(1994) 12 BOM CK 0044

In the Bombay High Court

Case No : Income-tax Reference No. 232 of 1984

K. Y. Patel APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 05-12-1994

Acts Referred:
Income Tax Act, 1961 — Section 64, 64(1), 64(2)

Citation : (1995) 214 ITR 793

Hon'ble Judges : S.M. Jhunjhunwala, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S.J. Mehta, for the Appellant; G.S. Jetley, for the Respondent

Judgement

DR. B.P. Saraf, J.—By this reference u/s 256(1) of the Income Tax Act, 1961, made at the instance of the assessee, the Income Tax Appellate Tribunal, Bombay Bench "E", Bombay, has referred the following question of law to this court for opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the provisions of section 64(2) were applicable in the case of the assessee ?"

2. The assessee is an individual deriving income from salary, property, dividends and shares from a partnership-firm. The assessment years are 1975-76 and 1976-77, the relevant previous years being the years ended on March 31, 1975, and March 31, 1976, respectively.

3. The assessee held certain foreign shares as his personal property in the individual capacity. By a declaration dated March 28, 1970, he converted the said foreign shares into joint family property consisting of himself, his father and mother. During the assessment proceedings, the assessee claimed that the foreign dividends were not taxable in his hands because they were not received by him. The Income Tax Officer did not accept this contention on the ground that the foreign dividends were taxable in the hands of the assessee on accrual basis

even though remittance to India was not allowed by the foreign country.

4. The assessee appealed to the Appellate Assistant Commissioner. Before the Appellate Assistant Commissioner, the assessee contested the addition of the foreign dividends to his income on an altogether different ground. This time, the contention of the assessee was that the foreign shares which were formerly the individual property of the assessee were converted by him by a declaration dated March 28, 1970, into property of the joint family consisting of himself, his father and mother. As in the past, the Income Tax Officer added one-third of the income arising from the said shares in the individual income of the assessee in the assessment year 1975-76 by applying the provisions of sub-section (2) of section 64 of the Income Tax Act, 1961 (for short "the Act"), as applicable to the assessment for the said assessment year. However, in the assessment for the assessment year 1976-77, in the light of the amendment made in sub-section (2) of section 64 of the Act with effect from April 1, 1976, the Income Tax Officer included the whole of the dividend income in the hands of the assessee. The new case pleaded by the assessee before the Appellate Assistant Commissioner was that sub-section (2) of section 64 of the Act did not apply at all to the facts of the present case. According to the assessee, sub-section (2) of section 64 is applicable only if the transfer of the property is made by the individual to a joint family of which he is the karta and not to transfers made to a joint family of which he is only a member. Recording to the assessee, section 64(2) at no time had any application to transfers made to a joint family of which the individual concerned was not the karta like a joint family consisting of the assessee, his father, mother and brothers. It may be mentioned that though the conversion of the property was made during the previous year relevant to the assessment year 1971-72, the assessee had not raised any such contention in any of the earlier years. Even during the years under consideration, as stated earlier, this new plea was raised for the first time in appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner considered the above contention of the assessee in the light of the provisions of section 64(2), as it stood before and after the amendment with effect from April 1, 1976. He, however, held that the conditions for application of section 64(2) were fully satisfied in the case of the assessee and hence upheld the order of the Income Tax Officer for the two years.

5. The assessee appealed to the Income Tax Appellate Tribunal (for short "the Tribunal") and reiterated the contentions raised by him before the Appellate Assistant Commissioner. It was contended before the Tribunal that the expression "Hindu undivided family" in section 64(2) of the Act referred only to a particular type of Hindu undivided family of which the individual transferor was the karta. It was urged that section 64(2) created a legal fiction and so it had to be interpreted strictly. Reference was made to section 64(1) for the proposition that that only gifts to spouse or minor children were made taxable in the hands of the individual and not gifts to father or mother. Secondly, it was urged that in the event of a partition of the larger Hindu undivided family to which the property

was transferred, a share thereof will be allotted to the assessee as karta of his smaller Hindu undivided family and not to him individually. Hence, it was urged that it could not be his individual property. Thirdly, referring to section 64(2)(b) and section 64(2)(c), it was urged that the entire section referred to a joint family consisting of the individual and his spouse and children and not a family consisting of the assessee and his parents or brothers. On the other hand, the contention of the Revenue was that section 64(2) of the Act being clear and unambiguous, there was no legal justification to limit the meaning of the expression "Hindu undivided family" appearing therein to a particular type of Hindu undivided family. The contention of the assessee did not find favour with the Tribunal. The Tribunal considered the provisions of section 64(2) of the Act, as it stood before the amendment and also as it stood after the amendment and held that there was no authority for restricting the meaning of a Hindu joint family because the language of that section is quite clear and does not admit of any such restriction. The Tribunal, therefore, found no force in the contentions of the assessee. The Tribunal also found that there was no ambiguity in the language of section 64(2). Hence, the Tribunal upheld the order of the Appellate Assistant Commissioner for both the years and dismissed the appeals of the assessee. Hence, this reference at the instance of the assessee.

6. Mr. Mehta, learned counsel for the assessee, submits that sub-section (2) of section 64 would apply only to a case where a coparcener throws his separate property into the common stock of a joint family of which he is the karta. It has no application to income from property thrown into the common stock of a family of which he is merely a member. We have perused section 64(2) of the Act to appreciate the above contention. Even on a plain reading of the said provision, we find it extremely difficult to accept that the application of sub-section (2) of section 64 is restricted only to conversion of separate property of an individual into property belonging to the family of which such individual is karta. Sub-section (2) of section 64 was inserted in the Act by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971. It applies to separate property converted into "joint family property" after December 31, 1969. This sub-section provides that where an individual, being a member of a Hindu undivided family, has converted his separate property into joint family property on or after January 1, 1970, the part of the income from the converted property'' proportionate to his interest in the joint family property would be taxable as his income. This position continued for the assessment years 1971-72 to 1975-76. It, however, underwent some change by the amendment of section 64(2) by the Taxation Laws (Amendment) Act, 1975, with effect from April 1, 1976. As a result of this amendment, from the assessment year 1976-77 onwards, the entire income from the converted property became taxable as the income of the individual and not as the income of the family. Sub-section (2) of section 64, as inserted by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971, read as under :

"(2) Where, in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has, at any time after the 31st day of December 1969, been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family (such property being hereinafter referred to as the converted property), then notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, for the purpose of computation of the total income of the individual under this Act for any assessment year commencing on or after the 1st day of April, 1971, -

(a) the individual shall be deemed to have transferred the converted property, through the family, to the members of the family for being held by them jointly;

(b) the income derived from the converted property or any part thereof, in so far as it is attributable to the interest of the individual in the property of the family, shall be deemed to arise to the individual and not to the family;

(c) the income derived from the converted property or any part thereof, in so far as it is attributable to the interest of the spouse or any minor son of the individual in the property of the family and where the converted property has been the subject-matter of a partition (partial or total) amongst the members of the family, also the income derived from such converted property as is received by the spouse or minor son on partition shall be deemed to arise to the spouse or the minor son from assets transferred indirectly by the individual to the spouse or minor son and the provisions of sub-section (1) shall, so far as may be, apply accordingly :

Provided that the income referred to in clause (b) or clause (c) shall, on being included in the total income of the individual, be excluded from the total income of the family or, as the case may be, the spouse or minor son of the individual.

Explanation. - For the purposes of sub-section (2), -

(1) ''property'' includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale thereof and where the property is converted into any other property by any method, such other property;

(2) ''interest of the individual in the property of the family'' and ''interest of the spouse or any minor son of the individual in the property of the family'' mean, respectively, the proportion in which the individual or, as the case may be, the spouse or minor son would be entitled to share the property of the family if there had been a total partition in the family as on the last day of the previous year of the family relevant to the assessment year for which the individual is to be assessed under sub-section (2)."

7. By the Taxation Laws (Amendment) Act, 1975, the following amendments were made in sub-section (2) of section 64 with effect from April 1, 1976 :

(i) In clause (b), the words "in so far as it is attributable to the interest of the individual in the property of the family" were omitted;

(ii) Clause (c) was substituted by the following :

"(c) where the converted property has been the subject-matter of a partition (whether partial or total) amongst the members of the family, the income derived from such converted property as is received by the spouse or minor child on partition shall be deemed to arise to the spouse or minor child from assets transferred indirectly by the individual to the spouse or minor child and the provisions of sub-section (1) shall, so far as may be, apply accordingly."

(iii) In the proviso, the word "son" was substituted by "child";

(iv) Clause (2) of the Explanation was omitted.

8. As a result of the above amendment, from the assessment year 1976-77 onwards, the entire income from the converted property became taxable as the income of the individual as against part of the income from the converted property proportionate to that member''s interest in the joint family property. Clause (c) is intended to foil the attempt of an individual to avoid the clubbing of the income of the spouse or minor child from assets transferred by the individual to such spouse or minor child with his own income under sub-section (1) of section 64 of the Act by adopting the device of first converting his separate property into property belonging to a Hindu undivided family comprising himself, his spouse and minor child and then to partition the same with a view to transferring part of such property to his spouse or minor child. It provides that in such an event, income derived from the converted property as is received by the spouse or minor child on partition, "shall be deemed to arise to the spouse or minor child from assets transferred indirectly by the individual to the spouse or minor child" and the provision of sub-section (1) of section 64 dealing with the clubbing of income of the spouse or minor child from assets transferred by an individual concerned to such spouse or minor child would apply also to such indirect circuitous transfers. This clause thus widens the meaning of the expression "transferred indirectly" appearing in sub-section (1) to remove all doubts and disputes in relation to the applicability of the said sub-section to such circuitous transfers. However, in the present reference, we are not concerned with clause (c).

9. The real controversy in this case pertains to the meaning of the expression "Hindu undivided family" appearing in sub-section (2) of section 64. According to the assessee, it means only "Hindu undivided family" comprising the individual, his wife and minor children of which he is the "karta". According to the Revenue, sub-section (2) being applicable to all cases of conversion of separate property of any individual into property of a "Hindu undivided family", its application cannot be restricted by giving an unnatural and artificial meaning to the expression "Hindu undivided family". We have given our careful consideration to the submissions of learned counsel for the assessee. We have also perused section

64(2) of the Act in the light thereof. We, however, do not find any basis or justification whatsoever to give a restricted meaning to the expression "Hindu undivided family" as suggested by learned counsel. The expression "Hindu undivided or joint family" has a definite and well-known connotation. It consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. It is a much wider body than a Hindu coparcenary which, generally speaking, includes only those persons who acquire by birth an interest in the joint or coparcenary property. As observed by the Supreme Court in N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, , the expression "Hindu undivided family" in the Income Tax Act is used in the sense in which a Hindu joint family is understood in the personal laws of Hindus. It is used in the Income Tax Act with reference to all schools of Hindu law. In view of this settled legal position, the contention of the assessee that for the purposes of applicability of section 64(2) of the Act, this expression should be given a restricted meaning so as to include only those "Hindu undivided families" which comprise the individual, his wife and minor child is wholly erroneous and misconceived and cannot be accepted.

10. We have also considered the submission of learned counsel for the assessee that looking at the intent and purpose of enacting section 64 of the Act, the expression "Hindu undivided family" appearing in section 64(2) should not be given its ordinary meaning. We do not find any merit in this submission mainly for two reasons. First, no such legislative intent is discernible from sub-section (2) of section 64 of the Act or the object and purpose of incorporating the same. Second, the language of section 64(2) being clear and unambiguous and the meaning of the expression "Hindu undivided family" used therein being well-known and well-understood, we cannot detract from the same unless reading the statute as a whole, the context so requires. In the instant case, there is nothing in the context or in the circumstances to warrant such deviation with a view to giving it an artificial and restricted meaning.

11. In view of the above, we are of the clear opinion that the provisions of section 64(2) of the Act are clearly attracted in the present case. Hence, the question referred to us is answered in the affirmative and in favour of the Revenue.

12. In the facts and circumstances of the case, we make no order as to costs.