
(1967) 02 AHC CK 0007

In the Allahabad High Court

Case No : Income-tax Reference No. 369 of 1963

NAGAR DAS

APPELLANT

Vs

COMMISSIONER OF Income Tax, U. P.

RESPONDENT

Date of Decision : 23-02-1967

Acts Referred:

Income Tax Act, 1922 — Section 66(1)

Citation : (1967) 66 ITR 203

Hon'ble Judges : Jagdish Sahai, J

Bench : Division Bench

Judgement

JAGDISH SAHAI J. - At the instance of the assessee, Sri Nagar Das (hereinafter referred to as the assessee), the Income Tax Appellate Tribunal, Bombay Bench (hereinafter referred to as the Tribunal), has submitted statement of the case and referred the following question of law for the opinion of this court u/s 66(1) of the Indian Income Tax Act, 1922 (hereinafter referred to as the Act) :

"Whether, on the facts and in the circumstances of the case, the sum of Rs. 6,000 forming part of the sum of Rs. 9,334 being Nagar Dass share of profits in the firm of Hari Prasad Ram Kishan is liable to be taxed in the hands of his Hindu undivided family ?"

The reference arises out of the assessment made upon the Hindu undivided family of Nagar Das for the assessment year 1959-60, the accounting year being the year ending Kuar Sudi 9, Samvat 2015. Originally the assessee's family had also some other branches joint with it. A partial partition took place in that family some time in the year 1951. Originally the Hindu undivided family was carrying on business in cloth. After the partial partition, it was carried on by a partnership firm constituted of the separated coparceners. The partners in this firm are Ram Kishan, Nagar Das and Gopal Kishan.

The statement of the case is clear that Nagar Das represented his Hindu undivided family which provided funds on behalf of Nagar Das for investment in

the partnership business. Gopal Kishan is practicing medicine in Calcutta and was not available to work in the partnership business. In the partnership deed dated October 18, 1951, it was provided that Ram Kishan and Nagar Das, who were looking after the partnership business, would be paid a remuneration of Rs. 500 per month subject to that sum being modified at any time in future.

Ram Kishan died on August 6, 1957. The firm was reconstituted and a partnership deed was executed in respect of it on 26th September, 1957. In the new partnership Shyam Sunder, a son of Ram Kishan, deceased was the partnership taken in as a third partner in place of Ram Kishan. Under clause 10 of the partnership deed dated 26th September, 1957, it was provided that Nagar Das and Shyam Sunder would each receive a remuneration of Rs. 500 per month for looking after the affairs of the business but this amount could be varied in future.

For the assessment year 1959-60, the new firm of Hari Prasad Ram Kishan claimed registration u/s 26A of the Act. This was allowed. The Hindu undivided family of Nagar Das was paid Rs. 9,334 in accordance with the provisions of section 16(1) (b) of the Act in respect of the income of the firm. The sum of Rs. 9,334 was made up of two items : Rs. 6,000 paid by way of remuneration to Nagar Das and Rs. 3,334, the share of Nagar Das in the profits of the firm. Nagar Das disclaimed this amount as his personal income and objected to that sum being included in computing the assessable income of the Hindu undivided family. The Income Tax Officer rejected the contention and included that sum in the income of the Hindu individual family. The assessee appealed to the Appellate Assistant Commissioner. The liability of the inclusion of the sum of Rs. 3,334 in the assessable income of the assessee does not seem to have been challenged before him and the appeal was confined to the sum of Rs. 6,000, i.e., to the amount received by Nagar Das as remuneration. The Appellate Assistant Commissioner dismissed the appeal and upheld the inclusion of Rs. 6,000 in the computation of the assessee families total income.

The assessee appealed to the Tribunal affirmed the findings of the Income Tax Officer and the Appellate Assistant Commissioner and dismissed the appeal. But, at the instance of the assessee, it made the instant reference.

The case of the assessee is that the sum of Rs. 6,000 paid to Nagar Das for the personal services that he rendered to the partnership firm had nothing to do with his share in his representative capacity on behalf of the Hindu undivided family in the profits of the partnership firm. Mr. Brijlal Gupta has strenuously contended that with regard to the sum of Rs. 6,000 the remuneration received by Nagar Das, his position was not different from any other person who might have been employed by the partnership business as a paid servant and that the Tribunal committed an error in ignoring this aspect of the matter. The question that required determination is whether this sum of Rs. 6,000 paid to Nagar Das was in the nature of profits paid to him as representative of the Hindu undivided family or it was in the nature of salary paid to him as a servant of the

partnership firm. Nagar Das was a partner in the partnership firm. A partnership is nothing but a compendious name for the partners. Whoever would be the servant of the firm would also be the servant of Nagar Das. Consequently, it is difficult to see how Nagar Das could be treated to be his own servant. In the partnership deed, which is in English, the word used is "remuneration" and not "salary" in respect of the payment to be made to Nagar Das and Shyam Sunder. The word "remuneration" is a colourless word. There is no finding recorded by the Tribunal that Nagar Das had any specialised knowledge or his services were required for any special purpose. It is noteworthy that in the deed of agreement Shyam Sunder, who was a young man and a newcomer to the business, was also given the same remuneration as was given to Nagar Das. It is also noteworthy that the amount of Rs. 500 paid to each, Nagar Das and Shyam Sunder, was variable at any time. Paragraph 10 of the agreement deed which deals with this aspect of the matter, reads :

"10. That the 1st and 3rd parties (Nagar Das and Shyam Sunder) shall get a remuneration of Rs. 500 per month for looking after the affairs of the partnership business. This amount will be debited to shop expenses in each month or at the end of the year. This amount is liable to variation orally by mutual consent of the partners from time to time and as per oral agreement entries will be made in the books of the firm of the said remuneration in each year as may be settled with the partners orally."

It is again noteworthy that there is no provision in the deed of agreement to the effect that if the partners exercised their choice to vary the amount payable to Nagar Das or Shyam Sunder, they would be free not to work for the firm. In other words, the agreement deed is clear that there is no relationship between the payment of Rs. 500 each to Shyam Sunder and Nagar Das and their actual working in the firm. There being no such relationship, it is difficult to see how the payment of Rs. 6,000 to Nagar Das could be treated to be a payment made to him for personal services rendered by him, a part from his capacity as partner.

Another circumstance which goes against the assessee is that, even though Sham Sunder is a youngster and wholly new to the business, he too is getting Rs. 500 per month. It is clear that there were three partners in the business. Gopal Kishan was not doing any work for the partnership business but was making money by carrying on medical practice at Calcutta. Inasmuch as the other two partners were looking after the business, the partnership deed in effect provided that their remuneration should be larger than that of Gopal Kishan. It is clear that Nagardas was much more experienced than Sham Sunder and yet the remuneration had nothing to do with the personal services they rendered to the firm but was only to compensate as partners in view of the circumstance that the third partner, Gopal Kishan, was not doing any work for the partnership business but earning money elsewhere in a venture with which the partnership had nothing to do.

Nagar Das was a partner on behalf of his Hindu undivided family in a

representative capacity. All the profits that came to his share belongs to his Hindu undivided family. Inasmuch as we have held above that the cumulative effect of all the facts and circumstances is that it must be held that even the sum of Rs. 6,000 paid to Nagar Das was by way of additional profit and not byway of any salary in the sense of his having rendered any personal service to the firm, the entire sum of Rs. 9,334 belongs to the Hindu undivided family and no part of it can be treated to be the personal income of Nagar Das. We find support for the view we are taking from Mathura Prasad v. Commissioner of Income Tax. In that case M who had become a partner with the joint family funds of the partnership business. Inasmuch as the allowance that was received by M from the partnership funds was received as a consequence of his having joined the partnership firm with the funds of the Hindu undivided family, the sum representing the allowance was included in the assessable income of the Hindu undivided family.

Mr. Brijlal Gupta has placed reliance upon Jugal Kishore Baldeo Sahai v. Commissioner of Income Tax. The assessee in that case was a Hindu undivided family. It had several coparceners, i.e., Babu Ram, his brother, Goverdhan Das, and his sons. In June, 1946, the karta, Babu Ram, wrote a letter to his brother, Goverdhan Das, who was the only other adult member in the family, claiming a sum of Rs. 1,000 per month as his salary for managing the entire business of the Hindu undivided family. Goverdhan Das agreed to this and in the income tax return submitted on behalf of the Hindu undivided family and in the accounts a sum of Rs. 12,000 was debited as expenses. The Income Tax Officer rejected the claim of the assessee that this sum of Rs. 12,000 was liable to be deducted u/s 10(2) (xv) of the Act as deductible expenditure. The view of the Income Tax Officer was affirmed by the Appellate Assistant Commissioner and by the Tribunal in the appeals filed by the assessee. The Tribunal, however, made a reference to the High Court and, taking the view that it was the duty of the manager or karta of the Hindu undivided family to work for the family, the sum of Rs. 12,000 was not allowed as deductible expenditure by the High Court. The Supreme Court held that it should have been so allowed. Bhargava J., who spoke for the court, observed : "The test, we think, which should be applied, is whether the agreement has been made by or on behalf of all the members of the Hindu undivided family and whether it was in the interest of the business of the family, so that it could be justified on grounds of commercial expediency. "It was held by the Supreme Court that "If a remuneration is paid to the karta of the family under a valid which is bona fide and in the interest of, and expedient for, the business of the family and the payment is genuine and not excessive, such remuneration must be held to be an expenditure laid out wholly and exclusively for the purpose of the business of the family and must be allowed as an expenditure u/s 10(2) (xv) of the Act." The question before the Supreme Court was a very different one from the question before us. In that case there was a clear relationship between the sum of Rs. 12,000 paid to the karta and the work that he did for the family. In the case before us there is no relationship between the payment of Rs. 6,000 to Nagar Das and the work that he had to do. In the

deed of agreement, even though there is a provision that the amount of Rs. 500 could be reduced both in the case *Nagar Das and Shyam Sunder*, there was no corresponding provision that once that is done they would cease to work in the firm. Apart from it, it is the duty of the karta to give his whole time to the management of the business of the Hindu undivided family. In our opinion, therefore, *Jugal Kishore Baldeo Sahai v. Commissioner of Income Tax* is clearly distinguishable.

Mr. Brijlal Gupta also placed reliance upon *Piyare Lal Adishwar v. Commissioner of Income Tax*. In this case Ss father was a treasurer of a bank until his death. After his death S was appointed as a treasurer of a bank at various branches of the bank on monthly salary. The treasurer was responsible for the acts and omissions of his representatives whom he had appointed and other members of the staff and he identified the bank against any loss incurred as a result of any neglect or omission on their part. The treasure and his staff were under the control of the bank. The treasure was also responsible for the correctness and genuineness of hundies and cheques dealt with by the treasure or the staff. The agreement between S and the bank could be terminated by three calendar months notice in writing by either side. The question that required consideration in that case was whether S was a servant of the bank and any sum received by him was his individual income apart from the income of the Hindu undivided family which had provided security of Rs. 75,000 on behalf of S. The Supreme Court held that S being the treasure was a servant of the bank and the amount that he received was his income and not that of the Hindu undivided family. That case is also clearly distinguishable from the one before us, firstly, on the ground that the furnishing of security did not mean that any investment was made by the Hindu undivided family. It only meant that the Hindu undivided family was prepared to indemnify to that extent for any lapses committed by S or persons appointed by him. By furnishing the security it did not become entitled to any profits. The security could have been furnished even by a stranger. Assuming that the security had been furnished by a stranger and not by the Hindu undivided family, could it be argued that the income of S received as salary was the income of the surety ? Secondly, the amount that was paid to S was for the personal services he rendered and not because the Hindu undivided family made any investment in the bank as a partner and were entitled to receive any profits from the bank. Lastly, every partner has a duty to work for his partnership business but S certainly had no duty to work for the bank until he was employed. The relationship between the bank and S was that clearly of a master and servant. The relationship of *Nagar Das* and the partnership was not that of a master and servant but that of a partner and a partnership firm.

We have found no merits in the submission of Mr. Brijlal Gupta that even if the relationship of master and servant does not exist between *Nagar Das* and the partnership firm, the amount of Rs. 6,000 paid to the former can be treated to be his separate income and is liable to be assessed in his hands as an individual. We have given our reasons for coming to the conclusion that this sum of Rs.

6,000 was in the nature of extra profits payable to Nagar Das by the same way as an equal sum was payable to Shyam Sunder Lal. Mr. Brijlal Gupta contends that in terms of the agreement this amount is payable to Nagar Das and must be taxed in his hands as an individual. There is nothing in the agreement to show that this amount is payable to him in any other capacity than that of a partner and inasmuch as he is a partner in his representative capacity all remuneration paid to him as a partner must go to the Hindu undivided family. That being the position, we are of the opinion that the view taken by the Tribunal is correct.

We would, therefore, answer the question in the affirmative, in favour of the department and against the assessee. The assessee shall pay to the department a sum of Rs. 200 by way of costs of these proceedings. We fix the fee of the learned counsel for the department at the same figure.

Question answered in the affirmative.