(1943) 03 AHC CK 0017

In the Allahabad High Court

Case No : Miscellaneous Case No. 95 of 1938

MANOHAR DAS MUNNI LAL APPELLANT

Vs

SECRETARY OF STATE FOR INDIA. RESPONDENT

Date of Decision : 26-03-1943

Acts Referred:

Citation : (1945) 13 ITR 356

Final Decision : Dismissed

Judgement

This is an application u/s 66 (3) of the Indian Income Tax Act by an assessee named Lala Dwarka Prasad. The assessment was made in the year 1937-38 and was in respect of the profit of 1936-37 arising out of a Burmah Shell agency business, which is being carried on in the name Misri Lal Dwarka Prasad.

It is necessary to state certain facts. There was a banker named Lala Munni Lal, who had two sons, Lala Bisheshar Das, who died in 1917 and Lala Misri Lal, who died on the 20th February 1935. Lala Bisheshar Das had two sons, one of whom was Lala Bankey Lal, and the applicant is a son of the latter. Lala Misri Lal had a daughter by name Mst. Shyama Bibi and she had a son by name Amar Nath. Admittedly the family of Lala Bisheshar Das and Lala Misri Lal was originally joint. It is said that there has not been a separation, but it is not denied before us that the family was still joint in the year 1935-36. The agency business was started by Lala Misri Lal as long ago as 1913, and he deposited with the company as security Government promissory notes to the value of Rs. 35,000 and these promissory notes were admittedly there property of the joint family. It is stated by learned counsel for both parties that the interest accruing upon these promissory notes was entered in the joint family accounts. In 1932 Lala Misri Lal associated with himself in this agency business his daughters son, Amar Nath, and the name of the business then became Misri Lal Amar Nath; but in 1934 Amar Nath went out of the business and Lala Misri Lal then associated with himself his brothers grandson, Lala Dwarka Prasad, who, as we have already said, is the applicant before us. Lala Misri Lal died on the 20th February 1935 and the applicant remained the surviving partner of the business and he claims to be its sole proprietor.

We are informed that the profits arising out of the agency business were shown in a separate ledger in the account books of the joint family, but hitherto these profits had always been shown in the Income Tax returns as belonging to the joint family. In the assessment year 1936-37 the applicant for the first time claimed that this was his own separate business and had no concern with the joint family. He failed to satisfy the Income Tax Officer and his appeal to the Assistant Commissioner was also dismissed. He then applied to the Commissioner of Income Tax for review u/s 33 and alternatively for the stating of a case u/s 66 of the Act; but the Commissioner has refused either to exercise his powers of review u/s 33 or to state a case for the decision of this Court.

The question in respect of which we are asked to direct the Commissioner to state a case and make a reference to this Court will be found in the application at page 3 of our paper-book. The applicants case is that this business is owned separately by himself and should be assessed as such, and his learned counsel has advanced the following three contentions before us :-

1. The mere circumstances of the security of Rs. 35,000 having come from joint funds will not of itself show that the business was joint.

2. The mere circumstances of the profits from this business having on previous occasions been shown in the Income Tax returns as joint family profits will not estop the applicant from satisfying the Income Tax authorities that in point of fact the profits arose from the applicants own separate business.

3. There is no rule of law that a member of a joint Hindu family is incompetent to start and conduct a separate business.

Learned counsels case is that the Income Tax authorities have not kept the above propositions of law in mind and have consequently been misled in their conclusion of fact. We have read the order of the Assistant Commissioner as well as the order of the Commissioner of Income Tax and we do not find that these authorities have misdirected themselves in law. They have nowhere held the agency business to be joint from the mere circumstances of the Government promissory notes having been supplied from joint funds; but they were fully entitled, in reviewing all the facts, to draw an inference from this circumstances. Nor have they any where expressed the opinion that the previous Income Tax returns operate as an estoppel; they may have drawn an inference from these returns, but this they were entitled to do. Moreover, the competence of a member of a joint Hindu family to initiate and conduct a separate business on his own account is a well-established proposition and we do not find that the Income Tax authorities have anywhere found to the contrary. The Commissioner of Income Tax says :-

"The applicant cannot certainly be allowed to turn a mere question of fact into one of law by asking, as apparently he has done, whether as a matter of law the officer came to a correct conclusion upon a matter of fact."

This observation is apposite and we are of opinion that the Commissioner was right in holding that no question of law arises as contemplated by Section 66 (3) of the Act. In the result we dismiss this application with costs. Counsel for the Department is entitled to a fee of Rs. 75.

Application dismissed.

