
(1979) 06 MAD CK 0015
In the Madras High Court
Case No : Tax Case No. 121 of 1975

Seethammal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 13-06-1979

Acts Referred:

Income Tax Act, 1961 — Section 171, 171(1)

Citation : (1981) 130 ITR 597

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; J. Jayaraman and Nalini Chidambaran, for the Respondent

Judgement

Sethuraman, J.—In this reference under Sections 256(1) of the I.T. Act of 1961, the Income Tax Appellate Tribunal has referred the

following question at the instance of the assessee :

Whether, on the facts and in the circumstances of the case, when the HUF consisting of the karta and his wife ceased to exist due to the death of

the karta before the commencement of assessment proceedings, the assessment on the HUF is possible under the provisions of the Income Tax

Act, 1961?

2. One Sannanna Chettiar, his two wives, Venkatammal and Seethammal, and their four sons constituted a HUF of which Sannanna Chettiar was

the karta. He was being assessed in the status of a HUF for the purpose of Income Tax. There was a partition in the family on 19th April, 1951,

by a partition deed. Under the said partition deed all the properties were divided between Sannanna Chettiar and his four sons and there was also

a provision that the properties set out in Schedule "B" to the partition deed and

allotted to the share of Sannanna Chettiar would devolve, on his death, on his two wives, Seethammal and Venkatammal, to be enjoyed by them for their lives and thereafter on the four sons absolutely. The sons too effected a division of the said properties subsequently. The assessment year under consideration is 1965-66 and the relevant previous year ended on April 12, 1965. Sannanna Chettiar died on 27th January, 1967, The assessment came to be made on 21st March, 1970. In the assessment, the ITO took the income from the properties allotted to Sannanna Chettiar as assessable in the hands of a HUF. He had given notices to the surviving widow of Sannanna Chettiar, viz., Seethammal, and also to the four sons after the death of Sannanna Chettiar. Venkatammal, the other wife of Sannanna Chettiar, had died earlier. The ITO referred to the widow as well as the sons as the legal heirs of Sannanna Chettiar. The assessee objected to the status being determined as HUF and filed an appeal against the assessment before the AAC who by his order dated 31st December, 1970, held that the ITO should have made the assessment on Seethammal as representing the joint family. The ITO had included his four sons also, as mentioned earlier, as legal heirs. In the view of the AAC, this was not proper and he, therefore, restricted the liability to tax on Seethammal and deleted the liability of the heirs. The assessee appealed to the Appellate Tribunal. The Tribunal agreed with the view of the AAC and found no reason to interfere with the assessment, which emerged as a result of the order of the AAC. It is this order of the Tribunal that is now challenged by raising the question extracted above.

3. The contention of the learned counsel for the assessee was that the joint family, after the partition of 1951, consisted of only Sannanna Chettiar and his two wives and on the death of Sannanna Chettiar and the other wife, the family ceased to exist. It was, therefore, submitted that there can be no assessment on the income as there was no machinery for this purpose. For the department, the submission was that the joint family continued to exist until an order u/s 171(1) of the Act recognising the partition of the family was passed and that the deeming provision of Section 171 of the Act would apply here so as to enable the assessment being made on the family as such. It is this controversy that is now to be resolved.

4. There can be no dispute about the income being assessable in the hands of

Sannanna Chettiar as the karta of the HUF if the assessment had been made prior to 27th January, 1967, on which date he died. The only point to be examined is whether any assessment could be made as the income of the joint family subsequent to that date. The Supreme Court has held in C. Krishna Prasad Vs. Commissioner of Income Tax , Bangalore, that the family signified a group and that the plurality of persons was an essential attribute of a family. It was also observed that a single person, male or female, did not constitute a family and that a family consisting of a single individual was a contradiction in terms. It was, therefore, held that the assessment in the status of a HUF could be made only when there were two or more members of the HUF. That decision came to be rendered in connection with the assessment of a person, who had obtained properties on a partition, but who was unmarried in the relevant year. It was held that he could be assessed only in the status of an individual. Applying the said decision, it would follow that in the present case, there was no family on the death of Sannanna Chettiar, as the family was reduced to a single individual on his death. A single individual, as laid down by the Supreme Court, cannot constitute a family. The assessment on her as an HUF is thus, wholly opposed to this decision of the Supreme Court.

5. The learned counsel for the revenue, however, contended that Sections 171 of the I.T. Act, 1961, provided that a HUF assessed as undivided should be deemed for the purpose of the Act to continue to be a HUF, except where and in so far as a finding of partition had been given under that section in respect of the said family? As there was no finding of partition in the present case, it was contended that the family could be assessed. We do not agree. The continuity of assessment in a family can come to an end by the disappearance of the family as such and not necessarily by an order under Sections 171. Moreover, Sections 171 proceeds on the postulate that there exists a family which consists of more than one individual. If there is no family as such, then there is nothing in Sections 171(1) to create a legal fiction of the existence of a family. The family here had been reduced to a single individual and a single individual cannot constitute a family. When once the family had disappeared, Sections 171(1) cannot apply. The family cannot be assessed as such, Section 171(1) also proceeds on the postulate that there can be a partition

between the members of the family. In the present case, there is no question of any partition on the death of Sannanna Chettiar, as the widow had

her rights under the partition deed as the life estate holder. In these circumstances, the provisions of Section 171(1) have no manner of application to the present case.

6. The learned counsel for the revenue relied also on a decision of the Privy Council in Attorney-General of Ceylon v. AR. Arunachalam Chettiar

[1958] 34 ITR (ED) 42. That was a case of a sole surviving coparcener of a HUF having died leaving widows. The question related to the estate

duty assessment under the relevant statute in Ceylon. The point to be examined was whether the deceased, the sole surviving coparcener, died as a

member of a HUF. The Privy Council held that, notwithstanding the fact that he was the sole surviving coparcener, the family continued to exist

and in the course of his judgment, at pages 44-45, it was observed as follows :

The question, then, is a narrow one of construction, whether (a) the father was at his death a member of a Hindu undivided family, and (b) the

property of which he was the sole coparcener was the property of that Hindu undivided family. Upon (a) no doubt arises : it is conceded that he

was a member of a Hindu undivided family. It must be observed that it was the same undivided family of which the son when alive was a member

and of which the continuity was preserved after the father's death by the adoptions that have been mentioned, for, his death did not put an end to

the family line. Gratiaen J., in his judgment in the Supreme Court, quotes the language of this Board in two cases which appear to be apt to the

present appeal. In Pratapsing Shivsing v. Agarsingji Raisingji [1918] LR 46 IA 97, it was said, "Hindu lawyers do" not regard the male line to be

extinct or a Hindu to have died without male issue until the death of the widow renders the continuation of the line by adoption impossible" and in

AIR 1943 196 (Privy Council) , it was said :"" a Hindu family cannot be finally brought to an end while it is possible in nature or law to add a male

member to it". These and similar quotations which might be multiplied supply the context in which the second part of the question must be

considered, viz., whether, while the undivided family thus persists, the property in the hands (to use a neutral expression) of a single coparcener can

properly be described as the " joint property of " that family.

7. The contention for the revenue in the present case was that so long as there was a possibility of an addition to the family, there was a scope for a family being held to exist. In the present case, the widow could not have made an adoption, as her husband has natural sons. The cases cited in the above passage related to the widows without natural issues. That principle cannot be imported here. As the said decision cannot apply to the facts here, we do not find it possible to hold that the said passage is of any assistance in coming to the conclusion that there is a potential joint family in the present case.

8. Further, it was pointed out by the Supreme Court in *C. Krishna Prasad Vs. Commissioner of Income Tax , Bangalore, ,* that the question of the existence of the family will have to be decided in the light of the circumstances that obtained in the relevant year. At page 497, it was observed as follows :

In order to determine the status of the assessee for the purposes of Income Tax we have to look to the relatives as they exist at present and it would not be correct to project into the matter future possibilities which might or might not materialise. This would indeed amount to speculation and the same is not permissible. Excursions to the realm of speculation may be legitimate and justified when one is engaged in the study of philosophy and metaphysics ; they are wholly unwarranted when one is dealing with the mundane subject of the status of the assessee for the purpose of the Income Tax assessment. For this purpose we have to look to facts as they exist and emerge from the record and not to what they may or may not be in future.

9. Having regard to the above passage and the fact that there was a single individual here in the relevant year, it would be clear that the assessment made in the present case as a HUF would not be proper. There is no machinery pointed out to us on behalf of the revenue on the basis of which the assessment should be justified.

10. The reference is, accordingly, answered in the negative and in favour of the assessee. The assessee will be entitled to her costs. Counsel's fee Rs. 500.