
(1975) 05 AHC CK 0017

In the Allahabad High Court

Case No : Agricultural Income Tax Reference No's. 162 and 163 to 167 of 1972

Sheo Mahendra Kumar and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 12-05-1975

Acts Referred:

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 10, 2(11), 3

Citation : (1976) 104 ITR 703 : (1976) RD 32

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : G. Malviya, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

C.S.P. Singh, J.—The Agricultural Income Tax Revision Board, U.P., Lucknow, has in conformity with the order passed by this court, referred the following question of law u/s 24(4) of the U.P. Agricultural Income Tax Act, 1948 :

"Whether, on the facts and in the circumstances of the case, a joint assessment could be made in law in respect of the agricultural income of the estate held by Kr. Ram Singh as reversioner and of the ancestral estate held by him for himself and his sons ?"

2. The years involved in the present reference are the Fasli years 1355, 1356, 1357, 1358 and 1359. In 1355 Fasli, a notice u/s 15(3) of the Act was issued against the assessee, and he filed two sets of returns, one for the inherited property and the other for his self-acquired property. The assessing authority by order dated August 13, 1949, assessed an amount of Rs. 19,700-11-0 as tax treating both the properties as joint. An appeal was filed against this order by the assessee before the Commissioner and by order dated March 24, 1950, the Commissioner remanded the matter to the assessing authority. On remand, the assessing authority treated the properties as separate, and by order dated September 30, 1950, assessed a tax of Rs. 255-6-0 on "Bibi Kunwar

Estate" (inherited by the petitioner as reversioner) and Rs. 20,715-8-0 on "Kr. Ram Singh Estate" (ancestral property).

3. An appeal filed against the above order by the assessee was dismissed on 19th October, 1951. In 1356 Fasli, assessment was made on October 15, 1949, treating both properties as joint and the tax was fixed at Rs. 19,196-4-0. Some properties had escaped assessment and as such a notice u/s 25 of the Act was issued and the tax was finally fixed at Rs. 20,132-9-0 by the order dated January 31, 1951. These assessment orders were set aside by the Commissioner on October 19, 1951, and the matter was remanded. On remand, the assessing authorities by the order dated January 30, 1953, assessed the two sets of properties separately to a tax of Rs. 13,695-12-0 (on property inherited by the assessee as reversioner) and Rs. 181-1-0 (on ancestral property).

4. In 1357 Fasli, the assessing authority treated the two estates as separate units, assessed a tax of Rs. 21,881-13-0 on "Bibi Kunwar Estate" and Rs. 217-7-0 on "ancestral estate" by the order dated September 30, 1950. The matter was, however, remanded by the Commissioner by order dated October 19, 1951. On remand the assessing authorities assessed a tax at Rs. 17,173 against "Bibi Kunwar Estate" and Rs. 327-1-0 "on ancestral property", i.e., a total tax of Rs. 17,500. This order was passed on January 3, 1953.

5. In 1358 Fasli, the assessing authority treated both the sets of properties as separate units and vide its order dated October 30, 1957, assessed a tax of Rs. 14,553 on "Bibi Kunwar Estate" and Rs. 190-4-0 on ancestral property, i.e., an aggregate total tax of Rs. 17,143-4-0.

6. In 1359 Fasli, the two estates were treated as separate units and by the order dated December 30, 1952, were assessed to a tax of Rs. 17,257-11-0 on "Bibi Kunwar Estate" and Rs. 284-12-0 on ancestral estate. This assessment was challenged before the Commissioner, by the assessee in appeal, who dismissed it by his order dated January 20, 1954.

7. The assessment for 1355 Fasli to 1359 Fasli treating the two estates separately were challenged by the State in revision. By order dated January 24, 1957, the Board of Revenue accepted the State's contention that the assessee should be treated as one unit and directed fresh assessment to be made. This order of the Board was challenged by a writ petition in this court, and was allowed on 28th September, 1961. Direction was issued to the Agricultural Income Tax Revision Board to hear the appeal after impleading the petitioners as opposite parties. The assessee was thereafter impleaded as a party to all the revisions. The Board disposed of this revision by order dated July 31, 1963, and held that the two estates had to be treated as one unit, and remanded the matter for fresh assessment in accordance with their decision. The present reference arises out of this order.

8. After having heard the counsel for the parties, we are of the view that the order of the Board cannot be sustained as it is palpably erroneous in law. In

order to appreciate the controversy arising in this reference, it is necessary to set out a small pedigree:

Raja	Man	Singh	
-----			Pradip
Singh Prithi Singh	Tej Bal Bikram Singh	Raja Harbans Singh	=Rani Bibi Kunwar (wife) Ram Singh (died in 1953)

9. From the assessment order, which is a part of the record, it appears that the estate originally belonged to Raja Man Singh, and was known as Haldaur Estate. This estate was partitioned in 1884 between the two sons of Raja Man Singh. The share which fell to the branch of Prithi Singh was bigger of the two estates. Raja Harbans Singh died issueless and was succeeded by his wife, Rani Bibi Kunwar. Tej Bal Bikram Singh, son of Pradip Singh, had died before Rani Bibi Kunwar. After the death of Rani Bibi Kunwar, a dispute arose as to the succession to the estate. The estate was taken over under the management of the court of wards, and subsequently, the name of Raja Ram Singh was mutated over the estate of Rani Bibi Kunwar. Ram Singh had, before succeeding to the estate of Rani Bibi Kunwar in 1943, held the estate of his father, Tej Bai Bikram Singh. Thus, Ram Singh became entitled to the two estates, (1) the ancestral estate which he had inherited from his father, Tej Bal Bikram Singh, (2) the estate of Rani Bibi Kunwar which he had got on reversion.

10. The estate which the assessee, Kr. Ram Singh; had inherited from Tej Bal Bikram Singh was his ancestral property and his sons had an interest in it by birth (see Mulla's Hindu Law, 4th edition, art. 223). The property which he got on reversion, i.e., the property of Rani Bibi Kunwar or Raja Harbans Singh, his uncle, was not his ancestral property. Referring to the property inherited from collaterals or from females, Mulla in his Treatise on Hindu Law, after referring to a large number of authorities, has put the matter thus :

"(3) Property inherited from collaterals--property inherited from females. -- Excluding the case of property inherited from a maternal grandfather, it may be said that the only property that can be called ancestral property is property inherited by a person from his father, father's father, or father's father's father. Property inherited by a person from any other relation is his separate property, and his male issue do not take any interest in it by birth. Thus, property inherited by a person from collaterals, such as a brother, uncle, etc., or property inherited by him from a female, e.g., his mother, is his separate property."

11. Thus there can be no manner of doubt that Kr. Ram Singh was the owner of two units of property, (1) which was ancestral in which his sons had a share, (2) which he had got as a reversioner in which his sons had no share and which belonged to him exclusively. The Revision Board has by a curious line of reasoning, placing reliance on Sections 2(11), 3 and 10 of the Act, held that the income from both these estates could be clubbed in the hands of Kr. Ram Singh alone. In order to scrutinise the correctness of this proposition, it is necessary to

set out Section 2(11), Section 3 and Section 10 of the U.P. Agricultural Income Tax Act:

"2. (11) "person" means an individual or association of individuals, owning or holding property for himself or for any other, or partly for his own benefit and partly for that of another either as Owner, trustee, receiver manager, administrator or executor or in any capacity recognised by law, and includes an undivided Hindu family, firm or company but does not include a local authority.

3. Charge of agricultural Income Tax.--(1) Agricultural Income Tax and super-tax at the rate or rates specified in the schedule shall be charged for each year in accordance with and subject to the provisions of this Act and rules framed under Clauses (a), (b) and (c) of Sub-section (2) of Section 44 on the total agricultural income of the previous year of every person.

(2) Where there is included in the total income of an assessee any income exempted from agricultural Income Tax by or under the provisions of this Act, the agricultural Income Tax payable by the assessee shall be an amount bearing the same proportion to the total amount of the agricultural Income Tax which would have been payable on the total agricultural income had no part of it been exempted as the unexempted portion of the total agricultural income bears to the total agricultural income.

10. Assessment of income of undivided Hindu family.--Tax on agricultural income of an undivided Hindu family shall be so assessed that the share of income which a coparcener would receive upon partition of the family shall be treated as the separate income of each coparcener and shall be liable to tax as such provided firstly that a father and a son or a son's son how low so ever shall be deemed to be one coparcener for the purposes of this section, and provided secondly that the income derived by a woman from her stridhan property shall not be included in the agricultural income of the joint Hindu family."

12. Section 3 of the Act, as we have seen, is the charging section and brings to tax the total agricultural income of the previous year of every person. The definition of the word "person" includes an undivided Hindu family, as also other entities mentioned in Section 2(11). Thus, for the purposes of the Act, a Hindu undivided family is taken as a taxable unit. In the present case, inasmuch as the estate known as "Kr. Ram Singh estate" had devolved upon the assessee, Kr. Ram Singh, from his father, it was ancestral property, and his sons had also a share therein. There is no finding that Kr. Ram Singh was separate from his sons. This being so, the estate aforesaid belonged to the Hindu undivided family of Kr. Ram Singh and his sons. It was thus the Hindu undivided family that was the owner of Kr. Ram Singh estate. So far as the estate which Kr. Ram Singh had got on reversion from Rani Bibi Kunwar that was his separate property and did not belong to the Hindu undivided family. Thus, in one case the assessable person was the Hindu undivided family, and in the other Kr. Ram Singh, individual. We fail to see how, this being so, the agricultural Income Tax of the Hindu undivided

family could be added with that of Kr. Ram Singh, individual. The Act does not contemplate lumping together of income of a Hindu undivided family with that of the individuals. Section 10, on which reliance seems to have been placed, does not affect the position. Section 10 of the Act only enacts a special rule for assessment of coparceners of Hindu undivided family, and in no way permits lumping of the whole income of the Hindu undivided family with that of one coparcener. Kr. Ram Singh, assessee, was a separate assessable entity as an individual in respect of property acquired on reversion, and income from this property could not be added to the income received by him as karta of the Hindu undivided family. The Board seems to have lost sight of the charging section, i.e., Section 3 of the Act, which imposes a charge on the total agricultural income of "every person". The word "person" in the context must mean the assessable entities set out in Section 2(11) of the Act, and inasmuch as a Hindu undivided family is treated as a separate entity and as there is no provision for lumping together the whole income of a Hindu undivided family with the separate income of the coparcener, the Board was in error in adding up the income from the two estates.

13. We, accordingly, answer the question referred in the negative, in favour of the assessee and against the department. The assessee is entitled to costs which we assess at Rs. 200. Counsel's fee is assessed at the same figure.