

(1957) 02 AHC CK 0019

In the Allahabad High Court

Case No : Agricultural Income Tax Ref. No. 370 of 1955

Sahu Ram Kishan

APPELLANT

Vs

The State of U.P.

RESPONDENT

Date of Decision : 18-02-1957

Acts Referred:

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 10, 2(11)

Citation : AIR 1958 All 35

Hon'ble Judges : V. Bhargava, J;Upadhya, J

Bench : Division Bench

Advocate : J.N. Takru, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

V. Bhargava, J.—In compliance with the order of this Court dated 4-3-1955 the Board constituted under the Agricultural Income Tax Act has referred the following question for the opinion of this Court: Whether on the facts of this case the assessment of Sahu Ram Kishan in the status of a Hindu undivided family is right in law?

The statement of the case shows that Sahu. Ram Kishan has eight sons and a wife. The notice for assessment of the Agricultural Income Tax for the year 1955 was issued to Sahu Ram Kishan alone. He filed a return in which he had shown his individual income and he averred that a partition had taken place between him and his sons so that he could not be assessed in respect of the entire income of the family. He was assessed in respect of the entire income of the family except for the share of one of his sons, viz., Om Prakash who was held to be separate. His appeal before the Commissioner and his revision, before the Board were unsuccessful. He then applied to this Court which directed the Board to make this reference.

2. The assessee's case was that a separation had taken place in the year 1946 in the family. Consequently, on 5-1-1948, Om Prakash instituted, a declaratory suit

impleading the assessee and all other members of the family as defendants with a prayer that his separation from the family may be declared and his share fixed at one tenth. The case was uncontested and was decreed in March 1948. Thereafter, mutation took place as result of which the share of each member of the family was separately shown in the revenue records. It was in these circumstances that the assessee claimed that he was separate from all other members of the family.

3. Having gone through the statement of the case carefully, we have been able to find only one fact which could possibly be said to support the contention of the department that the assessee and his sons and wife except Om Prakash continued to remain members of an undivided Hindu family after the separation of Om Prakash. That fact is that, even after the alleged separation, the assessee continued to manage the property and Mahabir Prasad the old karinda continued to look after the family property so that the accounts were continued to be maintained jointly by the assessee.

Apart from this fact even the learned Senior Standing Counsel was unable to point out to us any other fact which could lead to an inference that after the separation of Om Prakash, the rest of the family continued to remain joint. So far as the fact relied upon by the department is concerned it appears to us that it is consistent with the jointness of the remaining members of the family as well as with separation between them. It has been noted in the judgment of the Commissioner which was quoted with approval by the Board that the assessee besides being the father and head of the family was also the lambardar of this agricultural property.

When there is a lambardar he is under law entitled to manage the property on behalf of all the co-sharers. After realising the agricultural income he divides that income between the co-sharers. This is irrespective of the fact whether the other co-sharers belong to the same family as he does or are entirely strangers. Even after separation, therefore, the property had to be managed by the assessee in his capacity as a lambardar so that this fact relied upon by the department can provide no material for holding that the remaining members of the family continued to be joint after the separation of Om Prakash. In fact, though it is not clearly stated, it would appear that after the separation of Om Prakash the management of the property of Om Prakash also continued to be carried on by the assessee as he was the lambardar. If the assessee had to manage the property of Om Prakash in spite of separation his management of the property on behalf of his other sons and wife also can provide no material at all for an inference that the family had continued to remain joint.

4. On the other hand, there was ample material to show that the family did not continue to remain joint after the separation of Om Prakash. Once there was disruption of the family by the separation of Om Prakash, the presumption of Hindu Law that the family was an undivided Hindu family ceased to exist. Thereafter, there was neither a presumption that the remaining members

continued to be joint nor was there a presumption that they all became separate. The question had to be decided as one of fact on the evidence available.

The evidence in this case showing that there had been separation even amongst the other members of the family was that there was mutation in the revenue records showing the separate share of each member of the family and in the accounts also the different shares of the income of each of the co-sharers and the expenses incurred by each of them were separately shown. These were positive facts in support of the plea of the assessee that the remaining members of the family had separated. The suit brought by Om Prakash was instituted at a time when the Agricultural Income Tax Act had not come into existence. The date of the institution of the suit was 15-1-1948 and it appears that the Agricultural Income Tax Bill was published with its statement of objects and reasons for the first time in U. P. Gazette Extraordinary dated October 11, 1948, i.e., more than ten months after the suit had been instituted by Om Prakash.

It does not appear why in these circumstances the Board was of the view that the suit was collusive and fictitious. It could not have been for the purpose of avoiding Agricultural Income Tax Act as that Act assumed the form of a Bill for the first time ten months after the institution of the suit. In the circumstances, we are led to the view that there was no material at all in this case for the finding arrived at by the Board that Sahu Ram Kishan assessee continued to form an undivided Hindu family with his wife and sons other than Om Prakash after the separation of Om Prakash whereas there was material to show that they had all separated. Consequently, on the facts of this case the assessment of Sahu Ram Kishan in the status of a Hindu undivided family was wrong in law. We answer the question accordingly.

5. The assessee will be entitled to his costs of this reference which we fix at Rs. 200/-.