
(1970) 12 CAL CK 0021
In the Calcutta High Court
Case No : Matter No. 161 of 1969

Mahabir Prosad Poddar

APPELLANT

Vs

Income Tax Officer, (B), Ward

RESPONDENT

Date of Decision : 04-12-1970

Acts Referred:

Income Tax Act, 1961 — Section 148, 271(4A)

Citation : (1971) 82 ITR 299

Hon'ble Judges : K.L. Roy, J

Bench : Single Bench

Advocate : D. Pal, for the Appellant; Dilip K. Sen and Dipak Sen, for the Respondent

Judgement

K.L. Roy, J.—This petition is purported to be made on behalf of the Hindu undivided family of which Mahabir Prosad Poddar is the karta. No returns were filed by the Hindu undivided family for the assessment years 1957-58 to 1961-62 and no assessments were made in respect of the said years until the time hereinafter mentioned. On the 16th March, 1963, the petitioner, Mahabir Prosad Poddar, as an individual, was served with four notices all dated the 19th February, 1963, purported to be u/s 148 of the Income Tax Act, 1961, by the second respondent-income tax Officer in respect of the assessment years 1958-59 to 1961-62 requiring the petitioner to file his returns for the said years as his income therefore had escaped assessment. A further notice u/s 148 dated the 7th March, 1963, in respect of the assessment year 1957-58 was issued by the said respondent-income tax Officer, after obtaining the necessary satisfaction of the Commissioner and served on Mahabir Prosad Poddar on the 16th March, 1963. Mahabir Prosad filed his returns for all the aforesaid five years on the 18th October, 1963, Notices u/s 142(1) in respect of the above years were served on 24th August, 1963. Thereafter, the premises of the petitioner were searched on the 1st October, 1964, and it is claimed in the petitioner that on 12th July, 1965, Mahabir Prosad, as the karta of the Hindu undivided family applied u/s 271(4A) to the Commissioner of Income Tax, West Bengal III, the respondent No. 4

herein, making a disclosure of the hitherto unassessed income of the Hindu undivided family and praying for a spread over of the tax payable in respect of the said disclosed income. It is further alleged in the petition that by his letter dated 26th August, 1966, addressed to Mahabir Prosad, the 1st respondent-income tax Officer informed him that the returns for the assessment years 1957-58 to 1963-64 had already been filed and for which the requisite notices u/s 143(2) were being enclosed. It was further pointed out that no returns had been filed for the assessment years 1964-65 and 1965-66 and that the statements filed by Mahabir Prosad showed that there was a net increase in his wealth of Rs. 9,51,861 during the financial year 1964-65 and he was required to show cause why the said amount should not be taken as his income for the assessment year 1965-66. Requisitions for production of various books of account and other supporting documents were also made. In reply, by his letter dated 26th September, 1966, Mahabir Prosad, on behalf of the Hindu undivided family, pointed out that no returns had been filed by the Hindu undivided family, for any of the aforesaid years and that the Hindu undivided family had by its application dated 12th July, 1965, made a disclosure u/s 271(4A). As no decision had been taken in the disclosure matter the Hindu undivided family was filing its returns for the assessment years 1951-52 to 1965-66 so that its income may be taken as per the decision of the Commissioner on the disclosure petition. Along with the said letter returns of the Hindu undivided family for the assessment years 1951-52 to 1965-66 were filed. It is further alleged in the petition that on or about the 3rd March, 1967, the petitioner received five purported orders of assessment u/s 143(3)/147(a) for the assessment years 1957-58 to 1961-62 made on the 28th and 29th February, 1967 (sic), respectively, on the Hindu undivided family. In the said purported assessment orders it was recorded that though returns in the status of an individual were originally filed on 18th October, 1963, as subsequently on 27th October, 1966, the assessee filed revised returns showing the status as Hindu undivided family which were accepted, the assessments were completed in the status of Hindu undivided family. Subsequent assessments were also made on the Hindu undivided family in respect of the assessment years 1962-63 to 1965-66 but these later assessments are not impugned in this rule.

2. The petitioner's appeals against the said orders of assessment for the assessment years 1957-58 to 1961-62 were dismissed by the respondent-Appellate Assistant Commissioner by his order dated 27th December, 1967. This rule was obtained on 18th March, 1969.

3. An entirely different picture is presented by the facts stated in the affidavit-in-opposition filed on behalf of the respondents and affirmed by the Income Tax Officer who made the impugned assessments. Prior to April, 1958, there was no Income Tax file in the name of Mahabir Prosad, either in his individual capacity or as the karta of a Hindu undivided "family as the department had no information that such an assessee with an assessable income existed. In 1961, information was received from the special investigation branch that during the period 1st

April, 1958, to 31st March, 1959, a sum of Rs. 2,33,763.53 had been received by one Mahabir Prosad Poddar from India General Steam Navigation & Rly. Co. Ltd., Calcutta, and a file in that name was started in December, 1961. From further investigation made by the special investigation branch it was ascertained that the total payments received by Mahabir Prosad during the calendar year 1959 amounted to Rs. 25,50,961. This information was conveyed to the respondent-income tax Officer in February, 1962, whereupon he started further inquiry. On or about the 13th December, 1962, the respondent-income tax Officer issued a notice u/s 139(2) of the Act in the name of Mahabir Prosad for the assessment year 1962-63, and later Mahabir Prosad was examined u/s 131 of the Act on 16th January, 1963. In his deposition, Mahabir Prosad stated that his father left no property, that he used to carry on business in the name of M. P. Poddar and that he had been doing business on his own account for the last two years for which he maintained bank accounts. On further enquiry it was discovered in August, 1962, that supplies had been made to the India General Navigation Co. Ltd., in the names, inter alia, of three concerns, namely, I. P. Trading Co., Easwar Engineering Co. and Hanuman Timber Traders. It is pointed out that at no stage was it ever contended by Mahabir that the income from business was the income of the Hindu undivided family and not of himself as an individual. In response to the notices u/s 148 he filed returns in the status of an individual and in Part III of the returns various businesses carried on by the assessee were declared to include amongst others I. P. Trading Co., Easwar Engineering Co. and Hanuman Timber Traders. It was only after the search and seizure made on the 1st October, 1964, that Mahabir Prosad filed a statement of wealth of the Hindu undivided family of which he claims to be the karta affirmed before a notary public on 22nd February, 1965, showing the net wealth at Rs. 25,07,151. In the application u/s 271(4A) to the Commissioner the total assets as on 31st March, 1965, was shown at Rs. 35,56,698. It is asserted that returns for the assessment years 1957-58 to 1965-66 were filed on 27th September, 1966, by Mahabir Prosad as the purported karta of the Hindu undivided family quoting the same file number as allotted to him in respect of the returns filed by him on 18th October, 1963. The respondent further states that after filing the returns as an individual Mahabir Prosad later on filed revised returns in the status of a Hindu undivided family and the claim for the status as shown in the revised returns was accepted by the department on the merits.

4. It would be useful to set out the following relevant portion of the assessment order for 1962-63 which was made on 21st February, 1967, where the question of status was considered by the respondent-income tax Officer.

"Status : As already stated above, the file was started in the name of the assessee on the basis of certain information received. At this stage there is nothing on record to show the status in which the assessee traded. In response to the notice u/s 139(2) the assessee filed a return declaring his status as "individual". Later on he filed another return declaring his status as Hindu undivided family. The business which was said to have been carried on by the

Hindu undivided family as well as the individual are the same. I have no objection to treat the assessee as Hindu undivided family on the basis of his own declaration. The status will, therefore, be taken as Hindu undivided family on the basis of revised admission made by the assessee."

5. Dr. Pal for the petitioner contended that the impugned notices u/s 148 were addressed to Mahabir Prosad as an individual and in response to the said notices returns were filed in the status of an individual. The respondent-income tax Officer had, therefore, no jurisdiction to make an assessment in respect of the said notices in the status of a Hindu undivided family. As there is no dispute that originally the notices u/s 148 were addressed to Mahabir Prosad as an individual it is not necessary to refer to certain authorities cited by Dr. Pal in support of his contention that the wording of the notices showed that they were issued to Mahabir Prosad as an individual. For his contention that having issued the notice to Mahabir Prosad as an individual the Income Tax Officer was not competent to make the assessment in the status of a Hindu undivided family, strong reliance was placed by Dr. Pal on the decision of the Supreme Court in *Commissioner of Income Tax Andhra Pradesh Vs. K. Adinarayan Murty*, .

6. In that case the facts were that the assessee was assessed in the status of a Hindu undivided family. Subsequently in the assessment year 1954-55, the Income Tax Officer made the assessment in the status of an individual and thereafter he issued a notice u/s 34 in respect of the assessment year 1949-50 on the assessee as an individual having taken the sanction of the Commissioner to make the reassessment in that status. Pending the assessment proceedings the assessee's appeal for the year 1954-55 was allowed and the Appellate Assistant Commissioner determined the status as that of a Hindu undivided family. Thereafter, the Income Tax Officer issued a fresh notice u/s 34 in respect of the year 1949-50 on the assessee as a Hindu undivided family. A second return was duly filed pursuant to the second notice and the Income Tax Officer made an assessment thereon. It was contended before the Supreme Court that it was not competent for the Income Tax Officer to issue the second notice and to proceed thereon ignoring the return filed by the assessee in response to the first notice issued u/s 34. Rejecting that contention the (1) Supreme Court held that since the correct status of the assessee was that of a Hindu undivided family the first notice issued was illegal and without jurisdiction and the Income Tax Officer could not have validly acted on the return filed by the respondent pursuant to that notice and, therefore, the Income tax Officer was entitled to ignore the first return and issue the second notice and make the assessment u/s 34. Dr. Pal contended that if in the present case the Income Tax Officer found that the original notices issued to Mahabir Prosad were bad he should have issued fresh notices before proceeding to make the assessment. Dr. Pal reiterated the usual argument that the issue and service of a valid notice being the foundation of jurisdiction u/s 34 such jurisdiction was lacking in this case and the purported assessments were bad in the absence of fresh notices being served on the petitioner as a Hindu undivided family.

7. Mr. D. K. Sen, learned counsel for the department, submitted that large sums of money were found to have been paid to Mahabir Prosad in the course of business without any assessments being made in respect of any income earned by that business. Enquiries revealed that an amount of over Rs. 35,00,000 had been amassed by Mahabir Prosad. Accordingly notices u/s 34 were issued to Mahabir Prosad without indicating what the status of the assessee was as the department at that time had no knowledge as to who Mahabir Prosad was. In response to the said notices returns were filed showing the status as that of an individual and income was shown to be derived from the very same business which were later claimed to be the business of the Hindu undivided family. No claim was made in these returns that the income from the business belonged to the Hindu undivided family and not to the individual. Even at that stage when Mahabir Prosad was examined u/s 139 in December, 1962, he did not claim that the business and income thereof belonged to the Hindu undivided family and not to him in an individual capacity. Mr. Sen further pointed out that the application for voluntary disclosure dated the 12th July, 1965, u/s 271(4A) of the Act, which is claimed in the petition to have been made by Mahabir Prosad on behalf of the Hindu undivided family was signed by Mahabir Prosad without showing that he was acting on behalf of any Hindu undivided family. The application was an application on behalf of Mahabir Prosad in his individual capacity. I have verified this fact from the records and found that the original application did not bear any qualification or description after the signature of Mahabir Prosad. In annexure "C" to the present petition, which purports to be a copy of the aforesaid application the words "karta of Hindu undivided family" appear in handwriting after the typed signature of Mahabir Prosad and it seems to me to be interpolation made at the time of filing the petition. Mr. Sen further pointed out that In the said application the names of the ten firms and individuals in whose name the business was carried on and held by the applicant were given and these names include I.P. Trading Co., Eswar Engineering Co., Hanuman Timber Traders and others which were shown in the returns filed by Mahabir Prosad as an individual in response to the impugned notices.

8. Mr. Sen submitted that this is not a case of the Income Tax Officer making an assessment on an assessee in a different capacity after discovering a mistake. This was a case of the assessee himself filing revised returns and satisfying the Income Tax Officer of the correct status for the purpose of assessment and the Income Tax Officer accepting the revised returns and making assessments accordingly. The ratio of the Supreme Court decision in Commissioner of Income Tax v. Adinarayana Murty has no application to the facts of the present case.

9. The application is wholly without merit and is mala fide. Some of the material facts have been suppressed in the petition and/or misrepresented with a view to obtaining interim stay for realisation of the demand resulting from the disclosure made by the petitioner himself. I have no reason to doubt the version given by the respondent in the affidavit-in-opposition that it was the petitioner himself who filed revised returns and wanted the assessments to be made in the status

of Hindu undivided family. The relevant portion quoted from the assessment order for 1962-63 supports the case of the department. There is no dispute that enormous amounts of money had been received and considerable assets acquired by the petitioner in respect of which no tax has been paid and this application is a further attempt to avoid liability for payment of any tax due in respect of such receipts or such assets. In a very recent decision of the Gujarat High Court in Chootharmal Wadhuram v. Commissioner of Income Tax ITR 1968 (Guj) 88 the following observations at page 101 were made by that court:

"But through some oversight the applications made by the Income Tax Officer to the Commissioner showed the status of the assessee as an association of persons. This was clearly a mistake and the question is whether this mistake had any invalidating consequence on the subsequent proceedings for assessment initiated by the Income Tax Officer after the grant of the sanction by the Commissioner. We do not think that the wrong description of the status of an assessee can have the effect of invalidating the proceedings for assessment initiated after obtaining the sanction of the Commissioner when the sanction is in terms granted to the initiation of proceedings against the assessee. If the status of the assessee was wrongly described, it can always be corrected by the Income Tax Officer in the course of the assessment proceedings but that cannot affect the validity of the assessment proceedings. The position would of course be different where the status is so inextricably mixed up with the question as to who is the assessee that the description of the status one way would be referable to one assessee while the description of the status the other way would be referable to another assessee. Where such is the case, the description of the status may be indicative of the fact that a particular assessee is sought to be proceeded against and if sanction of the Commissioner is obtained for proceeding against that assessee, such sanction cannot be availed of for the purpose of initiating proceedings against another assessee who would be indicated by the description of the status the other way".

10. In my opinion, this is a case where the status of the assessee was wrongly described in the impugned notices and it was corrected by the Income Tax Officer in the course of the assessment proceedings on the application of the assessee and on the assessee's filing revised returns. There is absolutely no merit in this application and it must be dismissed. The rule is discharged. Interim order, if any, is vacated. The petitioner would pay one set of costs of this application to the respondents.