

(1997) 04 MAD CK 0087
In the Madras High Court
Case No : Tax Case No. 1226 of 1979

State of Tamil Nadu

APPELLANT

Vs

P. Ganesa Odyar

RESPONDENT

Date of Decision : 07-04-1997

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (1997) 3 CTC 433 : (1997) 227 ITR 544 : (1997) 2 LW 787

Hon'ble Judges : N.V. Balasubramanian, J;M. Abdul Wahab, J;K.A. Thanikkachalam, J

Bench : Full Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Thanikkachalam, Actg. CJ.

1. A Division Bench of this Court referred the following question for the opinion of the Full Bench :

"Whether a father constituting a family with his wife and children, can by a settlement create a right in favour of his daughters so as to exclude the properties covered by such a settlement deed from the agricultural Income Tax ?"

2. The abovesaid question arose from the following facts. One Muthusamy Odayar of Pillarnathan Village was the grandfather of the assessee. The assessee's father was one Palanisamy Odayar. Muthusamy Odayar had admittedly some ancestral property. Subsequently, from the income of that ancestral property as also from the personal earnings of grandfather, father and the assessee, some further properties were acquired. The original ancestral properties as well as the subsequently acquired properties were the subject matter of partition between Muthusamy Odayar. Palanisamy Odayar and the assessee in an oral partition on 5-8-1954 and each one of them was thereafter enjoying the properties allotted to them separately. To confirm the oral partition, a partition deed came to be executed on 7-8-1959. According to the said

partition deed, Muthusamy Odayar got 27.26 acres, Palanisamy Odayar 25.15 acres and the assessee got 37.98 acres. Certain lands were given away to five sisters of the assessee. Out of the lands got by the partition, the assessee settled 13.96 acres in the name of his minor daughter, Parimalam, and 13.34 acres in the name of another minor daughter, Vimala, under a document dated 25-11-1959. The settlement deed stated that the settlement had been made by the assessee for the purpose of providing for the education, marriage etc., of the minor daughters. The deed also stated that the title and possession have been given to the settle with immediate effect. Muthusamy Odayar settled the properties obtained by him in the partition in a settlement deed dated 15-5-1960, under which an extent of 13.10 acres had been settled in favour of his brother, Appathurai Odayar, and an extent of 14.21 acres in favour of his wife, Subbammal. Subsequent to these documents, the grandfather Muthusamy Odayar, grandmother, Subbammal and the father, Palanisamy Odayar have all died. The assessee's father, Palanisamy Odayar, appears to have acquired 3.50 acres before his death. The assessee also acquired 9.38 acres and 9.29 acres and held them in the benami names of Anthonisamy and Natesa Odayar. Having regard to the lands in the actual possession and enjoyment of the assessee, the assessment came to be made by the assessing authority treating the assessee as an individual.

3. On these facts, the assessee, in the assessment year 1977-78, before the Assessing Officer submitted that inasmuch as there was settlement of the properties in the individual names of the members of the joint family, the income derived from the lands settled on the members of the HUF cannot be assessed in the hands of the assessee. The assessee filed a return in Form No. 11, furnishing an income of Rs. 7,000 and declaring his status as an HUF. The Agrl. ITO made an assessment treating the status as individual and determining the net income at Rs. 55,875. In making the assessment, he included the income from lands which were settled by the appellant, who is the respondent herein, in favour of his minor daughters appellant, who is the respondent herein, in favour of his minor daughters and lands standing in the name of the grandmother of the appellant, the assessee herein. There was an appeal before the AAC of Agrl. Income Tax, which was dismissed ultimately. Thereafter, the matter was taken up before the Agrl. Tribunal. The assessee contended that the income from the lands of the assessee's minor daughters and the lands in the name of the assessee's grandmother should not be included in the hands of the deceased. It was submitted that the authorities should have determined the status of the assessee as an HUF following the decision of the Tribunal in the case of the same assessee in the earlier assessment years. It was further submitted that the provisions of section 9(2) of the Tamil Nadu Agricultural Income Tax Act, 1955 shall not be applicable to the facts of this case. According to the assessee, the lands in the name of the grandmother was a separate unit of assessment and the assessee's share was only a fractional one and it should be considered in the individual status of the assessee.

4. Considering the facts of this case the Tribunal, following the earlier orders in the case of the same assessee in the earlier assessment years, held that (i) the status of the assessee is an HUF and not individual; (ii) that the income from the lands standing in the name of the minor daughters cannot be clubbed with that of the assessee and (iii) that the appellant, the assessee herein, will be assessable as an individual on 1/21 share of the property of the grandmother and the remaining 20/21 share is not assessable in the hands of the assessee as individual or as an HUF. Accordingly, the Tribunal set aside the assessment and remanded the matter back to the Agri. ITO for appropriate computation of the income in respect of the lands held by the assessee.

5. As against this order, the State preferred T.C. No. 1226 of 1979. When this tax case came up for consideration, the Division Bench expressed the view that in the decision of State of Tamil Nadu Vs. P. Ganesa Udayar, , this Court has not taken into account that a presumption that a certain person is the karta of an undivided family is a concept with respect to the family in which more than one person had a share in an undivided property, and that there is no scope of a certain person being a karta with respect to the properties which exclusively belong to him or in a family in which the others who live with him do not have any interest in the property of their own, except spes successionis. This was a doubt expressed by the Division Bench, which led to the reference to the Full Bench.

6. An answer to the question referred before the Full Bench finds a place in the judgment of the Supreme Court in Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore, wherein the Supreme Court has held as under :

"... That property of the joint family did not cease to belong to the family merely because the family was represented after A's death by a single coparcener B, who possessed rights which an owner of property might possess, and the income received therefrom was taxable as income of the Hindu undivided family.

There need not be more than one male member to form a Hindu undivided family as a taxable entity under the Income Tax Act. The expression "Hindu undivided family" in the Income Tax Act is used in the sense in which a Hindu joint family is understood under the personal law of the Hindus. Under the Hindu system of law a joint family may consist of a single male member and widows of deceased male members, and the Income Tax Act does not indicate that a Hindu undivided family as an assessable entity must consist of at least two male members.

Under section 3 of the Income Tax Act not a Hindu coparcenary but a Hindu undivided family is one of the assessable entities. A Hindu joint family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. A Hindu coparcenary is a much narrower body than the joint family; it includes only those persons who acquire by birth an interest in the joint or coparcenary property, these being the sons, grandsons, and great

grandsons of the holder of the joint property for the time being." (p. 293)

7. Similarly, while considering the provisions of sections 4(1), 8, 19. Sch. Class I of the Hindu Succession Act, 1956, the Supreme Court in the case of Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, held as under :

"Held, affirming the decision of the High Court, that since C had inherited the amount standing to the credit of his father, R, from whom he had separated by partition in relation to that asset, u/s 8 of the Hindu Succession Act, 1956, that amount belonged to C in his individual capacity and did not constitute an asset of the Hindu undivided family of C and his sons. That amount could not be assessed to wealth-tax in the hands of that family and the interest credited to that amount was allowable as a deduction in computing the business income of that family." (p. 371)

It was further held :

"(iii) It would be difficult to hold today that property which devolved on a Hindu u/s 8 of the Hindu Succession Act would be Hindu undivided family property in his hands vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in Class I, the male heirs in whose hands it will be joint Hindu family property vis-a-vis their sons and female heirs with respect to whom no such concept could be applied or contemplated. The express words of section 8 of the Act cannot be ignored and must prevail. The preamble to the Act reiterates that the act is, inter alia, to "amend" the law. With that back ground, the express language which excluded son's son but included son of a predeceased son cannot be ignored." (p. 371)

8. So also in the case of Commissioner of Income Tax Vs. P.L. Karuppan Chettiar, , the Supreme Court, while considering section 8 of the Hindu Succession Act, held that the income from the property inherited by a son on the death of his father was not assessable as the income of the joint family since the property is inherited u/s 8.

9. In view of the foregoing decisions, we have got to hold that the lands in the name of the father of the assessee, as the son of his father, and the income derived from such land cannot be assessed in the status of HUF because u/s 8 the property inherited from the father will be the individual separate property of the assessee.

10. Accordingly, we hold that the assessment had to be made on the HUF consisting of the assessee, his wife and children in respect of the income derived by him from (a) properties received on partition among his father, his grandfather and himself (b) properties acquired from income from properties obtained on partition and (c) properties acquired by the assessee on the death of his father are to be assessed as his individual properties. The properties settled by the assessee on his minor children should be deemed to have been made by

him in his capacity as the karta of the HUF consisting of himself, his wife and children. The income from such properties could not be included in that of the HUF under the provisions of section 9.

(2) The income from properties received by the assessee from his grandmother was assessable in his hands as his individual income.

11. Accordingly, the Assessing Officer is directed to assess the income of the assessee in the light of the directions given by us in this order. This tax case is allowed to the abovesaid extent. However, there will be no order as to costs.

12. Order accordingly.