income-tax Officer Vs. Devatha Papaiah

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Court : Income Tax Appellate Tribunal ITAT Hyderabad

Decided On : Mar-31-1984

Reported in : (1984)9ITD600(Hyd.)

Judge : S Rajaratnam, T R Rao, J Member

Appellant : income-tax Officer

Respondent : Devatha Papaiah

Judgement :

1. These are two appeals preferred by the department against the order passed by the AAC, dated 17-2-1983 for the assessment year 1973-74 and a separate order of the same date by the 'same officer for 1974-75. The contention in these two appeals revolves round the question whether on the facts and in the circumstances of the case the assessee is to be taxed as an individual or as a HUF. According to the assessee, he is to be assessed as a HUF whereas according to the revenue, he is to be assessed as an individual.

2. Few facts necessary for the disposal of these two appeals may be noted as under : Shri Devatha Papaiah was assessed to income-tax in his status as individual for the assessment years 1965-66 to 1969-70 on his share income from the firm Devatha Papaiah, Commission Agents, Nizamabad. For the assessment years 1970-71 and 1971-72, though he claimed the status of HUF, he was assessed in the status of an individual. For the assessment year 1972-73, the assessee filed a return noting his status as a HUF as far as the share income from Devatha Papaiah is concerned. During that assessment year the assessee also claimed that there was a partial partition in his family on 18-10-1971 according to which, the sum of Rs. 1,83,000 which the assessee's joint family invested in the firm of Devatha Papaiah was partitioned. According to the said partition, the assessee as well as his three minor sons got Rs. 42,000 each whereas his wife got Rs. 5,000 and his two daughters got Rs. 5,000 each. Apart from the investment and share income in the firm Devatha Papaiah, the joint family of the assessee stated to have got house property, mulgi, jewellery, utensils, cattle farm house and agricultural land which were still held joint.

The partial partition was recognised by the ITO under Section 171 of the Income-tax Act, 1961 ('the Act') by his order dated 30-11-1974. The case of the assessee was that on 25-10-1971 there took place reconstitution in the firm of Devatha Papaiah whereby the three minor sons of Shri Devatha Papaiah were admitted to the benefits of the partnership with 20 paise share each. The three other major partners of the said firm and profit-sharing ratio remain an follows : It is stated that the reconstituted firm had commenced business from 20-10-1971.

3. For the assessment year 1973-74, the firm's assessment was finalized under Section 143(3) of the Act on 22-1-1976. The share income derived by Shri Devatha Papaiah and his three minor sons were as follows : Later by rectificatory orders under Section 154 of the Act, dated 29-3-1976, the profit derived by each of the above four persons was corrected to Rs. 16,641. For the assessment year 1973-74, Shri Devatha Papaiah returned his share income in the firm in the status of a minor HUF claiming to consist himself, his wife and two unmarried daughters.

He was also assessed to tax in that status. His three minor sons were taxed separately for their shares of profit in the firm in the status of individual represented by their father and natural guardian. Again there was a reconstitution of the firm on 6-11-1975 relevant to the assessment year 1977-78. In the said reconstitution the minor sons of Shri Devatha Papaiah dissociated themselves from the firm. However, they kept their capital balances in the firm and they choose to remain as creditors of the firm. While the matters stood thus, Shri Devatha Papaiah begot another male issue, Master D. Chandrashekhar, on 23-2-1973. According to the ITO, the share income from Devatha Papaiah was earned in the personal capacity of Shri Devatha Papaiah and so it constitutes absolute and individual income and so he should be assessed in his individual status. It is also the opinion held by the ITO that the minor sons are also members of the same firm and so the provisions of Section 64(1)(iii) of the Act would become applicable and the income arising to the minor children from their admission to the benefits of partnership has to be included in the assessee's income. He, therefore, clubbed the share income of Shri Devatha Papaiah as well as the share incomes of his three minor sons derived from the firm and assessed the whole of it in the hands of Shri Devatha Papaiah in the status of individual both for the assessment years 1973-74 and 1974-75. According to the ITO, the after-born son is not entitled to have the partition reopened but he was only entitled after the father's death to inherit not only the shares allotted to the father on partition but the whole of the separate property of the father, whether acquired by him before or after partition to the entire exclusion of the separated sons. It is also the view of the ITO that in Southern India the practice of allotting a share upon partition to females long became obsolete and the whole right of maintenance available to a Hindu wife and unmarried daughters was codified under the Hindu Adoptions and Maintenance Act, 1956, according to the provisions of which, the maintenance right is personal right which can be enforced against the husband and it is within the discretion of the Court passing the decree for maintenance to make the claim a charge upon the property. So, simply because a wife has got a right of maintenance, ipso facto it does not translate into a charge over the property held by her husband. It is also the opinion of the ITO that after the Hindu Adoptions and Maintenance Act came into force, the concept that a wife of a coparcener is entitled to maintenance and her maintenance claim has to be met out of the joint family property appears to have been superseded by the provisions of the said Act. Thus, according to the ITO, as the wife has no other right in the property held by the husband, the husband and wife (Devatha Papaiah and wife) do not constitute minor HUF as contended on behalf of the assessee. In support of the conclusions reached by the ITO he relies upon the Special Bench decision of this Tribunal in Premchand Chaganlal v. ITO [1981] 7 Taxman 171 (Hyd.) [since reported in [1982] 1 SOT 27 (Hyd.)] where the Special Bench of this Tribunal categorically stated that the income from property received by the assessee in partition was assessable in the status of individual. Thus, the ITO passed his reopened assessment on 27-2-1982 for the assessment years 1973-74 and 1974-75.

4. The assessee took the matters in appeal. It was contended that completing the assessment in the status of an individual for the two assessment years under consideration is wrong. The status of the assessee continues to be that of a HUF consisting of himself, his wife and a minor daughter after the partition of the capital in the firm.

After partition the character of the property in the hands of Shri Davatha Papaiah still remained as that of the joint family property till such time Shri Devatha Papaiah had the potentiality to conceive either a son or to adopt a boy subsequent to the partition. Reliance was placed upon the decisions of the Hon'ble Supreme Court in N.V.Narendranath v. CWT [1969] 74 ITR 190, Gowli Buddanna v. CIT [1966] 60 ITR 293, C. Krishna Prasad v. CIT [1974] 97 ITR 493 and also the decision of the Allahabad High Court in Prem Kumar v. CIT [1980] 121 ITR 347 where it is held that the property falling to a single coparcener on a partition does not lose its character of joint family property solely for the reason that there is no other member, male or female, at a particular point of time. The learned AAC considering the rival contentions advanced held that the assessee was wrongly determined to be an individual. He ought to have been determined as a HUF. According to the learned AAC, the decision in N.V. Narendranath's case (supra) should apply to the facts of this case. He also held that in the decision of the Allahabad High Court in Prem Kumar's case (supra) it is held that the Supreme Court decision given under the Wealth-tax Act, 1957, is equally applicable to cases arising under the 1961 Act.

Further, in the opinion of the AAC, the birth of another male issue to Shri Devatha Papaiah has further clinched the issue.

Therefore, ultimately he determined the status of Shri Devatha Papaiah as a HUF, set aside the ITO's order and the appeal was allowed. He directed to delete the incomes of Master D. Muralidhar Gupta, Master D.Ram Mohan and Master D. Rukminiprasad from the total income of the assessee.

5. Aggrieved against the impugned orders of the AAC, the revenue came up in second appeal for each of these issues and, thus, the matter stands for our consideration. We heard Shri N. Santhanam, the learned departmental representative, and Shri M. Anandam, the learned Counsel for the assessee. According to the learned departmental representative, the share derived by Shri Devatha Papaiah in partial partition, according to the categorical Andhra Pradesh High Court judgment in CWT v. Mukundgiriji [1983] 144 ITR 18, is the separate property of Shri Devatha Papaiah and so the ITO's assessment of Shri Devatha Papaiah as an individual is quite correct. It follows from this that the inclusion of the minors' share under Section 64(1)(iii) is also quite correct and, hence, the AAC's order should be set aside and the appeals allowed. In support of his contention reliance was also placed upon the Supreme Court's decision in Surjit Lal Chhabda v. CIT [1975] 101 ITR 776. In that case an immovable property called 'Kathoke Lodge' was initially self-acquired property of Shri Surjit Lal Chhabda. He had got wife and an unmarried daughter. He purported to have impressed this Kathoke Lodge into the family hotchpot and he intended to treat the said property as joint family property from 26-1-1956. The question 'was whether the income received therefrom was assessable in the individual hands of the assessee or as his HUF income. The Supreme Court held that the income should be treated as individual income of Shri Surjit Lal Chhabda. Here also, according to the learned departmental representative, the facts appear to be similar and so the ratio of Surjit Lal Chhabda's case (supra) should be applied. The learned departmental representative also relied upon the decision of the Allahabad High Court in CED v. Smt. Kalawati Devi [1980] 125 ITR 762 which also lays down the proposition that the assets received on partition by a member of a HUF who has no male issue at the time belongs to him absolutely. In that case also the deceased whose family consisted of himself, his wife and a daughter and they received certain properties on partition of a bigger HUF after the death of the deceased. The question was whether he was the absolute owner of the whole property received on partition. The Allahabad High Court held that it should be considered as his absolute property. The learned departmental representative also invited our attention to the decision of the Andhra Pradesh High Court in CED v. Smt. P. Leelavathamma [1978] 112 ITR 739. In that case the deceased died leaving behind him his mother, wife and a minor daughter. The maintenance expenses of the widow were claimed as deduction from the estate of the deceased. The High Court held that the wife being the heir of the deceased under Section 8 of the Hindu Succession Act, 1956, she is not entitled to separate maintenance after the death of the deceased under Section 22(2) of the Hindu Adoption and Maintenance Act. It is also held that the widow had no choate or clear right against any specific property of the deceased when he was alive and the nature of her right of maintenance is only personal in character. The learned departmental representative also argued that the son was born on 23-2-1977 which falls in the assessment year 1974-75. As far as the assessment year 1973-74 is concerned, the learned departmental representative argued that Shri Devatha Papaiah took his share in partial partition absolutely and his wife had no right in it. Assuming without admitting that she had any right of maintenance, her right was duly taken care of by the other undivided properties not covered by the partial partition as well as the amount of Rs. 5,000 each provided to the wife and daughters in the partial partition. He argued that the right of maintenance available to a Hindu woman was clearly laid down in Smt. P.Leelavathamma's case (supra). Therefore, he argued that the AAC's decision is clearly wrong and should be set aside and the appeals allowed.

6. Shri M. Anandam, the learned Counsel for the assessee, contended that Mukundgiriji's case (supra) rendered by the Andhra Pradesh High Court did not take into consideration the Supreme Court decisions in Gowli Buddanna's case (supra), N.V. Narendranath's case (supra), C.Krishna Prasad's case (supra) and also Surjit Lal Chhabda's case (supra). The assessee in that case belonged to a secular section, viz, Dingles

Gosavees, governed by the customary law relating to succession.

Further in the Andhra Pradesh High Court's case the question whether a Hindu, his wife and daughter constitute a minor HUF after they derived their share of property on partition from bigger HUF is not the point at issue. Therefore, Shri Anandam submits that the ratio laid down by the Andhra Pradesh High Court in Mukundgirijis case (supra) for the purposes of wealth-tax may not be clearly applicable to the facts on hand. So also he contends that the Allahabad High Court decision in Smt. Kalawati Devi's case (supra) also does not determine the real issue in this case. The said decision was rendered for the estate duty purposes and not for income-tax purposes. The deceased was considered to be the sole surviving coparcener who had unlimited rights to dispose of the property coming to his hands after partition. So is the case, Shri Anandam argues, with the Andhra Pradesh High Court decision in Smt. P. Leelavathamma's case (supra). In that case what was determined was that the wife of the deceased had no choate right or definite right of maintenance against any particular property held by her husband. Her right was only personal and unless her right was quantified and made a charge upon any particular property held by her husband, she can not claim any deduction of her maintenance while computing the value of her husband's estate. In our case that was not the issue at all. It was also submitted by Shri Anandam, the learned Counsel for the assessee, that Premchand Chaganlal's case (supra) rendered by the Special Bench of this Tribunal in which it is held that the income from property received by the assessee on partition was assessable in the status of individual was reversed by the Andhra Pradesh High Court in the decision in Premchand v. CIT [1984] 17 Taxman 90. In fact, according to Shri Anandam, the Andhra Pradesh High Court decision in Premchand's case (supra) lays down the correct ratio to be followed." The Andhra Pradesh High Court in that case duly considered Gowli Buddanna's case (supra), N.V. Narendranath's case (supra), C. Krishna Prasad's case (supra) as well as Surjit Lal Chhabda's case (supra). They have also considered Kalyanji Vithaldas v. CIT AIR 1937 PC 36. After reviewing the above case law they summarised the emerging legal position in para 25 of their elucidating judgment as follows : 1. Where the property 'was originally' owned by coparceners of a HUF and later devolved on a sole surviving coparcener who had female members in his family, the character of the property as HUF does not change in spite of the temporary reduction of the number of coparceners and the sole surviving coparcener has to be assessed as a HUF as in Gowli Buddanna's case (supra). Similarly where the property of a HUF is partitioned, the property so allotted to a single coparcener who has female members in the family has to be assessed as HUF on the principle of Gowli Buddanna's case (supra) as applied to Narendranath's case (supra). Where, however, there is physical absence of female members entitled to maintenance on the property, the sole surviving coparcener in possession of the above-mentioned property has to be assessed as an individual till such time that he gets married. That is the exception to the rule in Gowli Buddanna's case (supra) made in Krishna Prasad's case (supra).

2. But where the property was not owned by a HUF before it came to be owned by a sole surviving coparcener living with female members of the family entitled to maintenance, the assessment has to be made as an individual. The reason is that before it got converted as joint family property it was not owned by coparcener of a HUF. After conversion too the assessment remains so till a son is born. Such a conversion as joint family property occurred for the first time in the hands of the sole surviving coparcener by reason of the gift by the father in Kalyanji's case (supra), and by reason of the sole coparcener throwing his separate property into hotchpot in Surjit Lal Chhabda's case (supra). The property would have to be assessed as of individual even in spite of the existence of female members until a son was born who could have a right by birth. That is the rule in Kalyanji's case (supra).

In that case the question that ultimately cropped up before the High Court was whether Sardarilal and his wife Smt. Janakibai after partition dated 27-10-1970, which took place between Sardarilal and his son, formed a joint Hindu family and whether their status should be determined as that of a joint family. Ultimately the Hon'ble High Court rejecting the contention of the assessee that after partition he should be considered to be an individual held that simply because the wife was given a share in the partition, it did not have the effect of wiping of her sapinda relationship. She, therefore, continued to be a member of the family of her husband

notwithstanding the fact that under the Benaras School of Mitakshara Hindu law she was given a share. In coming to the said conclusion their Lordships of the Andhra Pradesh High Court extracted the classic exposition of the Hindu Law by Justice Chandrachud (as he then was) in Surjit Lal Chhabda's case (supra) which is as follows : The joint Hindu family, with all its incidents, is thus a creature of law and cannot be created by act of parties, except to the extent to which a stranger may be affiliated to the family by adoption. But the absence of an antecedent history of jointness between the appellant and his ancestors is no impediment to the appellant, his wife and unmarried daughter forming a joint Hindu family. The appellant's wife became his sapinda on her marriage with him. The daughter too, on her birth, became a sapinda and until she leaves the family by marriage, the tie of sapindaship will bind her to the family of her birth. As said by Golapchandra Sarkar Sastri in his 'Hindu Law' (eighth edition, page 240), 'those that are called by nature to live together, continue to do so' and form a joint Hindu family. The appellant is not by contract seeking to introduce in his family strangers not bound to the family by the tie of sapindaship.

The wife and unmarried daughter are members of his family. He is not by agreement making them so. And as a Hindu male, he himself can be the stock of a fresh descent so as to be able to constitute an undivided family with his wife and daughter.

7. Now let us apply the correct legal position enunciated by the Andhra Pradesh High Court in Premchand's case (supra) to the facts of the present case. Admittedly the investment by Shri Devatha Papaiah in the firm Devatha Papaiah, Nizamabad, prior to 18-10-1971 was part of joint family property. On 18-10-1971 the said joint family property found invested in the firm was Rs. 1,83,000. This amount was partitioned among Shri Devatha Papaiah, his three minor sons, his wife and two unmarried daughters. This partial partition was duly recognised by the ITO by his orders dated 30-11-1974. From 20-10-1971 Shri Devatha Papaiah, his three minor sons along with some others formed themselves into a partnership and carried on business. The sons were assessed in their individual capacity. After partition Shri Devatha Papaiah, his wife and two unmarried daughters, according to the above said decisions, formed themselves into a HUF. Simply because there is no other coparcener in the family who can share the property along with Shri Devatha Pap aiah does not make the property in his hands, his absolute property. He begot a son on 23-2-1973. It is no doubt true that after-born son cannot reopen the partition which took place prior to his birth. But in our considered opinion he has got a right by birth in the properties held by his father. From the date of birth of the after-born son, Shri Devatha Papaiah no longer remain to be the sole surviving coparcener vis-a-vis the property held by him. His son became a coparcener for the property held by him along with him. Therefore, we have no reservations in our minds to come to the conclusion that for the assessment year 1973-74, Shri Devatha Papaiah, his wife and two minor daughters constituted a HUF and for the assessment year 1974-75, Shri Devatha Papaiah, his after-born son D. Chandrasekhar. his wife and two unmarried daughters are the members of his HUF. When once Shri Devatha Papaiah is to be assessed as HUF for both these assessment years, Section 64(1)(iii) does not come into play at all in view of the categorical decision of the Andhra Pradesh, High Court in CIT v. Sanka Sankaraiah [1978] 113 ITR 313 which laid down the law as follows as per the headnote of the decision : The expression 'individual' in Section 64(1) of the Income-tax Act, 1961, does not comprehend in its meaning the karta of a joint family. If it were the intention of the Legislature that, that expression shall also take in a Hindu undivided family, then it would have used the expression 'person' so as to include a Hindu undivided family. The use of the words 'spouse of such individual' in Clause (i), 'minor child of such individual' in Clause (iii) and 'either spouse or parent' in the Explanation to Section 64 support this view.

Wherever a partner in a firm represents any Hindu undivided family, the partner has got a dual role to play. Qua the partnership, he functions in his individual capacity. Qua third parties, he acts in his representative capacity. In all such cases, when the partner represents as a trustee or karta or as a benamidar, either under express or implied agreement, Section 64 of the Income-tax Act has no application. Any contrary view will result in absurd results.

Therefore, where a person is a partner representing the Hindu Undivided Family consisting of himself, his wife and minor children, the share income from the firm derived by his wife or minor children cannot be

included in the individual assessment of the partner under Section 64.

We are, therefore, of the opinion that the appeals preferred by the revenue are devoid of any merit and they are dismissed.