
(1987) 10 KL CK 0025

In the High Court Of Kerala

Case No : Income-tax Reference No. 168 of 1984

P.G. Narayanaswamy

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 20-10-1987

Acts Referred:

Citation : (1988) 68 CTR 169 : (1988) 1 ILR (Ker) 524 : (1988) 169 ITR 813

Hon'ble Judges : M. Fathima Beevi, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : Jose Joseph, for the Appellant; P.K.R. Menon, for the Respondent

Judgement

M. Fathima Beevi, J.—The question referred for our opinion u/s 256(1) of the Income Tax Act, 1961, is this :

"Whether, or; the facts and in the circumstances of the case, the Tribunal was right in holding that no Hindu undivided family came into existence on the marriage of the assessee in view of the Kerala Joint Hindu Family System (Abolition) Act, 1975 ?"

2. The assessment year in question is 1979-80. The assessee, who was a member of a Hindu undivided family, separated from the family on September 2, 1974. He was thereafter assessed as an individual up to and inclusive of 1978-79. He got married on June 12, 1978. In the assessment for the year 1979-80, the assessee claimed the status of a Hindu undivided family in respect of the share income from the firm in which he was a partner. The Income Tax Officer rejected the claim and held that in view of the Kerala Hindu Joint Family System (Abolition) Act, 1975, which came into force on December 1, 1976, the assessee cannot claim the status of a Hindu undivided family. The Appellate Assistant Commissioner confirmed the assessment. The Appellate Tribunal held that in view of the abolition of the Hindu Joint Family System by the Kerala Act, no Hindu undivided family consisting of the assessee and his wife came into existence. The assessment on the assessee as an individual was, therefore,

confirmed. The question of law was referred at the instance of the assessee.

3. Sri P.K.G. Warriar, learned counsel for the assessee, contended before us that the property obtained by the petitioner as his share in the joint family revived its ancestral character on the assessee getting married and a joint family must be deemed to have come into existence on such marriage and in the absence of any specific provision in the Kerala Act repugnant to this rule of the Hindu law, the general law is to prevail and the assessment could have been made only in the status of a Hindu undivided family. As held by this court in *Wealth Tax Officer, C-Ward Vs. K. Madhavan Nambiar*, there can be no joint Hindu family in the State after December 1, 1976. It is a case of the statutory extinction of joint family. When the system has been abolished and the right by birth has been put an end to and the provision has been made for distribution of the properties owned by the joint family, the dormant character of the property obtained by individual member cannot revive and leave the imprint of joint property. Under the general law, the share falling to coparceners does not lose its character of joint family property. The Hindu undivided family will come into existence on the marriage of the coparcener and the wife along with the husband can constitute a Hindu undivided family. That rule cannot apply after the extinction of the Hindu undivided family itself by the Act, when the joint family has been wiped off, the joint family character has been effaced and the absolute right of the individual members had been declared under the statute.

4. Thus, by operation of law, the property held by an individual member on and after December 1, 1976, has lost its character of ancestral property and that character cannot be revived as no undivided family could come into existence or revive within the State where the system has been statutorily put an end to.

5. We, therefore, hold the view that the Tribunal has rightly rejected the contention of the assessee. We accordingly answer the question in the affirmative, in favour of the Revenue and against the assessee.

6. A copy of the judgment under the seal of the High Court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.