
(1970) 11 AHC CK 0005

In the Allahabad High Court

Case No : Income-tax Reference No. 332 of 1964

Mahadeo Prasad Rais

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 10-11-1970

Acts Referred:

Income Tax Act, 1922 — Section 66

Citation : (1972) 84 ITR 48

Hon'ble Judges : V.G. Oak, C.J;H.N. Seth, J

Bench : Division Bench

Advocate : P.N. Panchauri, for the Appellant; B.L. Gupta and R.R. Misra, for the Respondent

Judgement

Oak, C.J.—This is a reference u/s 66 of the Indian Income Tax Act, 1922. The assessee is a Hindu undivided family consisting of six members. Mahadeo Prasad is the karta of the family. Other members of the family are Mahadeo Prasad's major son, Bithai Das, two minor sons, Naunit Priya Das and Ashtbhuji Das, Mahadeo Prasad's wife, Smt. Kastoori Devi, and his widowed mother, Smt. Kastoori Devi. The assessment years are 1956-57, 1957-58 and 1958-59.

2. Up to the assessment year 1948-49, the assessee was being assessed as a Hindu undivided family. For the assessment year 1949-50 and subsequent years, the assessee claimed partition in the family. The assessee's case has all along been that there was partition in the family in the year 1948. The family carried on business. Some of the assets of the assessee were in the books of the family. Several items were outside the books. Items in the books of the assessee were divided on June 30, 1948. On July 7, 1948, a partnership firm took over the assets, which had been divided on June 30, 1948. The assets outside the books were also divided on October 30, 1948, and were invested in the partnership firm. The result is that the entire business of the family was taken over by the new firm. According to the assessee, it had no income during the three previous years corresponding to the three assessment years.

3. The assessee's case was not accepted by the Income Tax Officer. He held that formation of the partnership firm on July 7, 1948, was a sham transaction. It was further held that the assets in question continued as assets of the joint Hindu family. Assessment for the three years was, therefore, made on that basis. This view was upheld in appeal by the Appellate Assistant Commissioner and by the Appellate Tribunal.

4. At the instance of the assessee, the Appellate Tribunal has referred the following two questions to this court:

"1. Whether the assets of the Hindu undivided family except zamindari and house properties and Government securities of the value of Rs. 18,24,000, about which there is no dispute, could be deemed to have been partitioned on June 30, 1948, and October 10, 1948.

2. If the answer to question No. 1 is in the negative, whether the income from the business set up and assets acquired in the case of individual members of the family after the above dates by utilising the family funds could be assessed in the hands of the Hindu undivided family?"

5. It may be pointed out that the Tribunal accepted the position that the zamindari and house properties and Government securities of the value of Rs. 18,24,000 had been divided among the members of the family before the three relevant assessment years. That is why question No. 1 has been confined to items besides those .three items.

6. In the, statement of the case there is a table giving details of the assets, which were divided in the year 1948. There were five items, of assets in the books, and seven items outside the books. The total value of the assets in the books came to Rs. 3,29,819. After adjusting a certain liability amounting to Rs. 56,156, the balance was divided among the six members of the family. The share allotted to each member came to Rs. 45,610-7-0. Entries to this effect were made in the books of the family on June 30, 1948.

7. The items outside the books were disposed of after a few months. On October 10, 1948, entries were made in the books of the firm indicating a credit entry for Rs. 5,28,721-12-0 in favour of each partner or member of the family. .

8. The Tribunal has pointed out that, although the shares in the total amounts in the books and outside the books were ascertained, there was no actual division of the individual items in the year 1948, Some cash was available in 1948. But, no attempt was made to divide the cash among the six members of the family. Securities available in the year 1948 amounted to Rs. 19,34,000. But, no attempt was made to divide those securities in specific shares in the year 1948. The securities amounting to Rs. 18,24,000 were not actually divided among the different members till the year 1952. These circumstances indicate that, although the family had planned to divide the assets in the year 1948, the different items were not actually divided in the year 1948. Question No. 1 has, therefore, to be

answered against the assessee.

9. Question No. 2 relates, to business set up by individual members during the relevant, accounting periods. There is mention of family funds in question No. 2. The reference must be, to money, which constituted the family fund at one time. We have seen that as far back as the year 1948 members of the family were attempting to divide the assets of the family. In the year 1952, securities of the value of Rs. 18,00,000 and odd were divided among the six members. Each member got securities to the extent of three lacs of rupees. It appears that the various businesses set up by individual members of the family after the year 1948 came out of the assets which were divided in the year 1948. The statement of the case shows that there were no business assets besides those which were divided in June and October, 1948. It appears that in due course those very assets were actually divided among the different members of the family ; and the individual members were able to set up separate businesses from those assets. It is true that up to June, 1948, these funds constituted joint family funds. But there was a definite plan to divide the assets and when they were actually divided among the members of the family, the funds ceased to be joint family property. Thereafter, the funds became the separate property of the individual members. Business set up by individual members would no longer be joint family business. Consequently, income from such business cannot be assessed as income belonging to the Hindu undivided family. Income from such business set up by individual members had to be excluded from the assessment of the Hindu undivided family.

10. In the result, we answer question No. 1 in the negative, and against the assessee. We answer question No. 2 in the negative, and in favour of the assessee. Parties shall bear their own costs in this reference.