
(1968) 12 AHC CK 0010

In the Allahabad High Court

Case No : Agricultural Income Tax Reference No. 2 of 1965

Hari Raj Swarup and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-12-1968

Acts Referred:

Citation : (1970) 77 ITR 853 : (1969) RD 182

Hon'ble Judges : R.S. Pathak, J; R.L. Gulati, J

Bench : Division Bench

Advocate : N.C. Rajvanshi, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.S. Pathak, J.—This is a reference u/s 24(4) of the U. P. Agricultural Income Tax Act, and the question referred for the opinion of this court is:

" Whether the partition decree could be ignored on the ground that the coparceners and their wives still lived and ate jointly and did their business of cultivation jointly ? "

2. Three brothers, Hari Raj Swarup, Brahma Raj Swarup and Gopal Raj Swarup, along with their respective wives and sons constituted a joint Hindu family. In assessment proceedings for the year 1359 Fasli, under the U. P. Agricultural Income Tax Act, it was urged by the assesseees that the joint Hindu family had suffered partition resulting in the complete disruption of the family as a result of which all the members had become separate from each other. It was claimed that the agricultural income should be assessed separately in the hands of each divided member according to his share. The assessing officer accepted the partition as one between the three branches of the family, each branch consisting of a brother, his wife and sons and did not accept the further plea that there was a separation also between the members inter se of each branch. The assessing officer found that the accounts were maintained jointly and the assets and liabilities were also shown jointly. He referred to the fact that the balance-sheet

disclosed the share of each member separately but relied on the circumstance that it was audited jointly. He also referred to the statement of Jyoti Prasad, mukhtar-e-am of the assessee, that the agricultural land was cultivated jointly while the income was divided separately. The mukhtar-e-am also stated that the various business transactions relating to the family were carried on jointly by its members. In cross-examination, he stated that the sons and wives of the brothers were living and messing together. The assessing officer found that the members were living and messing together and that the partition of the family was a fiction designed merely to evade agricultural Income Tax. Accordingly, he assessed the agricultural income in the hands of the three separated branches of the family according to the share of each branch.

3. On appeal, the contention was reiterated that the members of each branch had also separated from each other and reliance was placed upon partition decrees passed in three partition suits tiled between the members of each branch. The Commissioner, Meerut Division, declined to rely upon the partition decrees on the same considerations which prevailed with the assessing officer. The assessee then applied in revision but were also unsuccessful there. This reference has now been made to this court.

4. While holding that the members of the three branches of the family had not separated, the Revision Board relied upon the following considerations. The assessee lived jointly with their wives and sons and the management and cultivation was conducted jointly. The accounts were maintained jointly and so were the assets and liabilities. The Board observed that so long as separate living was not resorted to and the members continued to live together for reasons of affection, the assessing authorities were justified in holding them to be joint for the purpose of assessment. The Board commented that, if the members had separated in fact, there would have been a change in the management of the cultivation. The Board referred to the case of one Shri Purshottam Das of Gorakhpur where on similar facts the Commissioner, Meerut Division, had come to the same conclusion.

5. We are of the view that the Board has erred. There was evidence before the Board that suits for partition had been filed by the members of each branch praying for a partition decree between them, and that partition decrees had been passed by the civil court in each suit resulting in the disruption of each branch. It is settled law that a joint Hindu family may be partitioned by the institution of a suit for partition, and when the civil court decreed each suit the partition decrees were strong evidence of such partition. In order to displace such evidence it was necessary to show by reliable and pertinent evidence that the partition proceedings were a mere sham and there was no intention to effect partition. The circumstances upon which the Board has relied do not, in our opinion, constitute such evidence. There is nothing to prevent the divided members of a family continuing to live and mess jointly and to carry on their business jointly. Partition is effected by a mere division of the shares in the joint family property

and it is not necessary that there should be an actual division of the property by metes and bounds. In the instant case, apart from the partition decrees, there was material to show that although the management and cultivation was joint and the assets and liabilities as well as the accounts were maintained jointly, the agricultural income was shown according to the shares of different members. That was a circumstance which has not been correctly appreciated by the Board. As regards the joint living and messing by the members, it is difficult to hold that in order to effect partition it is necessary for the members to live and mess separately. Living and messing separately, while no doubt constituting an important circumstance evidencing partition, nevertheless, is not conclusive. Considerations of personal convenience may persuade the divided members of a family to live and mess together. So, also, considerations of economy and convenience may persuade the divided members to carry on their management and cultivation jointly and, therefore, to maintain joint accounts, and show their assets and liabilities jointly. The several considerations taken into regard by the Board do not, in our opinion, considered either individually or cumulatively lead necessarily to the conclusion that the partition proceedings in the civil court were a sham.

6. As regards the case of Shri Purshottam Das to which the Board has referred, we may point out that a reference (A. I. T. Misc. Case No. 387 of 1963), was made in that case to this court and the reference was answered in favour of the assessee.

7. In passing, the Board has relied upon Section 4A of the U. P. Agricultural Income Tax Act and referred to the absence of evidence showing that agricultural land had been transferred to the wife of each brother for adequate consideration or in connection with an agreement to live apart. In our opinion, the Board completely misconceived the case before it. This is not a case where an assessee asserts that he had settled the property on his wife and was, therefore, not liable to tax on its income. The case before the Board was one of partition of joint family property, and it cannot be disputed that no transfer is effected when a partition takes place and a share of the property is received by each member as his share.

8. In our judgment, the considerations upon which the Board has found against the assessee do not support the conclusion that the partition decrees should be ignored, and we, accordingly, answer the question in the negative.

9. The assessee is entitled to their costs which we assess at Rs. 100. Counsel's fee is assessed in the same figure.