

(1966) 05 AHC CK 0014

In the Allahabad High Court

Case No : A.I.T.R. No. 520 of 1960 connected with Misc. Ref. No's. 521 to 524 of 1960

Jagdish Prasad and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 20-05-1966

Acts Referred:

Income Tax Act, 1922 — Section 25A

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 10A

Citation : AIR 1967 All 526 : (1967) 64 ITR 539

Hon'ble Judges : V. Bhargava, C.J.; S.C. Manchanda, J

Bench : Division Bench

Advocate : Ashok Gupta and B.H. Gupta, for the Appellant; Swami Dayal, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Manchanda, J.—This is a consolidated case stated u/s 24(4) of the U.P. Agricultural Income Tax Act 1948 (hereinafter referred to as the Act).

2. The material facts are these. The relevant years of assessment are 1368F., 1359F., 1360F., 1361F., and 1362F. Sahu Jagdish Prasad was the Karta of his undivided Hindu family up to the 31st of May, 1951. The joint family owned considerable Zamindari property in the districts of Pilibhit, Barreilly and Bijnore. The family consisted of his wife and his three sons. The family had been paying agricultural income tax since the coming into force of the Act in 1948. It paid tax for 1948-49, 1949-50 and 1950-51 corresponding to Fasli years 1356-56 and 1357 in the status of a Hindu undivided family. A notice u/s 15(3) of the Act was issued to Sahu Jagdish Prasad as Karta for the relevant years of assessment. Sahu Jagdish Prasad submitted returns of income only in respect of 1/4th of the agricultural assets heretofore held by the family. In the assessment for the first of the assessment years 1358 F., corresponding to 1951-52, along with the return, an application was filed stating that a complete oral partition had taken

place on 31st of May, 1951, which was subsequently affirmed by a decree of the court of the Civil Judge, Pilibhit dated the 13th of July, 1951, in suit No. 15 of 1961. This suit was filed on 2-6-1951 by one of the sons, Madhava Prasad for a declaration that the properties mentioned in the schedules to the plaint be declared that they are owned by the plaintiff and the defendants in equal shares. A free translation of the decree granted by the said Civil court on the 13th of July, 1951. would be as follows:--

"It is decreed and ordered that a compromise decree be prepared in terms of paper 1/8 a declaration is given that each one is granted a 1/4th share. Each one is declared to be in separate possession of his share."

Though the prayer was for a declaration that the plaintiff's share be declared to be 1/4th, the decree was for a declaration of full disruption of the family, each having a 1/4th share in terms of the compromise arrived at. The Assessing Officer rejected the claim of partition on the grounds, (1) that there was no partition by metes and bounds, (2) that the same manager had continued to work as heretofore, (3) that there was no evidence to prove that the family members were living or messing separately and (4) that the accounts were kept jointly and income was only divided after it had been earned. The assessments for the other relevant assessment years was also made in the status of a Hindu undivided family.

3. The assessee went up in appeal and the appellate authority relying on a decision of the Income Tax Appellate Tribunal accepted the plea of partition for all the relevant years of assessment.

4. The State thereupon filed revisions before the Agricultural Income Tax Board The Board reversed the orders of the appellate authority and held that the agricultural property still continued to be joint, that Sahu Jagdish Prasad was managing that property as Karta and therefore set aside the order of the Commissioner and restored that of the assessing authority In doing so the Board observed:--

"There was however, little evidence to show that this separation had been given effect to on the spot The firm continued to be run jointly as before in 1957 F when there was no talk of partition There was other evidence to show that Sahu Jagdish Prasad and his three sons lived jointly "

5. Thereupon, the petitioner asked for a reference u/s 24(2) and this having been rejected, upon this Court being moved u/s 24(4) a direction was issued requiring the Board to state a case and refer a question of law Accordingly, the following question has been referred:--

"Whether Sahu Jagdish Prasad forms a joint Hindu family with his wife Smt. Lakshmi Devi and his 3 sons Sarvasri Madhav Prasad. Girish Prasad and Govind Prasad?"

6. It is manifest that the approach of the Board to the question which fell for

determination before them was erroneous. Under the Agricultural Income Tax Act a division by metes and bounds, as is required by the Income Tax Act, was not at all necessary to effect a disruption or partition of joint family assets. There is no provision similar to Section 25-A of Income Tax Act in the Agricultural Income Tax Act. On the other hand the provisions of Section 10A which deal with the assessment of a Hindu undivided family clearly lays down that the different branches of a Hindu undivided family should be assessed separately, even if the holding is joint with the exception that the son or a son's son of a co-parcener, shall be assessed as one unit. In other words the rigours of Section 26A of the Income Tax Act are thereby sought to be avoided so as to prevent joint Hindu families being split up merely to reduce the incidence of taxation. In this state of the law there can be no question of requiring a partition by metes and bounds for an effective partition under the Agricultural Income Tax Act. It is well settled that under Hindu Law a severance of status is effected the moment a co-parcener expresses a desire to separate and the shares are specified and division by metes and bounds is not at all necessary. The law applicable when considering the question of partition under the Agricultural Income Tax Act would be the Hindu Law and not the technical and stringent provisions of the Income Tax Act. That being the position the Board clearly erred in brushing aside the decree of partition of the Civil Court, albeit, a compromise decree, particularly as it was followed up by the necessary mutation entries in the revenue papers. The Civil Court decree and the mutation entries which followed thereupon clearly constituted prima facie evidence of partition. The initial burden which was on the assessee would, therefore, appear, to have been discharged. Thereupon, the burden shifted to the department to establish by evidence, circumstantial or otherwise that the Civil Court decree and the mutation entries were colourable, fraudulent, collusive or sham and one that was never meant to be acted upon. Suspicion, however, strong cannot ever take the place of proof nor will it suffice for the department in order to discharge the burden which has shifted upon it to merely put forward circumstances which are equally consistent with a partition or continuance of jointness

7. The circumstances which have been relied upon by the Board, namely, common management as heretofore, joint living and maintenance of common accounts, are not such circumstances as can possibly be said to be consistent only with the absence of partition. They are equally consistent with partition and therefore, the burden which shifted to the department cannot be said to have been discharged

8. The above view taken by us finds support from a decision, though given in a somewhat different context of the Supreme Court in Civil Appeals Nos. 527 and 528 of 1958. decided on 23rd of September. 1960. (which is placed on the record of A.I.T Misc. case 387 of 1963 Purshottam Das v. State of U P D/-12-2-1964 (SC). That was also a case under the U.P Agricultural Income Tax Act where the High Court had declined to call for a statement of the case u/s 24(4) on the ground that the finding of the Board that there was no partition was a finding of

fact The facts of that case were somewhat similar to the present case and though the Supreme Court was only concerned with the point as to whether a question of law did arise or not nevertheless, the observations made therein are entitled to greatest weight. Hidayatullah, J who was speaking for the Supreme Court observed:--

"Whether a joint family has disrupted or not is ordinarily a question of fact; hut whether there is no material on the record of the case from which a division in status can be inferred, in the face of the conduct of the parties, that decree of the civil court and mutations of separate shares in the Khewats is a question of law if it can be established that the Board reached its conclusion on suspicion and conjecture.

Prima facie, if a family disrupts, one would expect that separate management of the shares would follow; but there is in law, nothing to prevent tenants-in-common from managing jointly their separate shares, and this would not, unless ii amounted to a reunion, militate against a partition actually made. The question in the case was whether this fact alone, which seems to have weighed with the Board of Revision was "sufficient material" for discarding a partition made through the agency of the Civil Court and the revenue authorities. The motive for the partition is not of much relevance, if it be held that the result is, in effect to divide the family and not to continue in jointness. Indeed, one reason why the family might have found it necessary to disrupt might be the heavy incidence of the tax on it and in such an event, the fact that the decree was a consent decree might well lose its point. In our opinion, a question of law did arise in the case

9. Our understanding of these observations is that ordinarily the burden of proving partition would be on the assessee but if he produces a decree of a civil court, albeit, a mere consent decree followed by mutation in the Khewats the initial burden would stand discharged and thereupon the burden would shift to the department to establish something more than the existence of a motive to reduce the incidence of tax or colourless circumstances such as continuance of joint management and messing.

10. Such being the interpretation of the Supreme Court decision and that being the law. it must be held that none of the circumstances relied upon by the Board in any way militates against or is inconsistent with the factum of partition evidenced by the Civil Court decree and mutation entries

11. Before, however recording our formal answer it is necessary to re-frame the question referred so as to bring out the real point in dispute between the parties We would reframe the question thus:-

"Whether on the material on record the Board could say that there was evidence to show that there was no partition of the family consisting of Sahu Jagdish Prasad and his three sons in point of fact? "

12. The question is answered in the negative and against the department for all

the assessment years except 1358 F during which the partition took place when that year was almost over and all rents which had fallen due had been collected and the crops garnered

13. The reference is answered accordingly The State will pay the costs of the assessee. Counsel fee is assessed at Rs. 100