
(1980) 10 RAJ CK 0009
In the Rajasthan High Court
Case No : Income Tax Reference No. 5 of 1972

Govind Sharan

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 08-10-1980

Acts Referred:

Evidence Act, 1872 — Section 17, 18, 19, 20, 21
Income Tax Act, 1961 — Section 256(1)

Citation : (1982) 133 ITR 225

Hon'ble Judges : N.M. Kasliwal, J; M.L. Shrimal, J

Bench : Division Bench

Advocate : H.P. Gupta, for the Appellant; R.M. Lodha, for the Respondent

Judgement

Shrimal, J.—The assessee was and is at all material times a HUF of which Govind Sharan is the eldest male member and the "karta" of the family business. This joint Hindu family consists of Govind Sharan, his widowed grand mother, Smt. Laxmi Devi, his sons, Laxman Prasad, Badri Prasad, Ramesh Chandra, Suresh and Mahesh. The assessment year in question is 1962-63 and the corresponding previous year is the year ending on November 7, 1961.

2. Laxman Prasad started a business on November 30, 1960, in the name of M/s. Laxman Prasad Ramesh Chandra. The business was that of commission agent in grains. The initial capital of Rs. 41,000 is said to have been transferred to Laxman Prasad by his grandmother, Smt. Laxmi Devi. In the books of accounts, the amount was credited in the name of Laxman Prasad Ramesh Chandra. Accounts were opened in the same name with three banks, namely, State Bank of Bikaner and Jaipur, Punjab National Bank and Central Bank of India. The "karta" of the joint Hindu family Govind Sharan was also entitled to operate the accounts and overdraft facilities were obtained from the banks on the guarantee of the joint family business.

3. The assessee claimed before the ITO that the business in the name and style of Laxman Prasad Ramesh Chandra belonged to Laxman Prasad in his individual

capacity and the capital was contributed by Smt. Laxmi Devi by gift to Laxman Prasad. The ITO did not accept the contention of the assessee and treated the business in the name of Laxman Prasad Ramesh Chandra as belonging to the joint Hindu family whose "karta" was Govind Sharan. He further held that the initial capital of Rs. 41,000 introduced in the account of Laxman Prasad Ramesh Chandra was not satisfactorily explained. In the opinion of the ITO the amount of Rs. 41,000 was income from undisclosed sources of the firm. He assessed Govind Sharan at Rs. 51,962 and created a tax demand of Rs. 18,761.

4. On appeal to the AAC, the latter disagreed with the view of the ITO and granted a relief of Rs. 45,005.

5. Being aggrieved by the order of the AAC, the revenue went up in appeal to the Income Tax Appellate Tribunal, Delhi Bench "B". The Appellate Tribunal held that the AAC was not justified in taking the view that the business did not belong to the joint Hindu family. The profits from the business of Laxman Prasad Ramesh Chandra should, therefore, be included in the assessed income of the family whose "karta" was Govind Sharan. The Tribunal further held that out of the amount of Rs. 41,000 credited in the account of Laxman Prasad Ramesh Chandra, only an amount of Rs. 11,548 remained unexplained and that amount was liable to be treated as the assessee-family's income from undisclosed sources. Thus, the appeal was partly allowed, vide order dated May 30, 1970.

6. The assessee filed an application u/s 256(1) of the I.T. Act, 1961, for referring certain questions of law arising out of the impugned order dated May 30, 1970. On the application of the assessee the Appellate Tribunal submitted a statement of case and referred the following questions of law to this court for its opinion :

"1. Whether, on the facts and in the circumstances of the case, the profits from business in the name and style of Laxman Prasad Ramesh Chandra could be included in the income of the assessee-Hindu undivided family ?

2. Whether, on the facts and in the circumstances of the case, the amount of Rs. 11,548 introduced in the account of Laxman Prasad Ramesh Chandra in the books of the assessee-family and which was not satisfactorily explained could be treated as the income of the assessee-family from undisclosed sources ?"

7. Mr. H. P. Gupta, learned counsel for the assessee, vehemently urged that the Tribunal committed an error in choosing the middle course in holding that an amount of Rs. 11,540 remained unexplained. The amount of Rs. 41,000 given as gift by Smt. Laxmi Devi could not have been bifurcated. The Tribunal has misread the evidence and has also failed to consider the statement of Smt. Laxmi Devi. She is an old woman with considerable resources and the Tribunal ought to have upheld the finding of the AAC to the effect that the amount of Rs. 41,000 stood well explained.

8. To find out whether a property-is or is not a joint Hindu family property in the hands of a particular person, the mode of transaction by which the property has

come into the hands of the assessee must be looked into. In the case on hand, the grandmother transferred Rs. 41,000 by way of gift and Laxman Prasad received it not because he had a legal right to that property" but because his grandmother chose to bestow a favour upon him, which she could have bestowed on any other person as well. It depended on the will of the donor. She was unfettered in the exercise of her discretion by any rule or dictate of law. Property given by way of affectionate gift by the grandmother cannot be termed to be joint family property.

9. Learned counsel for the assessee further urged that the name of Ramesh Chandra was innocently joined in the business newly started by Laxman Prasad, as he was his younger brother and his grandmother had love and affection for him. There is no presumption in Hindu law that any business carried on by a member or members of a joint family is a joint family business and it is for those who alleged that it is so to prove it. In support of the above contention he placed reliance on *Padampat Singhania Vs. Commr. of Income Tax, U.P. and Ajmer-Merwara, Lucknow*, *D.D. Kapoor and Others Vs. Commissioner of Income Tax, PREMSUKHDAS JAGNANI Vs. COMMISSIONER OF Income Tax, BIHAR AND ORISSA.*, and *V.D. Dhanwatey Vs. The Commissioner of Income Tax, M.P. Nagpur*, . The nucleus of the joint Hindu family property is neither admitted nor proved. On the contrary, there is evidence on record that Smt. Laxmi Devi transferred her personal property to Laxman Prasad and as such it could not be held that the profits arising out of the newly started business of Laxman Prasad Ramesh Chandra formed part of the joint Hindu family income, whose "karta" was Govind Sharan.

10. Obtaining of overdraft facilities by Laxman Prasad Ramesh Chandra does not come within the precinct of aid and assistance of the joint Hindu family and as such it could not be considered as a determining factor for holding the profits earned by Laxman Prasad Ramesh Chandra as joint Hindu family income. Giving of "a guarantee by the joint family also cannot be termed to be an earning on account of an act detrimental to the joint family property. The statements of Smt. Laxmi Devi and Laxman Prasad clearly reveal that there was no connection between the family funds and the business of Metal Box Company of India Ltd. Vs. Their Workmen, *Shri Raj Kumar Singh Hukam Chandji Vs. Commissioner of Income Tax, Madhya Pradesh*, and *Satinder Kumar (H.U.F.) Vs. Commissioner of Income Tax*, learned counsel for the assessee urged that there was no real or sufficient connection between the joint family funds and earnings of Laxman Prasad Ramesh Chandra.

11. Learned counsel for the revenue has controverted the contentions raised by Mr. Gupta.

12. There is no controversy between the parties on the point that the initial burden to prove that a particular business is joint family business lay on the revenue, but the presumption of jointness is a rebuttable presumption. A perusal of annexes. G, H and I reveals that Laxman Prasad made unequivocal admissions

to the bank authorities, vide his letter dated August 6, 1963. In Thiru John Vs. The Returning Officer and Others, their Lordships of the Supreme Court, while dealing with the value of an admission made by a party, have observed as under (p. 1726):

"It is well settled that a party's admission as denned in Sections 17 to 20 fulfilling the requirements of Section 21, Evidence Act, is substantive evidence proprio vigore. An admission, if clearly and unequivocally made, is the best evidence against the party making it and, though not conclusive, shifts the onus on to the maker on the principle that "what a party himself admits to be true may reasonably be presumed to be so and until the presumption was rebutted, the fact admitted must be taken to be established"."

13. Besides the above noted admission, there is evidence on record to hold that the bank accounts of the newly started business were also being operated by Govind Sharan, who was the "karta" of the joint Hindu family. The appellate authority also held that the guarantee to the bank was given by the joint family and interest payable to the bank on account of the overdraft runs to the extent of Rs. 2,400. During the continuance of the overdraft account, the joint family did incur the liability to pay the same. It is also an admitted position between the parties that Laxman Prasad. had not separated from the assessee-family.

14. Two other factors carried weight with the Tribunal, apart from other factors, one that the business name consisted of two coparceners of the family, i.e., Laxman Prasad Ramesh Chandra, and was not in the name of Laxman Prasad alone. The other was that the capital account in the business also stood in the name of Laxman Prasad Ramesh Chandra. If the initial contribution was made by Laxman Prasad, in his individual capacity, the most logical thing to be done was to open an account in the name of Laxman Prasad, without any reference to any other coparcener in the family. Thus, the finding of the Tribunal based upon material on record and inferences drawn from such material, in the facts and circumstances of this case, cannot be held to be perverse or based on no evidence.

15. When a conclusion has been reached by the Tribunal in the case on hand on an appreciation of a number of facts established by the evidence, whether that is sound or not must be determined not by considering the weight to be attached to each single fact in isolation, but by assessing the cumulative effect of all the facts in their setting in the picture as a whole. We are of the opinion that the inference drawn by the Appellate Tribunal from the proved facts of the case is a correct one. We are, therefore, of the view that the Appellate. Tribunal has rightly held that the profits from the business in the name and style of Laxman Prasad Ramesh Chandra could be included in the income of the assessee-HUF. We answer question No. 1 in the affirmative, in favour of the revenue and against the assessee.

16. As regards question No. 2, it would suffice to say that the Income Tax

Appellate Tribunal has partly believed the statement of Smt. Laxmi Devi. She failed to explain as to how she came to possess Rs. 11,548. On being questioned by the ITO as to how much amount of money she possessed on the date of her statement, she refused to answer and stated that the answer to this question will be made by her at the time of her death. She did explain the amount of Rs. 19,452, which was received by her by sale of ornaments, but as regards the rest of the amount of Rs. 21,548, the Appellate Tribunal after giving all possible concessions to the assessee, rather taking a liberal view, has come to the conclusion that an amount of Rs. 10,000 could be saved by Smt. Laxmi Devi, who might have transferred it to Laxman Prasad. The findings regarding question No. 2 are purely findings of fact. A finding on a question of fact is open to attack u/s 256(1) of the I.T. Act as erroneous in law when there is no evidence to support it or if it is perverse. The finding of fact arrived at by the Tribunal cannot be challenged simply because it is an inference from other basic facts. We, therefore, answer question No. 2 in the affirmative, in favour of revenue and against the assessee.

17. The reference is disposed of as indicated above. In the facts and circumstances of the case, the parties are ordered to bear their own costs.