
(1978) 02 AHC CK 0033

In the Allahabad High Court

Case No : Miscellaneous A.I.T.R. No. 288 of 1974

Purshottam Das and Others

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 10-02-1978

Acts Referred:

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 15(3)

Citation : (1981) 128 ITR 745

Hon'ble Judges : Satish Chandra, J;K.C. Agarwal, J

Bench : Division Bench

Advocate : R.R. Agarwal, for the Appellant; Ashok Gupta, for the Respondent

Judgement

Satish Chandra, J.—On 6th November, 1965, the Collector issued notices to Brij Raman Das, Reoti Raman Das, Radha Raman Das, Smt. Kamal Mani Devi and Smt. Sumitra Devi requiring them to file returns under the Agrl. I.T. Act for the years 1359 Fasli, 1360 Fasli, 1361 Fasli and 1363 Fasli. The year 1363 fasli ended on 31st July, 1956. These notices were issued because these individuals' agricultural income had escaped assessment. Section 25 of the Agrl. I.T. Act provides for such contingencies. Under it a notice could be issued within three years of the expiry of a particular year. Obviously these notices were beyond time. The Board, however, dismissed the revisions filed by these persons on the finding that the question of partition in their family was pending consideration in courts and, therefore, the proceedings initiated by the issuance of the notices on 6th November, 1965, were, in law, proceedings in continuation of the previous proceedings relating to partition in the family. At the instance of the assessee, the Board has referred for our opinion the following two questions of law :

"1. Whether the assessment for 1359 Fasli to 1361 Fasli and 1363 Fasli, in view of the orders of the hon'ble High Court on the point of family partition on Brij Raman Das, Reoti Raman Das, Radha Raman Das, Smt. Kamal Mani Devi and Smt. Sumitra Devi, to whom individual notices had not been issued originally by the assessing authority, are barred by the provisions of sections 15 and 25 ?

2. Whether the revision Board can annul the assessment of 1361 Fasli and 1363 Fasli made on Smt. Kamal Mani Devi, deceased, and can make fresh assessment on her legal heirs in modification of its orders dated March 19, 1971 ?

2. In relation to the first question, the facts are that the family, of which Purshottam Das was the head, suffered a partition in 1948. In 1355 Fasli, the Collector accepted the partition and for that year made separate assessments on the individual members. The matter went up in revision and the Board ultimately held that the assessee had failed to establish the partition and it allowed the revision on 30th August, 1951. This court rejected an application for reference arising out of that order. Ultimately, the matter went up to the Supreme Court. The Supreme Court held that a question of law did arise and required the High Court to call for a reference. When the matter came back to the High Court, the reference was called for and ultimately the High Court allowed it and held that the partition of the family had been established.

3. During the pendency of these proceedings, notice u/s 15(3) of the Act was issued to Purshottam Das alone. It is admitted that no notices requiring the filing of returns were issued to other members of the family. These notices were for the first time issued on 6th November, 1965, for the assessment years mentioned above, in pursuance of a direction given by the Board while disposing of the revision.

4. We are unable to appreciate the view of the Board that the assessment proceedings consequent upon these notices issued on November 6, 1965, could, in any sense, be held to be a continuation of the previous litigation which related to the question whether the family had suffered a partition. Under the Agrl. I.T. Act an individual is an assessable entity and so is an HUF. These are distinct assessable entities. Proceedings to assess an HUF could not be connected with initiation of proceedings against individuals even though they may be members of the same HUF.

5. Admittedly, the notices issued for the years in question were beyond three years. The proceedings consequent on these notices were without jurisdiction. Section 15(3) requires the issuance of a notice during the year in question. It provides :

"In the case of any person whose total agricultural income is, in the opinion of the assessing authority, such amount as to render such person liable to payment of agricultural Income Tax in any year, he may serve in that year a notice in the prescribed form--....."

6. Obviously, this mandatory condition was violated by the issuance of the notices on November 6, 1965, for the assessment year ending 1363 fasli. The notice on November 6, 1965, could not be characterised as valid notices u/s 15(3) of the Act.

7. We answer the first question in the affirmative in favour of the assessee and

against the department. Learned counsels are agreed that in view of this answer, the second question does not call for any specific answer. We, therefore, return it unanswered.

8. The assessee will be entitled to costs which we assess at Rs. 200.