, are only a web of sophistry woven to shroud the plain meaning of the provisions of law.

7. The provisions in any enactment will have to be read as an integrated whole in order to understand the scheme. There are three aspects in the various clauses appearing in section 64(2) of the Act. So far as clause (a) is concerned, there is a notional transfer to the family; while clause (b) deems a transfer to the individual : and clause (c) to his minor son or spouse in different situations to which reference will be made later. The expression used in clause (a) is that the transfer is deemed to have taken place through the family to the members of the family for being held by them jointly. The Supreme Court in the case of Bhagwan Dayal Vs. Mst. Reoti Devi, and in the case of State Bank of India Vs. Ghamandi Ram (Dead) through Gurbax Rai, , have discussed the nature of ownership of the property of a Hindu joint family and stated that all the property of a Hindu joint family is held in collective ownership by all the coparceners in a quasi-corporate capacity. joint family property is held in trust for the joint family members then living and thereafter to be born. One of the incidents of such ownership is that till partition, each member has got ownership extending over the entire property conjointly with the rest and as a result of such co-ownership, the possession and enjoyment of the property is common. This position was further elaborated in the cases in Mahavirprasad Badridas Vs. M.S. Yagnik, Second Wealth Tax Officer, C-II Ward, Bombay, and Chhotey Lal and Others Vs. Jhandey Lal and Another, , to the effect that the Hindu law does not recognise a joint Hindu family or a coparcener as a juristic personality capable of holding property, as an entity separate from the members of the family. The true position in such a case in that the members

collectively own the joint family property, each having an interest. Therefore, it must be held that when the Legislature used the expression of a deemed transfer to the members of the joint family for being held by them jointly through the family, this legal position was borne in mind. In view of this position in law, clause (a) can be understood to mean a transfer to the members of the family to be held by them conjointly and, therefore, the transfer is to the joint family. When the transfer is to the members of the family. For being held by them jointly, it will be only through the family. This view finds support from the expressions used in clauses (b) and (c) such as "attributable to the interest of the individual, spouse or any minor son in the property of the family".

8. Further, the Explanation is also to the same effect using the expression "interest of the individual, spouse or any minor son of the individual" in the property of the family. Therefore, the only way of understanding clause (a) is that there is a transfer to the joint family. The argument of Sri Prasad ignores the effect of the Explanation. If this explanation is dovetailed into the clauses (b) and (c), it means that where the income is derived from the converted property in so far as it is attributable to the interest of individual or spouse or minor son of the individual in the property concerned, the consequence would be that there is a national partition in the family on the last day of the accounting year, and on what basis, fixes the shares of the minor son or the spouse or the individual and calculates the income derived from the converted property.

9. The resultant position is as follows : the scheme of the different clauses appearing section 64(2) is that clause (a) is to overcome the difficulty that conversion of individual property into joint family property to that of the member's interest in the joint family property is taxable as the transferor's income and not as the income of the joint family. The second part of clause (c) deals with a case where subsequent to the conversion, there is partition amongst the members of the family. The clause indicates that the income derived from the converted property even after the partition by the spouse and minor sons of the individual will be included in his assessment. Thus, it is of no consequence whether there has been a partition or not, the reason being that until partition is effected, a notional share of his income is taken, and after partition, the income from the assets or share actually allotted to the wife or minor son will be taken into account. The only case where it may make a difference will be where, on a partition, the individual or the spouse or the minor child relinquishes his or her share in the property, in which case an aliquot part of the income of the individual and spouse would be included in the former assessment till partition but not thereafter, because, there is no share allotted to such individual and/or spouse. In such a case, if it is to be held that what is contemplated in clause (a) is a transfer to the members of the joint family to be held jointly, a joint or common tenancy will be created and, therefore, it will not make any difference so far as the operation of the clauses are concerned. Indeed, in an identical situation where an individual converted his separate property into joint family property by depositing a certain sum in his individual

account with the firm and later on impressing that amount with the character of Hindu undivided family property, by becoming a partner of the firm, the interest and share income from the firm were included in the assessee's individual assessment, the High Court of Allahabad in the case of Mulk Raj Vs. Commissioner of Income Tax, held that (p.389).

"This sub-section was inserted by the Taxation Laws (Amendment) Act, 1970, with effect from 1st April, 1971. This sub-section supersedes the general law that where a coparcener throws his separate property into the common stock of the family and thereby converts it into joint family property, or where such property is subsequently partitioned among the family members including the coparcener's wife and minor children, there is no direct or indirect transfer by the coparcener to the wife or the minor children, nor a transfer by him for the benefit of the wife or minor children. The effect of this provisions is that where a member has converted his separate property into joint family property on or after 1st January, 1970, the part of the income from the converted property proportionate to that member's interest in the joint family property is taxable as his income and not as income of the joint family. The words "in so far as it is attributable to the interest of the individual in the property of the family" occurring in clause (b) of this sub-section were omitted by the Taxation Laws (Amendment) Act, 1975, with effect from 1st of April. 1976. It would be seen that the provisions contained in section 64(2) are very clear and admit of no doubt and the Appellate Tribunal was right in confirming the inclusion of the interest and the share income in the income of the assessee."

10. In our view also, the provisions are absolutely clear and do not admit of any doubt and, therefore, we have no hesitation in answering the first question in the affirmative and against the assessee.

11. The second question is as to the deductibility of the interest paid to members of the Hindu undivided family by the firm, to ascertain the share income from the firm while applying section 64 with respect to the assessee. The Hindu undivided family consists of the assessee, his wife, one major son, two minor sons and one minor daughter. The Tribunal has held that by reason of section 64(2)(c) of the Act, the share income of the assessee, his wife and minor sons will have to be included in the income of the assessee. While computing the share income from the firm by excluding the interest paid to the wife and minor sons of the assessee, such interest income will have to be included in the assessee's income once again in view of section 64(2)(c) of the Act. This view is indisputable and has got to be accepted. The only question that calls for consideration is payment of interest to Jawahar, the major son of the assessee. The deduction in his behalf has been allowed at 10% as against a claim of 18%. The Tribunal has found that there was no agreement between the firm and Jawahar and the claim was based only on a book entry. While examining the accounts of the firm and the Hindu undivided family, the Appellate Assistant Commissioner found that 10% interest was paid to the firm on monies due to it and that the book entry showing that

18% interest was paid to Jawahar was only make-believe and not trustworthy. He also did not adopt the market rate in the special circumstances of the case of the relationship of the parties and the rate of interest collected by the firm being only 10%. These conclusions are based on appreciation of evidence and the facts of the case. Hence, we cannot take a view different from that of the Tribunal and that of the Appellate Assistant Commissioner. We have to answer this question also in the affirmative and against the assessee.

12. The third question is in regard to the claim for deduction of expenses for the maintenance and marriage of the unmarried daughter. It was conceded, very rightly for the assessee, in the course of arguments, that even assuming for the purpose of argument, that section 64(1) of the Act was not attracted to the facts of the case, in respect of the converted property, the question of deducting expenses for the maintenance and marriage of the unmarried daughter does not arise at all. It is obvious that even if the same had been assessed in the hands of the Hindu undivided family, such a deduction could not have been granted. Therefore, Sri Prasad did not press the question to be answered. We answer the same against the assessee.

13. The fourth question relates to the includible of the interest income accruing to the smaller Hindu undivided family of the assessee and his wife after partition from his sons. As could be seen from the statement of the case, question No. 4 referred to us is in relation to accessibility of the interest income accruing to the smaller Hindu undivided family of the assessee and his wife in the hands of the assessee and not share income, as the share had not been the subject-matter of partition of all. Hence, as submitted by counsel for both the parties, the question is confined to interest income only and we have to answer the same. Sri K. Srinivasan, learned counsel for the Revenue, raised a preliminary point that the question does not arise as the same has not been referred to in the order of the Tribunal while disposing of the appeal. However, it may be seen that at para 16 of the statement of the case, the Tribunal states that his contention was raised before the Tribunal but since this issue had not been dealt with separately, it would be taken as having been decided against the assessee.

14. Sri Prasad, learned counsel for the assessee, contends that the taxable entity in so far as the smaller Hindu undivided family is concerned is neither a spouse nor a minor son but the Hindu undivided family only and, therefore, section 64(2) (c) of the Act was not attracted to this situation at all. Sri Srinivasan, countering this argument, submitted that that question has been concluded by a decision of this court in *K.S. Muthukali Chettiar Vs. Commissioner of Wealth Tax, Karnataka, Bangalore*, referred to earlier. Therefore, the first point to be decided in answering this question is whether the said decision has dealt with and answered the point raised herein.

15. In *K.S. Muthukali Chettiar Vs. Commissioner of Wealth Tax, Karnataka, Bangalore*, this court was concerned with the question whether a notional share attributable to an individual in the converted property could be clubbed and

assessed in the hands of the smaller Hindu undivided family consisting of husband and wife. This court observed that the individual with his wife may constitute a smaller Hindu undivided family but as the wife was not entitled to a share in the partition, in computing the interest of the individual, as provided in Explanation (d) to section 4(1A) of the Wealth-tax Act which is similar to Explanation (2) to section 64(2)(c) of the Act, in the converted property, are assessable in his status as individual. In that case, the question was only of computation and not of the applicability of the fictional transfer created in section 64(2)(c) and, therefore, that case is of no assistance to the Revenue. The latter part of section 64(2)(c) deals with income from converted property which is partitioned and is received by a minor son or spouse. For purposes of the Income Tax law, the Hindu undivided family (and not coparcenary) is an assessable unit or entity. The tax status of a Hindu undivided family depends upon the antecedent history of jointness of the property and on the composition of the family. In this case, the smaller Hindu undivided family consists of the assessee and his wife. There is no male member apart from the assessee in the family, the other sons having already separated. Not being a coparcener, the wife of the assessee has neither a right in the property nor a right to demand its partition nor indeed a right to restrain the assessee from dealing with it in any manner he likes. She had a right of maintenance prior to the partition from the bigger Hindu undivided family and that right alone continues and this prior right does not get enlarged after partition. Thus, until a son is born to him again, the assessee has a right to deal with the property thereof as his own.

16. The assessee had thrown his separate property into the common stock on January 5, 1971, which was held by the bigger Hindu undivided family, but a partial partition was effected on January 10, 1973, allotting a portion of the converted property while retaining the bigger Hindu undivided family status in the remaining property. Thus, there is an antecedent history of jointness impressed on the properties allotted at the partition to the smaller Hindu undivided family. In regard to the major son, Jawahar, income from his share is allotted at the partition and a separate assessment has been done in his hands and not clubbed with the assessee. Therefore, similarly, the smaller Hindu undivided family will have to be treated as a separate assessable unit. Hence, we have to hold that the property of the joint family does not cease to belong to the family merely because the family is represented by a single coparcener who possesses rights which an owner may possess. this income from property allotted on partition to the smaller Hindu undivided family will, therefore have to be assessed in the status of a Hindu undivided family and cannot be clubbed with that of the assessee u/s 64(2)(c) of the Act. It, therefore, follows that our answer to this question is in the negative and in favour of the assessee. For this conclusion and reasoning, we have derived support from the decision in *Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay*,

17. On the fifth question, the amount referred to therein represents the interest paid on the borrowings from two other firms and is not a borrowing from the

Hindu undivided family, and hence the question is concluded by the decision of this court in Baldev Ramnarayan Vs. Commissioner of Income Tax, (ITRC No. 62 of 1980 dt. 10-11-1983) in respect of the brother of the assessee and hence learned counsel for the assessee did not press the question to be answered. We, therefore, answer the fifth question against the assessee.

18. The last question relates to the accessibility of the income arising from the accretion to the converted property in the hands of the assessee for the purpose of section 64 of the Act. The contention raised on behalf of the assessee is that what could be included u/s 64 of the Act with that of the assessee is income referable to converted property and not income arising out of accretions to, or income from such property. Learned counsel for the assessee referred to the decision in Popatlal Bhikamchand Vs. Commissioner of Income Tax, Bombay City, . We have gone through the said decision and find that the same is not applicable to the facts of this case at all. In the case of S. Srinivasan Vs. Commissioner of Income Tax, Madras, , the Supreme Court found a difference between a case where interest is earned on a deposit or a loan and a case where interest is earned on amounts of which the minors and spouse permitted the use by the firm of their accumulated profits and held that the latter were in the category of accumulated profits arising from the firm itself and that they were entitled to partnership interest (in this case through the family) and hence assessable in the hands of the individual to whose wife and children such income accrued while applying section 16 of the Indian Income Tax Act, 1922, which provision is analogous to section 64 of the Act. Applying the said ratio to the facts of this case, we hold that the Tribunal was right in rejecting this claim. We, therefore, answer question No. 6 in the affirmative and against the assessee.