Commissioner of Income-Tax, Assam, Tripura and Manipur

Vs

Nandlal Agarwal and Another

Civil Appeal No. 820 of 1964

(K. Subha Rao, J. C. Shah, S. M. Sikri JJ)

17.11.1965

JUDGMENT

SIKRI, J. –

This appeal in pursuance of the certificate granted under section 66 A(2) of the Indian Income-tax Act, 1922, hereinafter referred to as the Act, is directed against the judgment of the High Court of Assam in a reference made to it under section 66(2) of the act. The question referred by the Appellate Tribunal was : " Whether, in the circumstances of the case, the Tribunal was justified in assessing the income of the minors in the hands of the guardians as the income of the Hindu undivided family."

The relevant fact out of which the reference arose are as follows : Shri Kishanlal Agarwalla died intestate in December, 1950, leaving his widow or two minors, Basanta and Ashok. Prior to his death he was being assessed as an individual on the income arising on the business carried on in the name of Shri Krishan Rice Mills, Tejpur. He was governed by the Mitakashara school of Hindu law. The widow also died in 1952. On the death of the widow an application was made by Shri Nandlal Agarwalla to the court of district judge, Gauhati, for being appointed as a guardian of the person and the properties of the two minors, Basanta and Ashok. The district judge, by his order dated June 1, 1953, appointed him temporarily the guardian of the person and the properties of Basanta and Ashok, till the disposal of the application, and transferred the file to the Subordinate Judge, L. A. D., Nowgong. On December 15, 1953, the Sub-Judge appointed Shri Dwarka Prasad Agarwalla and Shri Nandlal Agarwalla guardians of the person and the properties (as per the schedule in the application) of Basanta and Ashok. The guardians were directed to render accounts half yearly of the months of March and September each year, i.e., by the 31st March and the 30th September, each year, until minor attained majority.

It is not necessary to mention what heppned in the assessment years 1951-52, 1952-53 amd 1953-54 because nothing turns on that. For assessment year 1954-55, which is the subject-matter of this reference, a return was filed in the status of a joint Hindu family by the two guardians.

It appears that on March 25, 1958, the Sub-Judge, Nowgoing, passed the following order :

> "According up to 30th September, 1957, filed. The guardians file petition seeking permission for showing the accounts of the two minors separately.
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> Heard learned lawyer. The guardians are hereby allowed to keep and submit separate accounts henceforward for each of the minors together with accounts of p[rofit and

loss and separate expenses of each minor."

It seems to have been assumed that this order was also operative during the accounting year 1953-54, but it is clear that this order has no application to this accounting year.

The income-tax Officer, by his order dated October 19, 1957, assessed the guardians under section 23(3) read with section 41 of the Act. The guardians filed an appeal before the Appellate Assistant Commissioner contending that the assessment was bad in law. The Appellate Assistant Commissioner by his order dated May 19, 1956, set aside the assessment and directed the Income-tax Officer to reassess after obtianing two separate returns form the appellants and to frame two separate and to frame two separate individual assessments. He came to the conclusion that "the very fact taht separate guardians for the two, minors were appointed by the court with directions to separately account for their receipts and expenses clearly establishes that they cannot also form a Hindu undivided family." By the time this order was passed, the SUb- Judge, Nowgong, had passed the order dated March 25, 1958, and it is clear that the Appellate Assistant Commissioner relied on it. He further held that "the two minors should be taxed through the guardians on their individual share of profits at the rate applicable to the individual share of profits at the rate applicable to the individual incomes. For that purpose the total income should be made in the as it has now been done. Two separate assessments should be made in the names of two minors at the hands of the guardians in the status of an individual. I may note here that even the deceased father was assessed in the status of an individual and not in any way as a Hindu individed familly."

The income-tax Officer filed an appeal before the Income-tax Appellate Tribunal and the Tribunal set aside the order of the Appellate Assistant Commissioner and resorted the order of the Income-tax Officer with the modification that the status of the assessee must be described as Hindu undivided familly. The Appellate Tribunal held that the status of the two minors is only that of Hindu undivided family, as it existed before the curatorship proceedings, and must continue to be so still at least such time that the elder minor attains majority. The guardians put in an application dated December 8, 1958, before the Appellate Tribunal under section 35 complaining that the contention of the guardians that under the Hindu law, by which the minors are goverened, their shares are specific and determinate and they can only be assessed under section 41 in the manner and to the extent the assessment can be made on each of the two minor children individually on whose behalf such income was receivable by the guardians had been adverted to. The Appellate Tribunal, however, replied that the contention referred to in the application had been omitted to be dealt with in the order of the tribunal as it became academic in the light of the Tribunal's decision that the assessee was a hindu undivided family. The tribunal refused to state a case under section 66(1) of the Act, but on being directed to do so by the Assam High Court, it drew up a statement of the case and referred the question set out above. The High Court answered the question in the negative. The Hogh Court held that the guardians "received the sahres of these monors in the profit of the business as their income. By the order of the court, separate accounts in the names of the two minors were opened in which the receipts and expenses relating to each of the minors were separately adjusted. The guardians were thus only liable to pay tax on the amount which they received on behalf of these two minors separately. It cannot be said that they were appointed guardians of any joint family as such, so that their beneficiary was the joint family as such and thus they were liable to pay tax on the total income received by them on behalf of the Hindu individed family, their ward. The beneficiaries were the two minors separately. The two minors are the wards of the guardians. The guardians will, in our opinion, be liable to pay tax on the separate income of each of the minors."

The learned Solicitor-General who appears on behalf of the revenue contends that under section 40

the guardians were liable to pay tax in like manner and to the same amount as it would be leviable upon and recoverable from the minors it of full age. He says that if the minors had been of full age. He says that if the minors had been of full age, they would have been assessed as a Hindu undivided family. Mr. Sastri, the learned counsel for the respondents, contends that the minors would not have been assessed as a Hindu undivided family but would have been asessed as a Hindu undivided familly but would have been assessed individually on their separate incomes. He saya that under section 7 of the Guardians and Wards Act, no guardian could have been appointed in respect of the undivided interest of a minor and, therefore, the court must have proceeded on the basis that the properties had been divided among minors. He further points to the order dated March 25, 1958, which shows that the interest of the minors was separate.

It is not necessary to decide the question whether under the Guardianship Act a guardian could have been appointed in respect of the undivided interest of the minors. There is authority of the proposition that when all the coparceners are minors, a guardian can be appointed for a whole number. The point whether the appointment of guardians was valid or not has not been raised before the income-tax authorities and we must proceeds on the basis that the appointment was valid. Both the revenue and the respondents as acted on his assumption. The only question which was raised in the effect of the orders dated June 1,1953, December 15, 1953, and March 25, 1958, on which Mr. Sastri strongly relies to establish that the minors had individual incomes. As we have already stated, the order dated March 25, 1858, came into existence after the assessment year and after the income-tax Officer had passed his order. It cannot therefore have any effect on the position prevailing in the accounting year 1953-54.

We have already mentioned that Shri Kishanlal was governed by the Mitakshara school of Hindu law and it appears to us that on his death his widow, and two minors sons, Basanta and Ashok, constituted a joint Hindu family and the business were joint family property. Till positive action was taken to have a partition of the property, it would remain joint family property. We cannot read the order dated December 15, 1953, of the Sub judge, Nowgong, as having effected partition of the property. Apart from the fact that the court under the guardianship Act not jurisdiction to partition property belonging to a joint Hindu family, there are no words in the order to warrant such a finding.

Reference was made to Saifudin Alimohamed v. Commissioner of Income- tax and Commissioner of Income-tax, v. Balwantrai Jethalal Vaidya. We agree with a view expressed by Chagla C. in the latter case in which he explained certain observation made in the former case. If a guardian carries on business on behalf of minors and receives income on there behalf, section 40 of the Act must be applied.

In our opinion section 40 plainly applies to the facts of this case and consequently the guardians have to be assessed, treating the minors as constituting a Hindu undivided family. In the result the appeal is accepted and the question referred to the High Court is answered in the affirmative. The appellants will lost his costs here and in the high court.

Appeal allowed.

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