
(1990) 07 GAU CK 0016

In the Gauhati High Court

Case No : Income-tax Reference No"s. 21 of 1981 and 9 of 1990

S. Ajit Singh Rais

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 13-07-1990

Acts Referred:

Income Tax Act, 1961 — Section 171

Citation : (1991) 188 ITR 242

Hon'ble Judges : A. Raghuvir, C.J.;M. Sharma, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee, R.P. Agarwalla, R.L. Jain and R. Gogoi, for the Appellant; D.N. Choudhury and K.H. Choudhury, for the Respondent

Judgement

A. Raghuvir, C.J.—The two references Nos. 21 of 1981 and 9 of 1990 relate to S. Ajit Singh Rais (the assessee) under the Income Tax Act, 1961. The first reference is made at the instance of the assessee by the Tribunal. That reference relates to the assessment years 1971-72, 1972-73, 1973-74 and 1974-75. The second reference was made by an order of this court at the instance of the assessee. The second reference relates to the assessment years 1968-69, 1969-70 and 1970-71.

2. The eight questions referred in the former reference are: (1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the status of the assessee was that of "Individual" and not "Hindu undivided family" ? (2) Whether the Tribunal has considered all relevant materials and has not based its findings on irrelevant materials while determining the status of the assessee ? (3) Whether, on the facts and in the circumstances of the case, the Tribunal was correct and had any material to hold that there was no new fact or material on record with the Appellate Assistant Commissioner enabling him to have come to a conclusion different from that arrived at by the Tribunal in its order dated December 18, 1975 ? (4) Whether, on the facts and in the circumstances of the case, the declaration of the assessee and the verification in

the Income Tax return for the assessment year 1957-58 and their acceptance by the Income Tax Officer and the Wealth-tax Officer are not sufficient and complete to impress the assessee's self-acquired property with the character of Hindu undivided family, it is open for the assessee, much less to a stranger, to revert them back to the individual character ? (5) Whether, on the facts and in the circumstances of the case, the assessee's action of blending the inherited ancestral properties with that of the properties impressed beforehand with the character of the Hindu undivided family would not amount to throwing into the common hotchpot of the Hindu undivided family and especially in view of the declaration and verifications in the Income Tax and wealth-tax returns for the assessment year 1958-59 ? (6) Whether the Tribunal was right in refusing to consider the legal submissions made and the various judgments cited before it by the assesses ? (7) Whether the Tribunal adjudicating upon an order passed u/s 143(3) was correct in ignoring the order u/s 171 which had become final by efflux of time and in fact nullifying the said order u/s 171 ? (8) Whether the order of the Tribunal is not contrary to the Supreme Court judgment reported in Joint Family of Udayan Chinubhai, etc. Vs. Commissioner of Income Tax, Gujarat,

3. The three questions referred in the second reference are : (1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the status of the assessee was that of individual and not Hindu undivided family ? (2) Whether the Tribunal has considered all the relevant materials while determining the status of the assessee ? (3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the inclusion of the income u/s 64 of the Income Tax Act despite the claim of partition of Eleye Cinema business with effect from April 1, 1967 ?"

4. The Revenue and the assessee both represented that if the first question in the two references is answered, all other questions in the two references will follow suit.

5. The father of the assessee, Sohan Singh, and Tahel Singh are brothers. Sohan Singh died on July 24, 1957, and his last testament is dated July 1, 1957. In that testament, the assessee is the sole legatee. Narindar Kaur is the spouse of the assessee and their three sons are Ripudaman Singh, Purdaman Singh, Tejdaman Singh and Sukhmit Kaur is their daughter. A title suit No. 3 of 1971 was filed on January 10, 1971, on the file of the Assistant District Judge, Sibsagar, Jorhat, by Ripudaman Singh. In that suit, Ajit Singh, Purdaman Singh, Tejdaman Singh and Sukhmit Kaur were defendants. A preliminary decree was passed in the suit on October 28, 1971, and a final decree was passed on December 18, 1972.

6. The Income Tax Officer, in these cases, examined on March 24 and 29, 1977, the following witnesses who deposed as to the suit and how the joint family properties got divided. Ajit Singh Rais deposed that in Pabhojan Tea Estate, he was a partner. He referred to a trust created on January 13, 1968, and a cinema house named Eleye Cinema house. His deposition reveals that, on April 1, 1967, the joint family properties were divided among the three sons. In the returns

submitted for the assessment years 1956-57, 1957-58, 1958-59, 1959-60 and 1961-62, the assessee asserted to have blended his personal property with that of Hindu undivided family. As for the dates of birth of Ripudaman and Purdaman, he explained that, due to lapse in his memory, some inaccuracies have crept in the records. Narindar Kaur deposed that she was in possession of the properties as per final decree and she furnished a list of them. Ripudaman Singh deposed that he managed Eleye Cinema hall and that he received properties as per the final decree. Tejdaman Singh deposed that he is in possession of the properties allotted to him. Besides the oral evidence, a host of assessment orders passed under the Income Tax Act are placed on record. We may briefly summarise what the orders relate to and for what assessment years.

7. Sohan Singh and Tahel Singh are assessed as partners of a registered firm in the assessment orders for 1953-54. In the assessment orders for 1956-57 and 1957-58, the firm, Sardar Sahib Sohan Singh Rais and Sons, was assessed as a registered firm. In the assessment order for 1958-59, the two sons of the assessee are taxed as partners of an unregistered firm. In the assessment orders for 1954-55, 1955-56, 1956-57, 1957-58 and 1958-59, Sohan Singh is assessed as an individual. In the assessment orders for 1956-57, 1957-58, 1958-59, 1959-60 and 1960-61, the assessee is shown as a Hindu undivided family. In the assessment orders for 1961-62, 1962-63, 1963-64, the assessee claimed unsuccessfully before the Income Tax Officer and the Appellate Assistant Commissioner the status of a Hindu undivided family. In the orders for 1964-65 and 1967-68, the assessee is shown as an individual. In the wealth-tax assessment, the assessee for the assessment years 1957-58, 1958-59 and 1961-62 is assessed as Hindu undivided family.

8. There is no consistency in these orders so far as the status of the assessee is concerned. In the wealth -tax returns, the assessee is shown as Hindu undivided family but under the Income Tax Act, the assessee for the same years is shown, as an individual. It does not appear that any attention was paid to strike any consistency when these orders were passed. On a reading of these orders, much is left to be desired.

9. Learned counsel for the assessee in this case pointed out to a will dated July 1, 1957, of the assessee's father in which the assessee is the sole legatee. Whatever property the assessee got under that will, it is pointed out by the assessee in the Income Tax return of 1957-58 was shown as the property of the Hindu undivided family but, in the succeeding year 1959-60, the assessee is again taxed as an individual.

10. Learned counsel for the assessee argued that, under the Mitakshara law, a coparcener is entitled to declare his personal individual property or self-acquired property as coparcenary property or joint property from the date of the declaration. A declaration of that nature is not a gift and is not a transfer. The Hindu law enables such a declaration to be made by any member of the Hindu joint family. If authorities are needed to such a proposition, it is found in G.

Narayana Raju Vs. G. Chamaraju and Others, Gundlapalli Mohan Rao and Others Vs. Gundlapalli Satyanarayana and Others, and COMMISSIONER OF Income Tax, GUJARAT-IV Vs. MAHENDRAKUMAR MITHARMAL. AND OTHERS.,

11. We accept that, on the demise of the assessee's father, the return submitted by the assessee for the year 1959-60 shows that the assessee treated the property he succeeded to under the will to be Hindu undivided family property. That inference of fact can be accepted as no specific form of declaration is required to be made under the Hindu law.

12. The next question which was argued was with reference to Section 171 of the Income Tax Act, 1961. The corresponding provision in the 1922 Act is Section 25A. The Supreme Court considered the scope of Section 25A in the case of Joint Family of Udayan Chinubhai, etc. Vs. Commissioner of Income Tax, Gujarat, and highlighted the scope of the section as it is reflected in the assessment orders. The assessment orders are shown to be self-contained orders. A decision in an assessment year does not operate as *res judicata* or bind the assessee or the Revenue in a subsequent year. This inference is drawn as the Assessing Officer is not a court and the Income Tax Officer can depart from the decision in subsequent years as each assessment year is final and conclusive between the parties only for that year.

13. Having said that this reference is made to Section 25A and it is said (at. p. 423) : "But this rule, in our judgment, does not apply in dealing with an order u/s 25A(1). Income from property of a Hindu undivided family, "hitherto" assessed as undivided, may be assessed separately if an order u/s 25A(1) had been passed. When such an order is made, the family ceases to be assessed as a Hindu undivided family. Thereafter, that family cannot be assessed in the status of a Hindu undivided family unless the order is set aside by a competent authority, Under Clause (3) of Section 25A, if no order has been made notwithstanding the severance of the joint family status, the family continues to be liable to be assessed in the status of a Hindu undivided family, but once an order has been passed, the recognition of severance is granted by the Income Tax Department, and Clause (3) of Section 25A will have no application." In this regard, a decision of the Punjab High Court, COMMISSIONER OF Income Tax, DELHI AND RAJASTHAN Vs. GANESHI LAL SHAM LAL., rendered u/s 25A of the Indian Income Tax Act, 1922, was approved. The principle of contrast set out in Section 25A as against the other orders is in substance an incorporation of the principle of comity. One of us (Chief Justice) referred to the comity principle in Commissioner of Wealth-tax Vs. N.R. Sirkar, See in the Constitution of U. S. A. at page 626 comity is defined in the following manner : "A self-imposed rule of judicial morality whereby independent Tribunals of concurrent or co-ordinate jurisdiction exercise mutual restraint in order to prevent interference with each other and to avoid collusion of authorities." Thus, we hold that the principle of comity is incorporated in Section 25A and Section 171 of the 1961 Act.

14. The orders of assessment years from 1968-69 to 1974-75 are the subject-

matter of reference. In the preceding years, that is, orders for the assessment years 1961-62 to 1967-68, the assessee's status was recognised as an individual. In these orders, the assessee claimed the status of a Hindu undivided family. When the Income Tax Officer did not grant him, he filed an appeal before the Appellate Assistant Commissioner and by an order dated April 24, 1969, his status as an individual was confirmed. Thereafter, he did not pursue the issue. Therefore, we find it difficult to accept now the contention that in the assessment year 1968-69 and onwards the assessee should be accorded the status of a Hindu undivided family.

15. In view of the above discussion, we hold on the first question in the two references that the order of the Tribunal did not suffer from any vice whatever. We answer the first question against the assessee and in favour of the Revenue. In view of this decision the other questions need not be answered separately as the conclusion in the first question operates on other questions. The references are answered accordingly. No costs.

M. Sharma, J.

16. I agree.