
(1987) 09 OHC CK 0017

In the Orissa High Court

Case No : Special Jurisdiction Case No's. 35 and 36 of 1981

Udham Singh

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 25-09-1987

Acts Referred:

Voluntary Disclosure of Income and Wealth Ordinance, 1975 — Section 18

Citation : (1988) 72 CTR 231

Hon'ble Judges : H.L. Agrawal, C.J.; P.C. Misra, J

Bench : Division Bench

Advocate : B.K. Mohanti, for the Appellant; Standing Counsel, for the Respondent

Judgement

H.L. Agrawal, C.J.—At the instance of the assessee, the Income Tax Appellate Tribunal, Cuttack Bench, has referred for the opinion of this court the following question of law in a consolidated reference for the assessment years 1973-74 and 1974-75 :

" Whether, on the facts and in the circumstances of the case, the assessee in its assessments for the assessment years 1973-74 and 1974-75 is entitled to the benefit of set-off of the amounts disclosed by several members of the assessee's family in their individual capacity under the Voluntary Disclosure" of Income and Wealth Ordinance, 1975 ? "

2. The assessee is a Hindu undivided family. The assessments for both the years were completed u/s 143(3) of the Income Tax Act, 1961 (for short " the Act "). Subsequently, the books of account of the assessee and the other documents were requisitioned u/s 132A of the Act from the custody of the Superintendent of Police, CBI, Cuttack. The assessee was summoned u/s 131 of the Act and his statement on oath was recorded by the Income Tax Officer. The books of account and the documents were scrutinised with reference to his statement. The Income Tax Officer, after verification of the accounts, found that various investments and bank deposits were made by the assessee during the assessment years. He

accordingly reopened the assessments u/s 147(a) and made additions under the head " Undisclosed sources " of Rs. 1,37,200 for the first assessment year 1973-74 and Rs. 19,300 for the second assessment year 1974-75, rejecting the assessee's claim that it was entitled to the benefit of the Voluntary Disclosure of Income and Wealth Ordinance of 1975 (later made an Act, being Act 8 of 1976) (for short, called " the Disclosure Scheme ") by the karta and other individual members of the family to the extent of Rs. 1,75,000 and that certain investments were made out of the withdrawals from banks.

3. When the matter went up to the Commissioner of Income Tax (Appeals), Orissa, he took the view that the assessee should get the benefit of the disclosure made by the karta of the Hindu undivided family irrespective of the fact whether the assessee's case was governed by Section 3(1) or Section 14(1) of the Disclosure Scheme and in view of section 17 of the Disclosure Scheme, the benefit was restricted to the declarant only and none else. Accordingly, he gave some relief to the assessee. Thereafter, the assessee took the matter to the Tribunal. It was contended before the Tribunal that the Hindu undivided family was nothing but a group of individuals and, as such, any declaration by the individual members also should be taken as a declaration made on behalf of the Hindu undivided family itself. The Tribunal, however, rejected this contention of the assessee, but made the present references.

4. Mr. B. K. Mohanti, appearing for the assessee, contended that the certificates granted u/s 8(2) of the Disclosure Scheme proved the necessary amount of income disclosed by the other members of the family on which tax was also paid and, therefore, under the essence of the Disclosure Scheme, those individual members of the family were also entitled to the benefit of the same and that it should have been held that the investments made by them in the books of account of the joint family business stood sufficiently explained.

5. Learned standing counsel, on the other hand, submitted that the concession or immunity under the Disclosure Scheme was available only to the person making the declaration and " not to any person other than the person making the declaration under the provisions of the Act. "

6. Mr. Mohanti, however, placed reliance on a decision in the case of Jamnadas Kanhaiyalal Vs. Commissioner of Income Tax, M.P., Bhopal, . This decision does not lend support to the contention of Mr. Mohanti; rather it goes against him as it has been held in unambiguous terms in this case that " the declaration u/s 24(2) of the Finance (No. 2) Act, 1965, had to relate to income actually earned by the declarant and the Act granted immunity to the declarant alone and not to other persons to whom the income really belonged ". It is not disputed that the provision of immunity in the 1976 Act is similar to that of the earlier Act. Mr. Mohanti also referred to another decision of the Supreme Court in the case of Seth Banarsi Das etc. Vs. Wealth Tax Officer, Special Circle Meerut, etc., . The question falling for consideration in this case was entirely different, namely, as to whether Section 3 of the Wealth-tax Act, 1957, in so far as it

purports to levy a charge of wealth-tax in respect of the net wealth of Hindu undivided families, was valid. The vires of the provision was challenged on the ground that Hindu undivided families were groups of individuals and, therefore, should be outside entry 86 and individuals who constituted such Hindu undivided families could not be subjected to the levy of the tax, because the body of coparceners who constituted such Hindu undivided families was a fluctuating body and their shares in the capital assets of their respective families were liable to increase or decrease and could not be definitely predicated for the accounting year as a whole, unless a partition was made. Reference was made by Mr. Mohanti to the following observation of the Supreme Court (p. 230) :

" We do not see anything in the context of entry 86 which can be said to introduce an element of restriction or limitation while interpreting the word " individuals ". Ordinarily, individuals would be treated as such and the capital value of their separate assets would be taxed ; but if individuals form groups and such groups own capital assets, it is difficult to say why the power to levy taxes on such capital assets should be held to be outside the scope of entry 86. "

7. To combat the above contention, learned standing counsel relied upon the definition of "person" in Section 2(31) of the Act to show that in the definition, (i) an individual, and (ii) a Hindu undivided family have been separately classified and a distinction was made between a " Hindu undivided family " and " an individual ". He also referred to the finding recorded by the Tribunal in this regard to the effect :

" There was no evidence to show that any member of the assessee family had any source of income. In such circumstances, the assessee family itself should have disclosed the entire amount of Rs. 1,75,000 under the Voluntary Disclosure of Income and Wealth Ordinance, 1975, in order to prove the unexplained investments made by it. "

8. Section 18 of the 1976 Act reads as follows :

" Removal of doubts.--For the removal of doubts, it is hereby declared that, save as otherwise expressly provided in the Explanation to Sub-section (1) of Section 13 and in Sub-section (4) of Section 16, nothing contained in this Act shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Act."

9. The submission of learned standing counsel also finds support from the decision of the Punjab and Haryana High Court in Commissioner of Income Tax Vs. Meera and Co., , where it was observed that it was open to the Revenue to dispute the genuineness of the cash credits appearing in the books of account of the assessee and that the disclosure scheme was limited only to the persons making the declaration. The reliance placed by Mr. Mohanti on the case of Biswanath Flour Mills v. CIT [1974] TLR 631, where the creditors had filed declarations u/s 24(2) of the Finance (No. 2) Act, 1965, for the assessment year in question and it was held that the assessee was entitled to deletion of the

credits standing in the names of the said creditors, also appears to be misplaced. There was no dispute in that case that the creditors had complied with the requirement of Section 24(2)(c) of the Finance Act which was accepted by the Revenue.

10. In my considered opinion, therefore, there is no scope for much discussion on account of the change of the definition in the 1961 Act. The expression. " individual " is now a unit of assessment and referable only to a natural person, i.e., a human being, a situation different from that in the 1922 Act.

11. A " Hindu undivided family " is a separate legal entity and it is in this sense that this legal expression has been employed in the taxation laws. (See CWT v. Smt. Champa Kumari Singhi [1972] 83 ITR 720). The Legislature deliberately did not define the expression in the Income Tax Act as it has a well-known connotation under the Hindu law. The Hindu undivided family is being assessed to Income Tax as a distinct entity or a unit of assessment. Section 18 of the disclosure scheme clearly provides that no benefit or immunity under the scheme shall be given to any person other than the person making the declaration under that provision. It may be noticed that an exception has been made specifically with respect to a declaration made by a firm. A " firm " and a " Hindu undivided family " being two separate assessable units under the Income Tax Act, no such benefit having been contemplated for the members of a joint Hindu family, I would hold that the Tribunal has taken the correct view of the law, namely, that the benefit would go to the assessee only with respect to the declarations made under the voluntary disclosure scheme to the extent of disclosure made by the assessee and not in the name of the individual members of the joint family, particularly in view" of the finding that they had no independent source of investment of their own.

12. As a result of the above discussion, the answer to the question must be given in favour of the Department and against the assessee.

13. In the circumstances, however, I shall leave the parties to bear their own costs.

P.C. Misra, J.

14. I agree.