
(1979) 09 AHC CK 0046
In the Allahabad High Court
Case No : Income-tax Reference No. 163 of 1976

Prem Kumar

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 06-09-1979

Acts Referred:

Estate Duty Ordinance, 1938 — Section 73
Income Tax Act, 1961 — Section 3

Citation : (1980) 121 ITR 347

Hon'ble Judges : R.R. Rastogi, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : V.K. Verma, for the Appellant; R.K. Gulati and A. Gupta, for the Respondent

Judgement

C.S.P. Singh, J.—The assessee, who is a partner in the firm, Ayodhya Prasad Gopinath, filed a return showing an income of Rs. 17,951 being share income from that firm. He showed his status as that of a HUF consisting of himself and his wife. The assessee had, before becoming a partner in the firm, separated from his father and brothers, who formed a HUF on 17th of October, 1962, and an amount of Rs. 3,216 was given to him as his share. This amount was invested by the assessee in the firm, Ayodhya Prasad Gopinath. At the time when he became a partner of this firm, he was unmarried but during the previous year relevant to the assessment year 1971-72, he married and it was for this reason that he claimed that the share income received from the firm should be taxed in the hands of the HUF consisting of himself and his wife. The ITO, however, did not accept this plea and taxed him in the status of an individual as in the earlier assessment years. The decision of the ITO was reversed by the AAC. An appeal filed by the department has, however, succeeded. The Tribunal has now, at the instance of the assessee, referred the following question for the opinion of this court :

" Whether, on the facts and in the circumstances of the case, the Tribunal was

right in holding that the share income from the firm, Ayodhya Prasad Gopinath, could be assessed in the hands of the assessee in his capacity as " individual "."

2. Counsel for the assessee urged that as the nucleus for the investment made by the assessee in the firm came from the assets of the HUF the amount received by the assessee was ancestral property in his hands and as such the income that accrued from the investment of this money in the firm had to be taxed in the hands of the assessee in the status of a HUF and not as an individual. In the alternative, it is also urged that in any event if the share income from the firm could be treated as the individual income of the assessee in the earlier assessment years, it had to be treated as the income of the HUF as from May 13, 1970, when the assessee married.

3. In the present reference, we are not concerned with the correctness or otherwise of the assessments made in the earlier assessment years where the assessee was assessed in the status of an individual. In the reference, we have to consider whether the assessment should be made in the status of a HUF family on account of the assessee's marriage.

4. Two questions have to be determined by us in order to resolve this controversy. Firstly, as to whether an individual coparcener on a partition constitutes a HUF for the purposes of the I.T. Act, 1961, and secondly, whether on the marriage of the individual coparcener, a HUF comes into existence so as to entitle an assessee to claim the advantage of being assessed in the status of a HUF. In order to determine these questions it will be useful to refer to certain decisions of the Supreme Court which have considered the difference between a coparcenary and a HUF and have also indicated the general category of persons who go to constitute a HUF.

5. We will begin by considering the decision of the Supreme Court in the case of Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore, . One of the questions that their Lordships had to consider in that case was as to whether it was necessary that there should be two male members in order to constitute a HUF. While considering this controversy their Lordships considered the difference between a Hindu coparcenary and a Hindu joint family and also categorised the persons who go to constitute a HUF. It was observed (pp. 295, 296) :

" The first contention is plainly unsustainable. u/s 3 of the Income Tax Act, not a Hindu coparcenary but a Hindu undivided family is one of the assessable entities. A Hindu joint family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. A Hindu coparcenary is a much narrower body than the joint family ; it includes only those persons who acquire by birth an interest in the joint or coparcenary property, these being the sons, grandsons and great-grandsons of the holder of the joint property for the time being. Therefore, there may be a joint Hindu family consisting of a single male member and widows of deceased coparceners. In Kalyanji Vithaldas v. CIT [1937] 5 ITR 90, delivering the judgment of the

Judicial Committee, Sir George Rankin observed :

" The phrase " Hindu undivided family " is used in the statute with reference not to one school only of Hindu law, but to all schools ; and their Lordships think it a mistake in method to begin by pasting over the wider phrase of the Act the words " Hindu coparcenary ", all the more that it is not possible to say on the face of the Act that no female can be a member."

The plea that there must be at least two male members to form a Hindu undivided family as a taxable entity also has no force. The expression " Hindu undivided family " in the Income Tax Act is used in the sense in which a Hindu undivided family is understood under the personal law of Hindus. Under the Hindu system of law a joint family, may consist of a single male member and widows of deceased male members, and apparently the Income Tax Act does not indicate that a Hindu undivided family as an assessable entity must consist of at least two male members."

6. The question as to whether a single member, male or female of a partitioned family would be a HUF for purposes of the I.T. Act was left unanswered. The principle relevant for the purposes of this case is that a Hindu joint family consists not only of the male members, but also of their wives and unmarried daughters. Thus, a Hindu joint family came into existence when the assessee married on the 13th of May, 1970 ; the question whether a Hindu joint family should be treated as a HUF was considered by the Supreme Court in the case of N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, and it was held that the expression " Hindu undivided family " in the W.T. Act was used in the sense in which a Hindu joint family is understood in the personal law of Hindus. It was also laid down that under the Hindu system of law a joint family may consist of a single male member, his wife and unmarried daughters. Although this decision was given under the W.T. Act, it applies equally to cases arising under the I.T. Act, for a HUF has not been denned in the I.T. Act nor under the W.T. Act. Thus, for the purpose of both these Acts, the concept of a HUF as understood under the Hindu law has to be applied.

7. Sri R. K. Gulati, appearing on behalf of the department, however, urged that the existence of a wife does not make income derived from ancestral property of a Hindu income of the HUF for the purpose of the Act. It was also urged that till such time that a son is born the assessment has to be made in the status of an individual notwithstanding that the assessee may have married. In support of these two contentions, he has drawn our attention to the case of Kalyanji Vithaldas v. CIT [1937] 5 ITR 90 and the decision of the Supreme Court in T.S. Srinivasan Vs. Commissioner of Income Tax, Madras, . The observations of their Lordships of the Privy Council in Kalyanji's case [1937] 5 ITR 90 lend support to the first contention, for it was observed :

"The existence of wife or of a wife and daughters does not make income derived from the ancestral property of a Hindu, income of a Hindu undivided family for

purposes of assessment to super-tax. "

8. This decision, however, has been considered in detail in *Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore*, and does not appear to have been approved, for, instead of following that decision, they approved of the view expressed by a subsequent decision of the Privy Council in the case of *Attorney-General of Ceylon v. AR. Arunachalam Chettiar* [1957] AC 540 ; [1958] 34 ITR 42 ; 3 EDC 825. In that case, the sole surviving coparcener of a HUF, which had a number of females, died. The widows and his son's widow, who had rights of adoption, exercised it after the death of the coparcener. The female members of the family had the right to maintenance and other rights in the estate of the deceased. A question arose u/s 73 of the Estate Duty Ordinance as to whether the property was of the HUF consisting of the deceased and the other family members or the sole property of the deceased. Considering this question their Lordships observed as under (pp. 45, 46 of 34 ITR (ED)) :

" But though it may be correct to speak of him as the " owner ", yet it is still correct to describe that which he owns as the joint family property. For his ownership is such that upon the adoption of a son it assumes a different quality : it is such, too, that female members of the family (whose members may increase) have a right to maintenance out of it and in some circumstances to a charge for maintenance upon it. And these are incidents which arise, notwithstanding his so-called ownership, just because the property has been and has not ceased to be joint family property. Once again their Lordships quote from the judgment of Gratiaen J. in *Attorney-General of Ceylon v. AR. Arunachalam Chettiar* [1953] 55 CNLR 469 :

To my mind it would make a mockery of the undivided family system if this temporary reduction of the coparcenary unit a single individual were to convert what was previously joint property belonging to an undivided family into the separate property of the surviving coparcener. " To this it may be added that it would not appear reasonable to impart to the legislature the intention to discriminate, so long as the family itself subsists, between property in the hands of a single coparcener and that in the hands of two or more coparceners. It was urged that already the difference is there since a single coparcenary can alienate the property in a manner not open to one of several coparceners. The extent to which he can alienate so as to bind a subsequently adopted son was a matter of much debate. But it appears to their Lordships to be an irrelevant consideration. Let it be assumed that his power of alienation is unassailable; that means no more than that he has in the circumstances the power to alienate joint family property. That is what it is until he alienates it and, if he does not alienate it, that is what it remains. The fatal flaw in the argument of the appellant appeared to be that, having labelled the surviving coparcener " owner ", he then attributed to his ownership such a congeries of rights that the property could no longer be called " joint family property ". The family, a body fluctuating in numbers and comprised of male and female members, may equally well be said to be owners

of the property, but owners whose ownership is qualified by the powers of the coparceners. There is in fact nothing to be gained by the use of the word " owner " in this connection. It is only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it can be determined whether the family property can properly be described as " joint property " of the undivided family. "

9. This dicta was approved by the Supreme Court. It follows from this, therefore, that property held by a single coparcener does not lose its character of joint family property solely for the reasons that there is no other member, male or female, at a particular point of time. The fact that till such time that no other member comes into existence, either by marriage, adoption or by the birth so as to enable an assessee to claim the status of a HUF for the purpose of the I.T. Act does not alter the character of the family property held by the sole coparcener. But once the sole surviving coparcener marries, a HUB" comes into existence, for the wife along with her husband constitutes a joint Hindu family and as we have seen earlier there is no difference between a joint Hindu family and a HUF. We find support for this view from the decision of the Supreme Court in C. Krishna Prasad Vs. Commissioner of Income Tax , Bangalore, , where it was held that a family signifies a group and it was essential, therefore, that there should be a plurality of persons. It was, as such, held that a single person, whether male or female cannot be treated as a HUF for the purpose of the I.T. Act. It was observed at page 496 :

" It would follow from the above that the word " family " always signifies a group. Plurality of persons is an essential attribute of a family. A single person, male or female, does not constitute a family. He or she would remain, what is inherent in the very nature of things, an individual a lonely wayfarer till per chance he or she finds a mate." (underlining ours).

10. In view of these pronouncements, it has to be held that a HUF came into existence when the assessee married. The case of T.S. Srinivasan Vs. Commissioner of Income Tax, Madras, was not concerned with the point as to whether a HUF comes into existence on the marriage of a separated coparcener, for the assessee in that case had claimed the existence of a HUF solely on the ground that a HUF comes into existence from the point of time that a son is conceived. This contention was repelled by the Supreme Court as it was held that the doctrine under the Hindu law that a son conceived or in his mother's womb is equal in many respects to a son in existence, in respect of certain matters is not one of universal application, and applies mainly for the purpose of determining rights to property and safeguarding such rights of the son. The doctrine in their Lordships' view did not fit in with the scheme of the I. T. Act. As no question arose before the Supreme Court as to whether a HUF comes into existence on marriage, we cannot read this decision as laying down the proposition that a HUF comes into existence only on the birth of a son. As noticed earlier, the matter appears to be fairly covered by the subsequent

decision of the Supreme Court in C. Krishna Prasad Vs. Commissioner of Income Tax , Bangalore, . As the matter appears to be concluded by the decision of the Supreme Court already referred to, we do not think that any useful purpose will be served by referring to decisions of other High Courts cited by counsel for the assessee.

11. We, accordingly, answer the question in the negative, in favour of the assessee and against the department. The assessee is entitled to costs which is assessed at Rs. 200. Counsel's fee is also assessed at the same figure.