
(1990) 10 AHC CK 0045
In the Allahabad High Court

Case No : Income-tax Reference No. 904 of 1978 and connected references

Rajendra Nath

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-10-1990

Acts Referred:

Income Tax Act, 1961 — Section 64, 64(1)

Citation : (1991) 93 CTR 89 : (1991) 188 ITR 753 : (1991) 55 TAXMAN 205

Hon'ble Judges : B.P. Jeevan Reddy, C.J;G.D. Dube, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

B.P. Jeevan Reddy, C.J.—In these fifteen cases, four common questions of law are referred to this court by the Tribunal. They can, therefore, be disposed of under a common order. It would be sufficient if we refer to the question stated in ITR No. 904 of 1978 : Sri Rajendra Nath v. CIT. The questions stated are as under :

"1. Whether, on the facts and circumstances of the case, the Tribunal was correct in law in upholding the assessee's claim of partial partition ?

2. Whether, on the facts and circumstances of the case, the Tribunal was legally correct in holding that the indenture dated April 22, 1971, created sub-partnership ?

3. Whether, in view of the finding that there was a genuine partial partition which brought about an overriding title in favour of the members, the Tribunal was right in coming to the conclusion that it was a case of sub-partnership attracting the provisions of the Income Tax Act ?

4. Whether the Tribunal was right in its interpretation of the deed dated 27th of April, 1971, and upholding that it was a partnership deed and not merely a document containing a recital of partial partition ?"

2. Pursuant to a partition of a Hindu undivided family in the year 1956, a firm, R. S. Janki Prasad and Son, was brought into existence by the erstwhile members of the said Hindu undivided" family. All the three branches (smaller-Hindu undivided families in the Hindu undivided families) were partners in this partnership. The three branches were represented by Sri Rajendra Nath, Sri Vishwamitra and Sri Jagdish Prasad. This firm was granted registration u/s 26A of the Indian Income Tax Act, 1922. The share income of each of these persons derived from the partnership was assessed for some time as the income of the respective smaller Hindu undivided families. A controversy, however, arose during the assessment year 1972-73. During the assessment proceedings, it was contended by each of these persons, viz Rajendra Nath, Vishwamitra and Jagdish Prasad that there has been a partition amongst the members of each of the three smaller-Hindu undivided families on April 22, 1971, wherein the wife and sons of-each of the said persons have been given equal shares. It was contended that the income accruing to their respective wives and sons should be treated as their separate income and cannot be clubbed with the income of the husband/father. To be more precise, we may refer to the facts in I. T. R. No. 904 of 1978, pertaining to the Hindu undivided family of Sri Rajendra Nath. His case was that, by virtue of an indenture dated April 22, 1971, the capital contributed by and standing to the credit of the smaller Hindu undivided family represented by him (Rs. 70,100.06) has been divided in equal shares between him and his wife, Smt. Uma Devi, and three sons, viz., Ravi Nath, Rajiv Nath and Rakesh Nath, the latter two being minors. His contention was that the share income of his wife or his minor sons cannot be clubbed with his income u/s 64 of the Act. The facts relating to the smaller Hindu undivided family of Jagdish Prasatt are similar. But so far as Vishwamitra's branch is concerned, there was no minor on the date of partition, One of the five members of the smaller Hindu undivided family, however, Sri Virendra Kumar, was a person of unsound mind and was represented by his father, Vishwamitra, at the said partition. The recitals in all the deeds of partition are identical. It would be sufficient to notice the terms and recitals of one such indenture. In the case of Rajendra Nath's branch, it reads as under :

"This indenture made this 22nd of April of the year one thousand nine hundred and seventy-one between Rajendra Nath, son of R. S. Lala Janki Pershad, Smt. Uma Devi, w/o. Sri Rajendra Nath, Ravi Nath, major son of Shri Rajendra Nath and Rajiv Nath and Rakesh Nath, both minors, under the guardianship of their father, Shri Rajendra Nath, all residents of Jhansi Cantt.

Witnesseth as under :--

Whereas we the above constitute a Hindu undivided family governed by the Mitakshara school of Hindu law with Shri Rajendra Nath as karta thereof.

Whereas I, the said Rajendra Nath had 1/3rd share in the partnership firm styled as R. S. Janki Pershad and Sons, in the capacity of a Hindu undivided family headed by me and whereas the said family was constituted by me, my wife, Smt. Uma Devi, Ravi Nath, Rajiv Nath and Rakesh Nath and whereas the family capital

as on April 1, 1971, invested in the business styled R. S. Janki Pershad and Sons, in the name of karta, Rajendra Nath, amounted to Rs. 70,100.06 (Rupees seventy thousand one hundred and paise six only) and whereas the said capital has been divided on March 31, 1971, as under :--

Rajendra Nath 1/5th Rs. 14,020.02

Smt. Uma Devi 1/5th Rs. 14,020.01

Ravi Nath 1/5th Rs. 14,020.01

Rajiv Nath 1/5th Rs. 14,020.01

Rakesh Nath 1/5th Rs. 14,020.01

and whereas as a result of such partition each member had become the exclusive owner of the said money and the share allotted to his/her share in partition to the exclusion of the others and hereafter the share derived from the said firm, R. S. Janki Pershad and Sons, shall belong to Shri Rajendra Nath, Smt. Uma Devi, Ravi Nath, Rajiv Nath and Rakesh Nath each having 1/5 share except that in case it is a loss the same shall be shared equally by Shri Rajendra Nath, Smt. Uma Devi and Ravi Nath.

A mention of the said partition also occurs in the cash book of the said Hindu undivided family started for this purpose and relevant entries in respect of the above have also been made in the said Hindu undivided family books and in order to avoid any further trouble in this respect this memo of partition is being executed this 22nd day of April, 1971, by way of memo of partition having been effected as above.

Signed this day the 22nd of April, 1971.

Sd, Rajendra Nath Sd. Sd. Ravi Nath." (Smt. Uma Devi)"

3. Before the Income Tax Officer, it was contended by the assesseees that the said indenture is a deed of partial partition between Rajendra Nath, his wife and three sons and, therefore, the other members have acquired an overriding title to their share of income in the share income received by Rajendra Nath from the firm, Messrs. R. S. Janki Pershad and Sons. It was argued alternately by the assesseees that the said indenture has brought into existence a sub-partnership between the members of the smaller Hindu undivided family. The Income Tax Officer refused to accept the said document either as a deed of partition or as a deed of sub-partnership. He, accordingly,, directed that the entire share income received by Rajendra Nath should be assessed in his hands as an individual as was done in the previous years. The matter was carried in appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that the said deed is a deed of partition and must be accepted as such. He also held that the said indenture has brought about a sub-partnership between the members of the smaller Hindu undivided family and, therefore, Section 64 of the Act would be attracted in so far as the income received by the wife and minor sons are

concerned. Against this decision of the Appellate Assistant Commissioner, both the assessee and the Department went in appeal to the Income Tax Appellate Tribunal. The Tribunal confirmed the findings and conclusion of the Appellate Assistant Commissioner. It would be appropriate to quote the operative portion of the Tribunal's judgment in Rajendra Nath's case which runs as under :

"These appeals were heard by us along with similar cross appeals filed in the case of Shri Vishwamitra. The two similar appeals filed by the Department ITA Nos. 1703 and 1705/Ald/1975-76 have been disposed of by us by order dated 16-6-1976. The facts and the contentions of the parties are discussed in detail in that order. The findings of the Appellate Tribunal are that there did take place a partial partition of the capital appearing in the books of the firm on the basis of the indenture dated 22-4-1971, that that document created an overriding title in favour of each of the persons who were parties to it and it was not a case of an application of income and lastly that this document created sub-partnerships and the provisions of Section 64 would be attracted where the spouse and/or minor sons are interested in the firm. In other words, the findings of the Appellate Assistant Commissioner have been confirmed in toto. For reasons given in detail in that order in the case of Shri Rajendra Nath as well, we record that same finding and confirm the order of the Appellate Assistant Commissioner accepting the claim of partition made on 22-4-1971, and further that this document created an overriding charge in favour of the parties to that agreement and lastly that it created a sub-partnership between them, but inasmuch as the assessee's wife and two minor children as well are interested in the same firm, the share income accruing to them would be includible in the assessment of the assessee u/s 64 of the Act. In the result, therefore, all the three appeals are liable to be dismissed."

4. Thereupon, the assessee applied for referring certain questions but, on being declined, he approached this court u/s 256(2) and this court directed the aforesaid questions to be stated for the opinion of this court.

5. According to the Mitakshara school of Hindu law, a karta/father is entitled to effect partition of joint family property between himself and the other members of the family. This right is not affected by the presence of minor members in the joint family. Even if a member of the joint family is of unsound mind, he may be represented by a guardian and a valid partition may be effected. That is what precisely has happened in this case. In the case of the smaller Hindu undivided families of Rajendra Nath and Jagdish Prasad, there were minors while, in the case of Vishwamitra's Hindu undivided family, one of the sons of Vishwamitra was of unsound mind and was represented by his guardian/father. We are, therefore, of the opinion that the said indenture can be treated as a deed of partition, but this is not the end of the problem. The indentures in question in the cases of Rajendra Nath and Jagdish Prasad go further and say that the minor members of the family shall not be liable for losses. This recital clearly discloses that what was also sought to be done in the said indenture was to bring into

existence a sub-partnership as well wherein the minors were admitted to the benefits of partnership. It is well-settled that we have to read the document as a whole to understand its true nature and purpose. Reading the document in the cases of Rajendra Nath and Jagdish Prasad as a whole, we are of the opinion that the Tribunal was not in error in holding that indentures in their cases did also bring into existence a sub-partnership, to the benefits of which the minors were admitted. Once this is so, Clause (i) of Sub-section (1) and Clause (iii) of Sub-section (1) of Section 64 of the Act are attracted and the income received by the wife and the minor children would be included in the income of the husband/father. The judgment of the Tribunal is, in our opinion, right except in so far as the branch of Vishwamitra is concerned where a minor clarification is called for. In the case of this branch, there are no minors. One of the sons of Vishwamitra is of unsound mind. It is true that, in the case of the indenture executed by the members of Vishwamitra's Hindu undivided family too, an identical recital is found (to the effect that the person of unsound mind shall not be liable for loss), yet that clause is liable to be ignored in law. Section 30 of the Partnership Act which provides for admission of a minor to the benefits of partnership, does not apply or extend to a person of unsound mind. There is no other provision of law where under a person of unsound mind can be admitted to the benefits of partnership. If he is admitted as a partner, he would also be liable for losses. We, therefore, ignore the said clause in the case of the Hindu undivided family of Vishwamitra. It may also be noticed that Section 64 of the Act does not apply to the income received by a person of unsound mind. Section 64 provides only for inclusion of the income received by a spouse or by a minor child but not by a major son who is of unsound mind. In this view of the matter, Section 64 of the Act cannot be applied in the case of Vishwamitra to the extent of the income received by the son of unsound mind.

6. For the above reasons, all the four questions referred in 1978 I. T. R. 974 , 975 of 1978, 107 of 1979, 167 of 1983 and 166 of 1983 (all pertaining to Jagdish Prasad) and 1978 I. T. R. 904 , 979 of 1978, 108 of 1979, 268 of 1981 and 165 of 1983 are answered in the affirmative upholding the judgment of the Tribunal. However, so far as 1978 I. T. R. 174, 976 of 1978, 109 of 1979, 266 of 1981 and 231 of 1983 are concerned, the answer to the four questions shall be as follows :

Question No. 1 is answered in the affirmative.

Question No. 2 is answered in the affirmative.

Question No. 3 is answered in the affirmative.

with the clarification that the income of Virendra Kumar (of unsound mind) cannot be included in the income of Vishwamitra u/s 64.

Question No. 4 is answered in the affirmative. There, shall be no order as to costs in all the cases.