
(1989) 08 AHC CK 0020

In the Allahabad High Court

Case No : Income-tax Reference No's. 4 and 5 of 1987

J.P. Verma

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 22-08-1989

Acts Referred:

Hindu Succession Act, 1956 — Section 19
Income Tax Act, 1961 — Section 22

Citation : (1990) 81 CTR 296 : (1991) 187 ITR 465 : (1990) 51 TAXMAN 232

Hon'ble Judges : U.C. Srivastava, J;S.N. Sahay, J

Bench : Division Bench

Advocate : K.B. Jindal, for the Appellant;

Judgement

S.N. Sahay, J.—This judgment governs both References Nos. 4 and 5 of 1987.

2. The following two questions have been referred u/s 256 of the Income Tax Act, 1961 :

"(1) Whether, on the facts and circumstances of the case, out of the amount invested in the construction of the house, any amount can be said to have been invested out of the Hindu undivided family funds ?

(2) Whether, on the basis of the above investments, any portion of the income from the house can be said to be the income of the Hindu undivided family liable to be excluded from the income of the applicant ?"

3. The assessee, Sri J. P. Varma, is an Assistant Engineer in the Under-Ground Water Division, Lucknow. He filed a return for the assessment year 1977-78 declaring a total income of Rs. 9,370. In part III of the return, he declared that his wife had constructed a house bearing No. 22, Chandralok, for about Rs. 1,10,000 out of loans, advances and savings received from her father and others. The assessee's wife, Smt. Kamlesh Kumari, also filed her individual return. Regarding the investment in the construction of the house property, the assessee relied upon the contention raised by his wife in her case that it included

a loan of Rs. 82,120 taken from the assessee. According to the assessee, the sources for the alleged loan of Rs. 82,120 were as follows :

Rs.

(i)

Encashment of National Savings Certificates by the assessee

31,420

(ii)

National. Savings Certificates encashed by the assessee's wife.

22,120

(iii)

National Savings Certificates encashed by Km. Suman Khare

15,480

(iv)

Non-refundable advance from G. P. F.

10,000

(v)

Sale of scooter.

3,100

82,120

4. The assessee claimed that the total of items Nos. 1, 2 and 3 above amounting to Rs. 69,020 represented the funds of the Hindu undivided family. His case is that he obtained a succession certificate for Rs. 9,137 in respect of the Post Office Savings Bank Account and F.D.R. for Rs. 14,000 standing in his father's name who died in April, 1961, and received a sum of Rs. 16,000 contributed in equal shares by his four brothers under a family settlement. This amount of Rs. 39,137 was invested from time to time in purchasing the National Savings Certificates mentioned above.

5. The Income Tax Officer held that out of the investments in the National Savings Certificates and a double-storeyed house property, a sum of Rs. 8,000 only could be said to represent ancestral funds which too had all along been treated as individual funds of the assessee and were not separately identifiable. The alleged loan given by the assessee was without normal consideration of interest. Therefore, the assessee was the real owner of the house property, No. 22, Chandralok. The Income Tax Officer added Rs. 5,710 as income from the property in question as computed in the assessment of the assessee's wife and

the assessment was completed by the Income Tax Officer accordingly.

6. The Appellate Assistant Commissioner held that the house property belonged to the assessee's wife and the income therefrom had to be assessed in her own hands. Therefore, the addition of Rs. 5,710 was deleted by the Appellate Assistant Commissioner. However, the Department preferred an appeal to the Income Tax Appellate Tribunal. The assessee filed cross-objections. Both the appeal and the cross-objections were decided by the Tribunal by order dated July 21, 1983.

7. The Tribunal held that Smt. Kamlesh Kumari, wife of the assessee, did not have any independent source of income. The sum of Rs. 82,120 actually belonged to the assessee and it was invested by him in the name of his wife. It was not a loan advanced by the assessee to his wife. With regard to the contention of the assessee regarding investments made out of the Hindu undivided family funds, the Tribunal recorded the following finding :

"The assessee's contention that the amount of Rs. 69,020 (total of items Nos. 1 to 3 of the foregoing Table) represented the funds of his Hindu undivided family as the assessee got Rs. 23,137 under the succession certificates and Rs. 16,000 from his four cousins between 1962 and 1968 in lieu of his share in the family property as a result of family settlement has not been fully established, as the original family settlement has not been placed on record. The assessee treated the amount as individual property and obtained National Savings Certificates in various names from time to time. Therefore, the assessee or his wife cannot say that the funds in question were Hindu undivided family funds or that the income from the house property in question could not be treated as the assessee's income but as income of the Hindu undivided family."

8. Section 227(2) of Mulla's Hindu Law relied upon on behalf of the assessee does not assist the assessee because in the present case, the house property in question does not belong to the Hindu undivided family and there never was any declaration or blending of the same into the Hindu undivided family nor were any funds ever used for investment as Hindu undivided family funds. The decision of the Hon'ble Allahabad High Court in Radhey Shyam Shri Krishna Vs. Commissioner of Income Tax, which was on the peculiar facts of the case also does not help the assessee. In the result, the amount of Rs. 5,710 representing the income from the house property was rightly taxed by the Income Tax Officer in the hands of the assessee who held it in the name of Smt. Kamlesh Kumari. We hold accordingly."

9. The assessee applied u/s 256(1) of the Income Tax Act, 1961, for referring certain questions of law said to arise out of the order of the Appellate Tribunal. The application was rejected by the Tribunal by order dated July 17, 1984. Then the assessee moved this court u/s 256(2) and the aforesaid two questions were directed by this court by order dated March 14, 1985, to be referred. That is how the said questions have been referred giving rise to Reference No. 4 of 1987.

10. In the assessment year 1978-79, the Income Tax Officer added in the total income of the assessee, Sri J. P. Verma, a sum of Rs. 5,710 received as income from the house property at No. 22, Chandralok, Lucknow, and interest income of Rs. 1,900 shown in the return of the assessee's wife, Smt. Kamlesh Kumari. The Income Tax Officer held that the assessee's wife is a name-lender and that the income really belongs to the assessee. The Appellate Assistant Commissioner was of the opinion that both these additions were covered by the appellate order for the assessment year 1977-78 and as such the said additions were liable to be deleted. The case of the assessee was considered by the Income Tax Appellate Tribunal and was decided by the same order dated April 21, 1983, referred to above. The assessee made an application u/s 256(1) of the Income Tax Act, 1961, and, consequently, the abovementioned questions were referred by the Tribunal and this has given rise to Reference No. 5 of 1987.

11. Learned counsel for the assessee has urged that the Tribunal has not correctly appreciated the law enunciated in Section 227(2) of Mulla's Hindu Law and in the case of Radhey Shyam Shri Krishna Vs. Commissioner of Income Tax, and has, therefore, erroneously held that the sum of Rs. 69,020 is not attributable to the Hindu undivided family funds, as claimed by the assessee. After hearing learned counsel for the Department, we are satisfied that learned counsel for the assessee is right in his submission. Section 227(2) of Mulla's Hindu Law reads as follows :

"227(2) Similarly, where members of a joint family who have control over the joint estate, blend with that estate property in which they have separate interests, the effect is that all the property so blended becomes joint family property."

12. According to the Mitakshara School of Hindu law, all the property of a Hindu joint family is held in collective ownership by all the coparceners in a quasi-corporate capacity. The textual authority of the Mitakshara, lays down in express terms that the joint family property is held in trust for the joint family members then living and thereafter to be born (see Mitakshara, Chapter 1-1-27). The incidence of coparcenership under the Mitakshara law are : first, the lineal male descendants of a person up to the third generation, acquire on birth ownership in the ancestral properties of such person ; secondly, that such descendants can at any time work out their rights by asking for partition ; thirdly, that till partition, each member has got ownership extending over the entire property conjointly with the rest ; fourthly, that as a result of such co-ownership, the possession and enjoyment of the properties is common ; fifthly, that no alienation of the property is possible unless it be for necessity, without the concurrence of the coparceners ; and, sixthly, that the interest of a deceased member lapses on his death to the survivors. A coparcenary under the Mitakshara school is a creature of law and cannot arise by act of parties except in so far as that on adoption the adopted son becomes a coparcener with his adoptive father as regards the ancestral properties of the latter. State Bank of India Vs. Ghamandi Ram (Dead)

through Gurbax Rai, . The joint family property does not cease to be joint family property when it passes into the hands of a sole surviving coparcener and if a son is born to the sole surviving coparcener, the said properties become the joint family properties in his hands and in the hands of his son. D. S. Agalawe v. P. M. Agalawe. [1983] 2 SCC 126. The observation made in Sudarsanam Maistri v. Narasimhulu Maistri ILR [1901] Mad 25 . 149, 154, were quoted with approval in State Bank of India Vs. Ghamandi Ram (Dead) through Gurbax Rai, :

"As regards the property of such family, the "unobstructed heritage" devolving on such family with its accretions, is owned by the family, as a corporate body, and one or more branches of that family, each forming a corporate body within a larger corporate body may possess separate "unobstructed heritage" which, with its accretions, may be exclusively owned by such branch as a corporate body."

13. In the case of Radhey Shyam Shri Krishna Vs. Commissioner of Income Tax, the question for determination was whether the capital received by the sons of one Shri Sheo Kant Misra on partition, after his death, constituted their individual property. In the opinion of the Income Tax Officer the sons got their share of the capital in their individual capacity. On appeal, the Appellate Assistant Commissioner took a different view. He held that in law the money inherited by the two sons was ancestral property in their hands qua their own sons and that, therefore, the money inherited by the two sons belonged to their Hindu undivided family in law. The Tribunal, however, endorsed the view of the Income Tax Officer. This court held that the view of the Tribunal could not be upheld, because the money inherited by the two sons from their father was in law ancestral property in their hands qua their sons. In this connection, a reference was made to para 223 of Mulla's Hindu Law and it was pointed out that the nature of the property in the hands of the sons continues to be ancestral property qua their offspring and this position has not changed even after the enactment of Section 19(b) of the Hindu Succession Act, 1956.

14. In the present case, the assessee has claimed that he received a sum of Rs. 23,137 under a succession certificate granted to him on the death of his father and another sum of Rs. 16,000 under a family settlement from his cousins in lieu of his share in the father's property. The Tribunal did not accept the claim with regard to the sum of Rs. 16,000 because the original deed of family settlement was not produced and the evidence adduced by the assessee in support of his claim was not such as to inspire confidence. However, the claim of the assessee in respect of Rs. 23,137 obtained under a succession certificate seems to have been accepted. This amount was and continued to be ancestral property in the hands of the assessee qua his sons and its true character could not be extinguished by any act or omission on the part of the assessee. It has been shown that the assessee invested the said amount in National Savings Certificates in various names and, therefore, the certificates as well as the accretions thereto were impressed with the character of property. The fact that the assessee treated the same as his individual property is immaterial and is not

sufficient in the eye of law to change the nature and character of the property from ancestral to individual property. In this state: of affairs, the question of applying the principle laid own in Section 227(2) of Mulla's Hindu Law need not be considered. We, therefore, are of the view that so much of the investment made in the house property in question as is attributable to the said sum of Rs. 23,137 must be regarded as Hindu undivided family property and so much of the income from the said house as bears proportion to the above investment is liable to exemption from Income Tax in the assessee's hands.

15. The questions referred are answered accordingly.