

Cit Vs. Vishwas D. Ranade

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Court : Mumbai

Decided On : Dec-12-2002

Reported in : [2003]127TAXMAN218(Bom)

Appeal No. : IT Ref. No. 451 of 1987 12 December 2002

Appellant : Cit

Respondent : Vishwas D. Ranade

Advocate for Pet/Ap. : R.V. Desai and P.S. Jetly, *for the Revenue* S.S. Phadkhan and A.S. Tungare, *for the Assessee*.

Judgement :

J.P. Devadhar, J.

In this income-tax reference relating to the assessment year 1976-77, the Income Tax Appellate Tribunal at the instance of the revenue has referred the following questions for opinion under section 256(1) of the Income Tax Act, 1961 :

'1. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in interpreting the implication of Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum : [1981]129ITR440(SC) and consequently holding that there was a notional partition on the death of the karta/deceased and, therefore, the ancestral/Hindu undivided family property did not belong to the HUF

as the HUF did not survive ?

2. Whether on the facts and in the circumstances of the case, the Tribunal should have directed assessments of 4/5th of the capital gains excluding only the share of the deceased Shri Digambar Hari Ranade ?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in consequence of question No. 1, in holding that the notice under section 148 was untenable in law since the HUF did not exist, and that the capital gains arising on the sale of the HUF property was not taxable as HUFs hands ?'

2. Brief facts relevant for the purpose herein are as follows :

Mr. Digambar Hari Ranade, (since deceased) became owner of the immovable property situated at 1381, Shukrawar Peth, Pune pursuant to the partition deed dated 27-1-1930 that took place between Bhaskar H. Ranade, Digambar H. Ranade and their fathers. The said Digambar H. Ranade died on 7-4-1965. On 12-7-1965 the names of the following legal heirs of the deceased were entered in the City Survey record and also in the Municipal record, in respect of the aforesaid property of the deceased :

(1) Smt. Malti D. Ranade.

(2) Shri Shrihari D. Ranade.

(3) Shri Vishnu D. Ranade.

(4) Shri Vishwas D. Ranade.

3. On 5-6-1975 all these 4 legal heirs entered into an agreement with M/s. A.V. Apte & Co. for sale of the aforesaid property. On 20-11-1975, independent final sale deeds were executed in favour of each of the aforesaid 4 legal heirs separately. The total amount of consideration for sale of the property was Rs. 2,75,000. It is an admitted position that each of the aforesaid legal heirs have individually paid capital gains arising on sale of the said property and the same has been accepted by the Income Tax Department.

4. On 6-10-1979 the Income Tax Officer issued notice under section 148 of the Income Tax Act, 1961, as he was of the opinion that the capital gains arising on sale of the aforesaid immovable property was assessable in the hands of the HUF and the same has escaped assessment. The legal heirs by their reply, contended that HUF was not in existence at any point of time and that the partition took place long back and what they had sold was their individual share. It was contended that the legal heirs were liable for capital gains in their individual capacity and not as coparcener of HUF and that the department has rightly taxed capital gains in the hands of the individuals.

5. The Income Tax Officer completed the assessment under section 144 read with section 147(a) of the Income Tax Act determining the capital gains of Rs. 1,38,750 in the hands of the Hindu undivided family. The Income Tax Officer rejected the contentions of the legal heirs, inter alia on the ground, that at the time of the sale of the property, all the members of the family were staying together; that in each sale deed, it is stated that the sale is of 1/4th share of the Hindu undivided family property; that no intimation of any alleged partition, as claimed, was given to the City Survey Office or the City Municipal Corporation; that the release deed from the married daughter Mrs. Vidya N. Phadke dated 12-6-1975 was filed subsequent to the agreement for sale dated 5-6-1975. For all the aforesaid reasons, the Income Tax Officer held that there was no partition of the HUF and, therefore, on sale of the property, the capital gains tax was liable to be assessed in the hands of the HUF.

6. On appeal, the Commissioner (Appeals) upheld the contention of the assessee and cancelled the notice issued under section 148 of the Income Tax Act on the ground; firstly, that the Hindu undivided family was never assessed to tax so far and, therefore, the question of claiming for any partition under section 171 of the Income Tax Act did not arise, secondly, there was no income assessable in the hands of the Hindu undivided family and thirdly, the Income Tax Officer had already taxed the capital gains arising out of the sale of the immovable property, in the hands of the individuals. Even on merits, the Commissioner (Appeals) held that in the light of the decision of the Apex Court in the case of Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum : [1981]129ITR440(SC) , on

the death of Shri Digambar H. Ranade in 1965, the Hindu undivided family was notionally partitioned and the property thereafter did not belong to the Hindu undivided family because the Hindu undivided family did not survive. The Commissioner (Appeals) accordingly cancelled the assessment order made under section 144 read with section 147(a) of the Income Tax Act, 1961.

7. On further appeal filed by the revenue, the Income Tax Appellate Tribunal, while upholding the findings of Commissioner (Appeals), held, that as per the decision of the Apex Court in the case of Gurupad Khandappa Magdum (supra) each individual acquired his/her share immediately after the death of Digambar H. Ranade and each coparcener acquired his share in the property even before the death of Mr. Digambar H. Ranade because of ancestral property. The Tribunal further held that the point of living jointly does not mean that they were not having their determined share in the ancestral property. Hence this reference at the instance of the revenue.

8. Mr. R.V. Desai, learned senior counsel appearing for the revenue submitted that the Tribunal was in error in not properly construing the decision of the Apex Court in the case of Gurupad Khandappa Magdums case (supra). According to him, the shares of the legal heirs to be determined by notional partition, as held by the Supreme Court, could not be constructed to mean that there was total disruption of the joint family property. He submitted that in the absence of any documents to establish that the joint family property was partitioned, the Income Tax Officer was justified in taxing the capital gains arising out of the sale of the immovable property in the hands of the Hindu undivided family.

9. Mr. Phadkar, learned counsel appearing on behalf of the respondents submitted that on the death of Digambar H. Ranade, the names of the person who were entitled to the estate of the deceased were recorded in the City Survey records as well as in Municipal records as far back on 12-7-1965. He submitted that the HUF was not in existence and the Hindu undivided family was never assessed to tax so far and, therefore, the question of claiming any partition of Hindu undivided family under section 171 of the Income Tax Act did not arise at all. He submitted that all the facts relevant for the purpose of the assessment were there before the Income

Tax Officer at the time of the original assessment of the individual legal heirs, including the fact that the capital gains taxes arising out of sale of immovable property have been paid by the legal heirs in their individual capacity and the same has been duly assessed. Accordingly, it was submitted that the orders passed by the authorities were justified and no interference is called for.

10. We have heard the counsel on both sides. As regards the first question is concerned, the Apex Court in the case of Gurupad Khandappa Magdums case (supra) had laid down the proposition that when a female member who inherits an interest in the joint family property under section 6 of the Hindu Succession Act, files a suit for partition expressing her willingness to go out of the family, then, she would be entitled to get both the interest she has inherited and the share she would have been notionally allotted to her, as stated in Explanation I to section 6 of the Hindu Succession Act. The Apex Court in the case of State of Maharashtra v. Narayan Rao Sham Rao Deshmukh : [1987]163ITR31(SC) has considered the scope and ambit of the ratio laid down in Gurupad Khandappa Magdums case (supra) and held as follows :

'(9) We have carefully considered the above decision and we feel that this case has to be treated as an authority for the position that when a female member who inherits an interest in the joint family property under section 6 of the Act files a suit for partition expressing her willingness to go out of the family she would be entitled to get both the interest she has inherited and the share which would have been notionally allotted to her, as stated in Explanation I to section 6 of the Act. But it cannot be an authority for the proposition that she ceased to be a member of the family on the death of a male member of the family whose interest in the family property devolves on her without her volition to separate herself from the family. A legal fiction should no doubt ordinarily be carried to its logical end to carry out the purposes for which it is enacted but it cannot be carried beyond that. It is no doubt true that the right of a female heir to the interest inherited by her in the family property gets fixed on the death of a male member under section 6 of the Act but she cannot be treated as having ceased to be a member of the family without her volition as otherwise it will lead to strange results which could not have been in the contemplation of Parliament when it enacted that provision and which might also

not be in the interest of such female heirs. . . .'

Therefore, the concept of notional partition contemplated under section 6 of the Hindu Succession Act, 1956 does not mean that a partition must necessarily follow or be assumed to have followed on the death of a coparcener. In this view of the legal position, the findings of the Tribunal that on the death of Shri Digambar Ranade, each coparcener acquired his share in the property and the Hindu undivided family did not survive, cannot be accepted. If at all there was an Hindu undivided family, then on the death of a coparcener the Hindu undivided family continues with the other members of the family. Thus, the findings of the Tribunal insofar as it holds that on the death of a coparcener, the Hindu undivided family comes to an end, is contrary to law laid down by the Apex Court. Accordingly, the question No. 1 is answered in the negative and in favour of the revenue.

11. However, the facts of the present case, as enumerated by the authorities below, clearly show that the Hindu undivided family was never assessed to tax and on the death of Digambar Ranade, the legal heirs have mutually decided amongst themselves as to who shall inherit the estate of the deceased and got their names recorded in the City Survey records and Municipal records. This fact is corroborated by the release deed executed by the married daughter of the deceased. Thus, the fact on record establish that on the death of Digambar Ranade in the year 1965, each of the 4 legal heirs were holding 1/4th share in the estate of the deceased as tenants in common and that in the year 1975 they agreed to sell their respective 1/4th share to M/s. A.V. Apte & Co. The Income Tax Officer has held that the Hindu undivided family was in existence all through, because in the agreement for sale entered into with M/s. A.V. Apte & Co., the legal heirs have stated that each of them are selling 1/4th share in the Hindu undivided family property. In our opinion, mere use of the words Hindu undivided family property in the agreement for sale cannot be the basis for holding that the Hindu undivided family existed on the date of sale. What was agreed to be sold was 1/4th share of each individual as co-sharer and the sale was not effected as the property belonging to the Hindu undivided family. Similarly, the release deed dated 12-6-1975 executed by the married daughter after the agreement for sale does not establish existence of the Hindu undivided family. In fact, the release deed of the

married daughter fortifies the contention of the legal heirs that on the death of Digambar Ranade, it was decided that the 4 heirs will take 1/4th share in the estate of the deceased and accordingly, their names were recorded in the City Survey records. If the married daughter were to contest the rights of the co-sharers to dispose of the property, then different considerations would have arisen. But in the facts of this case, where the parties have acknowledged and accepted the respective shares in the property, it cannot be said that the property continued to be HUF property. Since 1965, the co-sharers were holding the property of the deceased in equal shares as tenants in common and on sale of the said property in the year 1975, capital gains tax became payable by each of the co-sharer. Accordingly, each of the co-sharer has paid capital gains tax individually and the revenue has accepted it. In this view of the matter, we are of the opinion, that the Tribunal was justified in holding that in the facts of the present case, the sale of the immovable property was effected by the co-sharers individually and not by the Hindu undivided family. Consequently, the Tribunal was justified in holding that the entire capital gains arising out of the sale of the immovable property could not be taxed in the hands of the Hindu undivided family. In this view of the matter, we answer the question No. 2 raised by the revenue, by holding that the Tribunal has rightly upheld that the capital gains are assessable in the hands of the respective co-sharers.

12. Now, turning to the third question raised by the revenue, the facts on record clearly show that in the individual returns filed by each of the legal heirs, they had disclosed all material facts to establish that each of them had 1/4th share in the property and that the property did not belong to the Hindu undivided family. In the reasons recorded for reopening the assessment, no material is adduced to show that the HUF was in existence when the sale of the immovable property took place in the year 1975. The Income Tax Officer at the time of original assessment of the co-sharers on the basis of the documents on record, accepted their contention and held that the capital gains arising out of the sale of the immovable property are liable to be assessed in the hands of the individual co-sharers. There is neither failure on the part of the co-sharers to disclose any material facts nor there is any income escaping assessment. Therefore, in the facts of this case, the capital gains have been rightly assessed in the hands of the individuals and not in the hands of

the Hindu undivided family. Once it is held in the facts of the present case, that the capital gains on sale of immovable property are not taxable in the hands of the Hindu undivided family, the notice issued under section 148 of the Income Tax Act cannot be sustained. Accordingly, we answer question No. 3 in the affirmative and in favour of the assessee.

13. To sum up, we answer the questions referred as follows :

Question No. 1

is answered in the negative that is in favour of the revenue and against the assessee.

Question No. 2

is answered by holding that the Tribunal was justified in treating the entire capital gains arising out of the sale of the immovable property of the deceased, taxable in the hands of the individual co-sharers.

Question No. 3

is answered in the affirmative that is, in favour of the assessee and against the revenue.

14. The reference is disposed of in the above terms with no order as to costs.

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