

(1960) 09 AHC CK 0025

In the Allahabad High Court

Case No : Income-tax Miscellaneous Case No. 219 of 1952 (Reference under section 66 (I) of the India Income Tax Act, 1922, by the Income Tax Appellate Tribunal, Delhi Bench, in R.A.No. 647 of 1950-51)

KUNWAR KRISHNA CHANDRA,

APPELLANT

Vs

COMMISSIONER OF Income Tax.

RESPONDENT

Date of Decision : 23-09-1960

Acts Referred:

Income Tax Act, 1961 — Section 9(1)(iv)

Citation : (1961) 42 ITR 137

Hon'ble Judges : Upadhya, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

UPADHYA, J. - The question referred to this court is :

"Whether separate maintenance allowed to a wife of the karta of the assessee Hindu undivided family and charged on his movable and immovable properties by agreement between the spouses is a permissible deduction from the assessee's income between the spouses is a permissible deduction from the assessee's income in order to arrive at its taxable income ?"

The assessee is a Hindu undivided family consisting of Kunwar Krishna and his two sons by a second. Kunwar Krishna Chandra is the karta of the family. The family properties were obtained on partition with the karta paternal uncle in December, 1941. Differences arose between Kunwar Krishna Chandra and his first wife and a deed of separation was executed on the 12th January, 1942, awarding maintenance of Rs. 6,000 per annum secured by a charge on his movable and immovable properties. In the assessment year 1946-47 the assessee Hindu undivided family claimed a deduction for this sum of Rs. 6,000. The Tribunal disallowed the claim as it took the view that the maintenance was not a charge on the properties of the Hindu undivided family according to the agreement and the transaction was not "obligatory" and was entered into by the

assessee voluntarily was not first ground relied upon by the Tribunal is based on condition (3) of the agreement which reads as follows :

"3. That the said maintenance allowance of rupees six thousand per annum shall from the first charge on the properties, movable and immovable, belonging to the first party."

The first party referred to was Kunwar Krishna Chandra son of late Raja Lalta Prasad. O.B.E., caste Agarwal, resident of Pilibhit. In the Tribunal's opinion the assessee is a Hindu undivided family, while the charge created by the agreement was on the personal properties of the karta only. The family, therefore, could not claim a deduction in respect of this charge.

It appears that the Tribunal has overlooked the fact that the two sons of the karta are those whom he had by his second wife, who was married after his first wife separated from him. These minor children are only junior members of the Hindu undivided family and as such they were bound to maintain the female members of the family. If their step-mother had to live apart and their father entered into an agreement creating an obligation to pay Rs. 6,000 per year to her the entire family property including their interest was liable for the payment. At the time when the charge was created Kunwar Krishna Chandra was the sole owner of the entire property and was competent to create the charge in the circumstances of the case on the entire property. The subsequent birth of children by a second wife could not remove the charge or limit the enforceability of the charge of the interest of Kunwar Krishna Chandra only. It is possible to argue that the sons could repudiate the charge, but the transaction was not void ab initio. If the sons could establish facts to warrant a finding that their interest in the joint family property could not be made liable for payment of the maintenance they could avoid the transaction. Learned counsel concedes that nothing has been done by the sons to avoid the charge. As such, we are of opinion that the charge is a liability on the entire family assets and the assessee family is entitled to a deduction of Rs. 6,000 u/s 9(1)(iv) of the Income Tax Act.

The second reason that the transaction is not obligatory is still more untenable. The liability on the family property to maintain the lady is a legal liability and the obligation which exists in law has only been crystallised and expressly recognised by Kunwar Krishna Chandra in the agreement relied upon.

We are, therefore, of the opinion that the question referred to the court should be answered in the affirmative.

The assessee will have his costs which we assess at Rs. 200.