(1987) 07 RAJ CK 0036

In the Rajasthan High Court

Case No : .I.T. Reference No. 38 of 1980

S.K. Bohra APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 30-07-1987

Acts Referred:

Citation : (1988) 72 CTR 209 : (1988) 173 ITR 400

Hon'ble Judges : J.S. Verma, C.J;Milap Chandra, J

Bench : Division Bench

Advocate : Vineet Kothari, for the Appellant; B.R. Arora, for the Respondent

Judgement

Milap Chandra, J.—This reference has been made by the Appellate Tribunal (Wealth-tax), Jaipur, u/s 27 of the Wealth-tax Act, 1957 (hereinafter to be called as " the Act "), on the request of the assessee in respect of the assessment years 1967-68 to 1971-72, The following question of law has been referred, namely :

" Whether, on the facts and in the circumstances of the case, the hon''ble Tribunal was right in placing reliance on the decision of the hon''ble Supreme Court in the case of Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, and in holding that a sum of Rs. 1,60,000 thrown by the assessee into the joint family hotchpot on March 31, 1976 (it should be March 30, 1967), was assessable in the hands of the assessee in the individual status and not in the status of a HUF ? "

2. The facts of the case giving rise to this reference may be summarised thus.

3. The assessee is an individual. On March 30, 1967, he made a declaration on stamp papers that he had thrown his self-acquired amount of Rs. 1,60,000 in the common hotchpot of his Hindu undivided family consisting of himself and his wife. The Wealth-tax Officer found the declaration defective and also held that the said amount of Rs. 1,60,000 could not be said to be belonging to the Hindu undivided family as on March 31, 1967. or thereafter, relying upon Surjitlal Chhabda Vs. Commissioner of Income Tax, Bombay City-I, . Accordingly, he

included this amount in the wealth of the assessee in the wealth-tax assessment of all the said years. On appeal/ the Appellate Assistant Commissioner found the said declaration to be quite in order and further held that the said amount of Rs. 1,60,000 belonged to the Hindu undivided family of the assessee after it had been thrown into the common hotchpot, relying upon N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, and excluded it from the wealth of the assessee. The Department filed appeals against the common order of the learned Appellate Assistant Commissioner. They were allowed and the common order of the Appellate Assistant Commissioner was set aside by the Appellate Tribunal, Thereafter, the assessee moved the Appellate Tribunal for making this reference.

4. It has been contended by learned counsel for the assessee that the Appellate Tribunal seriously erred in setting aside the common order of the Appellate Assistant Commissioner holding that the said amount of Rs. 1,60,000 belonged to the Hindu undivided family. He contended that Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, is not applicable in the case as this decision was given in an Income Tax matter and the case of N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, is applicable as it was given in a wealth-tax matter.

5. In reply, learned counsel for the Department contended that the Tribunal has rightly relied upon Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, and N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, has duly been considered in it.

6. Admittedly, before the oaid declaration, the aforesaid amount of Rs. 1,60,000 was the self-acquired money of the assessee. In other words, he did not acquire it in the partition of a Hindu undivided family of which he was a member. It is further admitted by him that on the day on which the said money was thrown into the common hotchpot, his family consisted of himself, his wife and one daughter only and subsequently sons were born in the years 1969 and 1971.

7. It is correct that N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, related to wealth-.tax. In Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, and N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, several other cases have duty been considered by their Lordships of the Supreme Court. It has been observed in Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, as under :

" There are thus two classes of cases, each requiring a different approach. In cases falling within the rule in Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore, , the question to ask is whether property which belonged to a subsisting undivided family ceases to have that character merely because the family is represented by a sole surviving coparcener who possesses rights which an owner of property may possess. For the matter of that, the same question has to be asked in cases where the family, for the time being, consists of widows of deceased coparceners as in Commissioner of Income Tax, Madras Vs. Rm. Ar. Ar. Veerappa Cheitiar, so long as the property which was originally of the joint Hindu family remains in the hands of the widows of the members of the family and is not divided amongst them. In cases falling within the rule in Kalyanji''s case [1937] 5 ITR 90, the question to ask is whether property which did not belong to a subsisting undivided family has truly acquired the character of joint family property in the hands of the assessee. In this class of cases, the composition of the family is a matter of great relevance though a joint Hindu family may consist of a man, his wife and daughter, the mere existence of a wife and daughter will not justify the assessment of income from the joint family property in the status of the head as a manager of the joint family. The appellant''s case falls within the rule in Kalyanji''s case [1937] 5 ITR 90, since the property, before it came into his hands, was not impressed with the character of joint family property. It is of great relevance that he has no son and his joint family consists, for the time being, of himself, his wife and daughter.

Once it is realised that there are two distinct classes of cases which require a different approach, there would be no difficulty in understanding the implications of the apparently conflicting tests evolved as guides for deciding the two classes of cases. "

8. It has further been observed at page 795, paras 2 and 3, as under :

" Kathoke Lodge was not an asset of a pre-existing joint family of which the appellant was a member. It became an item of joint family property for the first time when the appellant threw what was his separate property into the family hotchpot. The appellant has no son. His wife and unmarried daughter were entitled to be maintained by him from out of the income of Kathoke Lodge while it was his separate property. Their rights in that property are not enlarged for the reason that the property was thrown into the family hotchpot. Not being coparceners of the appellant, they have neither a right by birth in the property nor the right to demand its partition nor indeed the right to restrain the appellant from alienating the property for any purpose whatsoever. Their prior right to be maintained out of the income of Kathoke Lodge remains what it was even after the property was thrown into the family hotchpot : the right of maintenance, neither more nor less. Thus, Kathoke Lodge may be usefully described as the property of the family after it was thrown into the common stock, but it does not follow that in the eye of Hindu law it belongs to the family, as it would have, if the property were to devolve on the appellant as a sole surviving coparcener.

The property which the appellant has put into the common stock may change its legal incidents on the birth of a son but until that event happens, the property, in the eye of Hindu law, is really his. He can deal with it as a full owner, unrestrained by considerations of legal necessity or benefit of the estate. He may sell it, mortgage it or make a gift of it. Even a son born or adopted after the alienation shall have to take the family hotchpot as he finds it. A son born, begotten or adopted after the alienation has no right to challenge the alienation. "

9. It is clear from the above-quoted extracts in Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, , that in a situation where the rule in Kalyanji''s case [1937] 5 ITR 90 applies, the property thrown in the common stock of the Hindu undivided family continues to retain the characteristics with all legal incidents of exclusive ownership of the individual till a son is born or adopted. It is only on the advent of a son in the Hindu undivided family as a coparcener that the rights of ownership in such property are shared by him with the person throwing the property into the common stock of the Hindu undivided family. Thus, the said amount of Rs. 1,60,000 became the property of the Hindu undivided family soon after the birth of a son. It remained the self-acquired property of the assessee till the valuation date of the year 1968-69, i.e., March 31, 1969, as the first son was admittedly born only after this date, i.e., May 16, 1969.

10. Accordingly, the first part of the question is answered in the affirmative, in favour of the Revenue for all the said assessment years, the second part of the question is also answered in the affirmative so far the assessment years 1967-68 and 1968-69 are concerned and it is answered in the negative, against the Revenue and in favour of the assessee in respect of the assessment years 1969-70, 1970-71 and 1971-72.