

V. Vs. S. Natarajan V. Commissioner of Income Tax, Madras.

V. Vs. S. Natarajan V. Commissioner of Income Tax, Madras.

SooperKanoon Citation : sooperkanoon.com/820520

Court : Chennai

Decided On : Apr-04-1977

Reported in : [1978]111ITR539(Mad)

Appeal No. : Tax Case Petition No. 65 of 1977

Appellant : V.

Respondent : S. Natarajan V. Commissioner of Income Tax, Madras.

Judgement :

SETHURAMAN J. - This petition has been filed by the assessee under section 256(2) of the Income-tax Act, 1961, for issuing a direction to the Tribunal to state a case on the following questions :

'(1) Whether, on the facts and the circumstances of the case, the Tribunal is right in law in holding that there was no partial partition and hence the claim is not right ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that there can be no partial partition since the wife was not allotted any property ?'

The assessee was being assessed as a Hindu undivided family. It consists of one V. V. S. Pandurangan, who is the karta, his wife, Rajeswari, and their two minor daughters, Ponmathi and Leela. This family, through its karta, was a partner in two

firms, V.V.S. Pandurangam & Co., Virudhunagar, and V. V. Shanmuga Nadar and Brothers, Madras. In addition, this family was carrying on business under the name and style of 'Nataraja Oil Mills'. It had other assets also. On February 11, 1969, being the last day of the accounting year relevant for the assessment year 1069-70, on the direction of the karta, the family's account in the books of V. V. S. Pandurangam & Co. was debited with Rs. 20,000 and the accounts of the two minor daughters, Ponmathi and Leela, were each credited with Rs. 10,000. The narration for the debit entry was to the effect that each of the two daughters was given Rs. 10,000 'as per partition arrangement'. On March 25, 1969, the karta made a declaration in writing stating that Rs. 10,000 had been set apart for being utilised for the education, maintenance and marriage expenses of his two daughters and that they had become their absolute properties. It was also stated in the declaration that the karta had taken over the family's share in the firms, V. V. S. Pandurangam & Co, Virudhunagar, and V. V. Shanmuga Nadar & Brothers, Madras, and that the business carried on in the name and style of 'Nataraja Oil Mills' was his individual asset with effect from February 12, 1969, and the remaining assets owned by the family continued to be joint family properties. In the said declaration there was also a statement that the said arrangement had been made with the full concurrence of his wife and after taking her wishes into account. The wife had attested the document. Basing himself on this arrangement, the assessee claimed before the Income-tax Officer that there was a partial partition in the family and that the same should be recognised. The Income-tax Officer declined to recognise the partial partition on the ground that the karta of the Hindu undivided family had no authority to unilaterally effect a partition of the family properties and that there was no question of a partition at all in a Hindu undivided family which had only one male coparcener, the other members being females. The assessee appealed to the Appellate Assistant Commissioner without success. Thereafter, the matter was taken on appeal to the Appellate Tribunal. The Tribunal held that the arrangement could not be considered to be a partition as it was well-settled that the right to claim a share in the properties belonging to a Hindu undivided family was available only to a coparcener and such a right is not available to a female member though a wife, mother and grand-mother are entitled to be allotted a share in the event of there being a partition between the

coparceners. Taking into account the fact that no share was allotted to the wife in this partial partition, the Tribunal came to the conclusion that the arrangement on the basis of which a claim of partial partition had been made was not a partition at all and that the income-tax authorities were justified in rejecting the same. It is this order of the Tribunal which is sought to be challenged by raising the aforesaid two questions.

The short point to be considered is whether there could be any partition at all in a case like this. In paragraph 306 of Mulla's Hindu Law, it is stated that every coparcener is entitled to a share upon partition. There is no coparcener in this Hindu undivided family apart from the karta. Therefore, the basic requirement of there being any male member who could be a coparcener is absent in the present case so that there could be no possibility of a partition. There can possibly be some provision for the maintenance of the wife or for the marriage or educational or other expenses of the daughters. In the present case, it is not stated that any amount is being given to the wife in lieu of her right to maintenance nor is there any statement made to show that the daughters are being given the respective amounts with reference to their right to be maintained or with reference to their right to have themselves educated or married. In the original entry as made on February 11, 1969, it was merely called 'partition agreement'. It is only in the declaration dated March 25, 1969, a statement is made to the effect that amounts given to the two daughters were to be utilised for their education, marriage and maintenance. Having regard to the contemporaneous evidence in the shape of entries in the account book, it is clear that the assessee had tried only to effect a partition. A partition is an impossibility in a family like this. In these circumstances we are unable to hold that there was any valid partition which could have been recognised under the provisions of the Income-tax Act.

The learned counsel for the assessee, relying on section 171 of the Income-tax Act, 1961, submitted that there could be a partition even among members as contrasted with coparceners. Section 171(2), which is sought to be relied on, runs as follows :

'Where, at the time of making an assessment under section 143 or section 144, it is claimed by or on behalf of any member of a Hindu family assessed as undivided that a partition, whether total or partial, has taken place among the members of such family, the Income-tax Officer shall make an enquiry thereinto after giving notice of the enquiry to all the members of the family.'

Emphasis is placed by the learned counsel for the assessee on the word 'member' occurring in the above provision. According to him it is not necessary that a person should be a coparcener in order to be eligible for being allotted a share on a partition. The provisions of the Income-tax Act cannot confer any right to partition which is not available to any person under the personal law by which he is governed. The provision of section 171(2) is intended to apply only in the course of assessment so as to see whether the family continues to own the same properties which it owned in the earlier years. Section 171(2) cannot be held as giving any right to any member of the joint family which he or she did not have under the personal law governing the parties. We have indicated that the wife or the minor daughters of a Hindu coparcener would not be entitled to a share on a partition of the properties of the joint family and they would have only a right to maintenance, etc., for which proper provision would be made in the course of any partition that takes place. Where there is no scope for partition, there is no possibility of making a provision therein. We are, therefore, of the view that the answer to the questions raised in the present case are so patent that there is no need to direct the Tribunal to state a case and refer the aforesaid questions for decision of this court. The petition is dismissed with costs. Counsel's fee Rs. 250.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com