(1990) 06 KL CK 0026

In the High Court Of Kerala

Case No : Income-tax Reference No. 37 of 1988

J. Dinesh Kumar APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 06-06-1990

Acts Referred:

Citation : (1990) 186 ITR 215

Hon'ble Judges : K.S. Paripoornan, J;D.J. Jagannadha Raju, J

Bench : Division Bench

Advocate : P.G.K. Warrier, for the Appellant; P.K.R. Menon, Senior Advocate and N.R.K. Nair, for the Respondent

Judgement

K.S. Paripoornan, J.—At the instance of the assessee, the Income Tax Appellate Tribunal has referred the following question of law for the decision of this court :

"Whether, on the facts and in the circumstances of the case, an assessment could be validly made on the assessee in the status of a Hindu undivided family ?"

2. The respondent is the Revenue. We are concerned with the assessment year 1980-81. The assessee got married on February 3, 1979. For the previous year which ended on March 31, 1980, he claimed the status of a Hindu undivided family consisting of himself and his wife. The plea was rejected by the Income Tax Officer whose order was affirmed by the Appellate Assistant Commissioner. The Appellate Tribunal concurred with the decision rendered by the lower authorities in the light of the decision reported in Sreepadam Vs. Commissioner of Wealth Tax and Others, . The Appellate Tribunal held that, after the passing of the Kerala Joint Hindu Family System (Abolition) Act, 1975, there could be no joint Hindu family and negatived the plea of the assessee. It is only thereafter at the instance of the assessee that the question of law formulated hereinabove has been referred for the decision of this court.

3. We heard counsel. In the decision reported in Wealth Tax Officer, C-Ward Vs. K. Madhavan Nambiar, , a Bench of this court held that, by the passing of the

Kerala Joint Hindu Family System (Abolition) Act, 1975, there is a total extinction of undivided Hindu family in the State with effect from December 1, 1976. It was held that there was a statutory extinction of Hindu undivided family. The above Bench decision was followed in subsequent decisions in Shantilal C. Shah Vs. Commissioner of Income Tax, and P.G. Narayanaswamy Vs. Commissioner of Income Tax, . In the light of the aforesaid Bench decisions of this court, the Appellate Tribunal was justified in holding that the assessment could not be validly made on the assessee in the status of a Hindu undivided family. We answer the question of law referred to us in the negative, against the assessee and in favour of the Revenue.

4. A copy of this judgment under the seal of this court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.