(1977) 06 MAD CK 0019

In the Madras High Court

Case No : Tax Case No''s. 459 to 462 of 1974 (Revision No''s. 215, 216, 217 and 219 of 1974)

State of Tamil Nadu APPELLANT

Vs

A. Sadhanandam and Others RESPONDENT

Date of Decision : 27-06-1977

Acts Referred:
Tamil Nadu Agricultural Income Tax Act, 1955 — Section 9(2)

Citation : (1978) 113 ITR 453

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

Bench : Division Bench

Advocate : Additional Govt. Pleader, for the Appellant; J. Jayaraman, Amicus Curiae, for the Respondent

Judgement

Sethuraman, J.—These tax revision cases have been filed by the State of Tamil Nadu against the order of the Tamil Nadu Agricultural

Income Tax Appellate Tribunal, dated 28th June, 1973. The four petitions relate to four partners of two firms, namely, Messrs. Waverly Estates

and Caladonia Estates. There are two other partners in the said firm. The income from these firms'' was being assessed for agricultural Income Tax

in the hands of the four respondents as individuals. On the 1st of April, 1970, each one of them made a declaration before an advocate. Taking the

case of Vimalan as typical of the four cases, it is stated in the declaration that he was the karta of the Hindu undivided family comprising of his wife,

his minor son, his minor daughter and that he was a partner in the aforementioned firms holding one-sixth share. He stated in the declaration :

On April 1, 1970, I had voluntarily relinquished and waived all my individual rights in the abovesaid 1/6th shares held by me in the two firms referred to above in favour of the Hindu undivided family..... and the said share and the income derived from April 1, 1970, belongs only to the

Hindu undivided family and is being received by me only as the karta of the Hindu undivided family.

To remove all doubts, I hereby declare that 1/6th shares held by me in the two firms, Messrs. Waverly Estates and Messrs. Caladonia Estates,

belong to the Hindu undivided family from April 1, 1970.

2. The other documents and declarations in respect of other respondents are not before us. In the case of the respondent in T.C. No. 459 of

1974, it is clear from the assessment order that he has neither a son nor a daughter and that the family consists of himself and his wife.

3. On the basis of the said declaration, the respondents sought exclusion, from their respective individual returns, of their share income from the

two firms. During the relevant year, there was only a net loss in the two concerns. The Agricultural Income Tax Officer, while making the

respective assessments, held that since the arrangement was not genuine and bona fide and was not enforced, but was made with a view to split up

the income and evade tax, the claim was liable to be rejected. He, therefore, assessed the loss as in the earlier years in the hands of the individuals.

On appeal, the Appellate Assistant Commissioner considered that the claim of the assessee was rightly rejected as the assessee was; all along

being assessed as an individual and that the case fell within the scope of Section 9(2) of the Tamil Nadu Agricultural Income Tax Act. It may be

seen that if a case were to fall within the scope of Section 9(2) of the Act, so as to be a transfer in favour of minors, then the transaction has to be

a real transaction. There is implicit in the order of the Appellate Assistant Commissioner the finding that the transaction was genuine. The matter

thereafter was taken on appeal to the Agricultural Income Tax Appellate Tribunal. The Tribunal held that the declarations had to be taken at their

face value and that the respective assessees had thrown their interests in the two estates into the hotchpots of their respective joint families"".

Thereafter, the Tribunal examined the question as to whether the provisions of Section 9 applied to this case. After referring to the decisions cited

before it, the Tribunal came to the conclusion that the throwing of the individual property into the common hotchpot could not be considered as transfer coming within the mischief of Section 9(2)(a)(iii) of the Act and that there was no transfer involved in the process. It was, therefore, held

that there was no justification for the inclusion of the losses in the hands of the respective respondents. The State of Tamil Nadu has challenged this

order by applying for a revision thereof.

4. The question that arises for our consideration is whether, under the personal law applicable to the respective respondents, the share income

from the two firms is to be processed in the assessment of the respective respondents in their individual capacity or in the hands of a Hindu

undivided family of which they are the kartas. We have already pointed out that even the Appellate Assistant Commissioner had given an implied

finding that the transaction was a genuine transaction. The Tribunal on the other hand, has given a specific finding that the transaction was a genuine

transaction and has rejected the contentions taken before it to the contrary.

5. In the case of a genuine transaction in which a member of a Hindu undivided family throws his interest in the partnership firm into a common

hotchpot, the problem that requires consideration is whether the provisions of Section 9(2) of the Agricultural Income Tax Act have any scope for

application. Section 9(2)(a)(iii) and (iv) are relevant in the context of the present case. The provision to the extent relevant reads as follows :

9. (2) In computing the total agricultural income of any individual for the purpose of assessment, there shall be included,--

(a) so much of the agricultural income of a wife or minor child of such individual as arises directly or indirectly--.....

(iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an

agreement to live apart; or

(iv) from assets transferred directly or indirectly to the minor child not being a married daughter by such individual otherwise than for adequate

consideration.

6. From the opening words of the provision, it is clear that it would apply only to the case of an ""individual"". Therefore, if the assessment is to be

made in the hands of the Hindu undivided family in respect of share income of the firms, then Section 9(2)(a)(iii) and (iv) have no scope for any

application. Further, it has been held in M.P.K. Kandasami Chettiar Vs.

Commissioner of Agricultural Income Tax, Madras, that the partition by

which an interest of an undivided Hindu family resulting in the allotment of certain properties to the wife as well as the minor sons and daughter of

an assessee does not come within the scope of Section 9(2)(a)(iii) and (iv) of the Act. Though that is a case which arose as a result of a partition

actually effected, and though the present case is one where the position is anterior to the partition, namely, at the point of conversion of the

individual assets into joint family assets, there is no difference in principle between the two situations, and the provisions of Section 9(2)(a)(iii) and

(iv) would have no application. There is, it is well settled, no transfer at the time of an individual impressing his property with a joint family

character. See Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh, .

7. As, in the present case, there were certain losses debited to the joint families of the respondents and as the respective families had minors, we

entertained certain doubts as to whether it was possible for any member of the Hindu undivided family to convert his individual interest in the firm

and throw it into the joint family hotchpot. In the case of a minor it is settled law that his share in the joint family property is liable for payment of

debts contracted by a manager in the course of family business (See Mulla''s Principles of Hindu Law, 14th edition, paragraph 234, pages 288 and

291). However, a minor cannot be made personally liable. The minor is liable only to the extent of his interest in the family property and his

separate properties arc not liable for payment of the debts contracted by the manager unless the minor accepted the partnership on attaining

majority. The doubt that arose in our minds was whether a member of a joint family could try to share his liabilities for these losses by throwing the

property into the common hotchpot. The Supreme Court has pointed out in Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh,

As observed by this court in Mallesappa Bandeppa Desai and Others Vs. Desai Mallappa and Others, , the doctrine of throwing into the

common stock inevitably postulates that the owner of separate property is a coparcener who has an interest in the coparcenary property and

desires to blend his separate property with the coparcenary property. The existence of a coparcenary is absolutely necessary before a coparcener

can throw into the common stock his self-acquired properties. The separate property of a member of a joint Hindu family may be impressed with

the character of joint family property if it is voluntarily thrown by him into the common stock with the intention of abandoning his separate claim

therein. The separate property of a Hindu ceases to be separate property and acquires the characteristics of joint family or ancestral property not

by any physical mixing with his joint family or his ancestral property but by his own volition and intention by his waiving and surrendering his

separate rights in it as separate property. The act by which the coparcener throws his separate property in the common stock is a unilateral act.

There is no question of either the family rejecting or accepting it. By his individual volition he renounces his individual right in that property and

treats it as a property of the family..... When a coparcener throws his separate property into the common stock, he makes no gift under Chapter

VII of the Transfer of Property Act. In such a case there is no donor or donee. Further, no question of acceptance of the property thrown into the

common stock arises.

8. Thus, if there is no question of any acceptance of the property thrown into the common stock, then the problem is whether any member of a

joint family can try to throw his liabilities into the common hotchpot so that he no longer has to pay the liabilities by himself, but could pass on the

liabilities to the other members of the family, including himself. As the respondents were not represented, we asked Mr. J. Jayaraman, advocate, to

assist us in this case. He readily gave his assistance and we are greatly indebted to him for the illuminating arguments that he advanced in relation to

the propositions mentioned above. After hearing the arguments we consider that it is not necessary for our present purpose to go into this nice

question as the matter has not been gone into in the earlier stages, and the matter may be reserved for consideration on a suitable occasion.

9. As far as the present case is concerned, we have already pointed out that the finding is that the transaction is a genuine transaction. We have

already ruled out the application of Section 9(2) of the Act. The learned Additional Government Pleader entertained some doubt as to whether

even in a case where the interest of a particular individual partner in a firm is impressed with a joint family character, the family has to be assessed.

According to him, the individual could be assessed and for this purpose, he brought to our notice the decision of the Supreme Court in Surjit Lal

Chhabda Vs. The Commissioner of Income Tax, Bombay, . In that case, the assessee had a wife and an unmarried daughter. On January 26,

1956, the assessee made a declaration that he had thrown an immovable property called Kathoke Lodge, which was his self-acquired property,

into the family hotchpot in order to impress that property with the character of joint family property and that he would be holding that property as

the karta of the joint Hindu family consisting of himself, his wife and his unmarried daughter. The question before the Supreme Court was whether

the income received by the assessee in that case, after the said document of 1956, should be assessed to Income Tax in the status of a Hindu

undivided family. It was held that ""since until the birth of a son the personal law of the assessee, namely, the Hindu law, regarded the assessee as

owner of the said immovable property and the income therefrom as his income even after the property was thrown into the family hotchpot, the

income was chargeable to Income Tax in the assessee''s hands as his individual income and not as the income of the family"". We do not consider

that the said case has any application to the facts of the case before us. It may be seen that in the said case, the assessee had only a wife and an

unmarried daughter. There was no coparcenary. In the case before us, there is a minor son with whom the respondents form a coparcenary. The

principle applicable to the sole surviving coparcener could not be applied to a coparcenary having another male member. We have, therefore, to

examine the position in the light of the other decisions brought to our notice by Mr. Jayaraman.

10. In The Commissioner of Income Tax, West Bengal Vs. Kalu Babu Lal Chand, , the karta of a Hindu undivided family by name Rohatgi was

one of the promoters of a company. He took over a business, which was later transferred to the company as a going concern and carried on the

business on behalf of the company until its incorporation in December, 1930. Under the articles of association, he was to be the first managing

director with specified remuneration, and there was an agreement between him and the company with reference to the said managing directorship.

It was found by the Appellate Tribunal that the shares held by the said karta and his brother were acquired with funds belonging to the joint family and the family was in enjoyment of the dividends paid on the said shares. In the course of the assessment for the relevant year, it was claimed by

the assessee that the whole of the managing director''s remuneration constituted the personal earnings and should not be added to the income of the

family. It was held that the managing director''s remuneration received by Rohatgi was, as between him and the Hindu undivided family, the income

of the family and should be assessed in his hands. At page 127-128, Das C.J., speaking for the court, stated that:

It is now well settled that a Hindu undivided family cannot as such enter into a contract of partnership with another person or persons. The karta

of the Hindu undivided family, however, may and frequently does enter into partnership with outsiders on behalf and for the benefit of his joint

family. But when he does so, the other members of the family do not, vis-a-vis the outsiders, become partners in the firm.....If for the purpose of

contribution of his share of the capital in the firm, the karta brought in monies out of the till of the Hindu undivided family, then he must be regarded

as having entered into the partnership for the benefit of the Hindu undivided family and as between him and the other members of his family, he

would be accountable for all profits received by him as his share out of the partnership profits and such profits would be assessable as income in

the hands of the Hindu undivided family.

11. Again, in Charandas Haridas and Another Vs. The Commissioner of Income Tax, Bombay North, Kutch, Saurashtra and Ahmedabad and

Another, , the Supreme Court was concerned with the assessment of a Hindu undivided family of which one Charandas was the karta. The family

consisted of his wife, his unmarried daughter, his three minor sons and himself. He was a partner in certain managing agency firms. There was an

oral partition between him and the other members of his family as a result of which one pie share was allotted to his unmarried daughter and the

balance of the interest of the family was partitioned between himself, his three minor sons and his wife. The question was whether the share income

from the firm was liable to be taxed in the hands of the family or in the hands of the respective members. Hidayatullah J. (as he then was), speaking

for the court, observed at page 209 :

While it was joint, the department could treat the income as that of the family ;

but after partition, the department could not say that it was still the

income of the Hindu undivided family, when there was none. In the face of the finding that this was a genuine document and not a sham, and that it

effectually divided the income and, in the circumstances, the assets, the question answers itself in the negative, that is to say, that there were no

materials to justify the finding that the income in the share of the commission agency of the mills was the income of the Hindu undivided family.

12. Subsequently also in V.D. Dhanwatey Vs. The Commissioner of Income Tax, M.P. Nagpur, , the question as to whether the remuneration

paid to a partner of a firm was the subject of consideration. The partner was the karta of a Hindu undivided family and the family assets had been

embarked in the partnership. The question was whether the remuneration paid to him by the partnership was liable to be taxed in his individual

hands or in the hands of the Hindu undivided family. In the judgment pronounced by Ramaswami J., on behalf of the majority, it was pointed out at

page 374 :

In our opinion, the remuneration paid to Shri V. D. Dhanwatey was directly related to investments from the assets of the Hindu joint family in the

partnership business. In other words, there was a real and sufficient connection between the investment from the Hindu joint family funds into the

partnership business and the remuneration paid to Shri V.D. Dhanwatey under Clause (16) of the deed of partnership. It follows therefore that the

remuneration of Shri V. D. Dhanwatey was not earned without detriment to the Hindu joint family funds and the case falls directly within the

principle laid down by this court in The Commissioner of Income Tax, West Bengal Vs. Kalu Babu Lal Chand, and in Mathura Prasad Vs.

Commissioner of Income Tax, Uttar Pradesh, .

13. Thus, when once it is found that the individual respondents had thrown their respective shares in the firm into the common hotchpot of the

respective families, it would follow that the partnership interest held till then by the individuals became joint family property. When the assets had

become the joint family assets, the income flowing therefrom has to be taken as the income of the joint family and not of the respective individuals.

In the case of the respondents in T.C. Nos. 460, 461 and 462 of 1974, the above discussion would go to show that the income has to be assessed in the hands of the respective Hindu undivided families and in the case of T. C. No. 459 of 1974, there being no son, the decision of the

Supreme Court in Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, would govern and he will have to be assessed as an

individual with reference to the share income as far as this assessment year is concerned. The revision petitions aye accordingly dismissed. There

will be no order as to costs as the respondents are not represented. We place on record our appreciation of the assistance of Mr. J. Jayaraman.