T. S. Srinivasan

Vs

Commissioner of Income-Tax, Madras

Civil Appeal No. 853 of 1964

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

29.11.1965

JUDGMENT

SIKRI J. –

This appeal, by certificate of the High Court of Madras, is directed against its judgment in a reference made to it under section 66(1) of the Indian Income-tax Act, 1922, hereinafter referred to as "the Act," by the Income-tax Appellate Tribunal, Madras. The question referred was "whether the assessment of the income of the assessee, other than his salary in the hands of the assessee, as an individual and not as a Hindu undivided family till 11th December, 1952, for the assessment year 1953-54 is valid."

The question arose out of the following facts. The appellant, hereinafter referred to as "the assessee", is the youngest son of T. V. Sundaram Ayyangar, who was the karta of a Hindu undivided family consisting of a number of persons. There was a partial partition of the above family and 150 shares of Rs. 1,000 each in T. V. Sundaram Iyengar and Sons Limited, a private limited company, were divided equally among the coparceners, the assessee getting 25 shares of the value of Rs. 25,000. With the aforesaid shares as nucleus, the assessee acquired house-properties, shares and deposits up to March 31, 1952. As the assessee was also the service manager of the aforesaid private limited company, he also received substantial remuneration.

The first son, named Venugopal, was born to the assessee on December 11, 1952, and it is common ground that the conception of the child must have taken place some time in March, 1952.

For the assessment year 1952-53, the assessee was assessed as an individual with reference to all his sources of income. For the assessment year 1953-54 (accounting year April 1, 1952, to March 31, 1953), the assessee claimed that income from all sources, except salary, should be assessed in the hands of the Hindu undivided family, consisting of himself and his son, Venugopal, which, according to him, had come into existence in or about March, 1952, when Venugopal was conceived.

The Income-tax Officer, while admitting that a male child acquires coparcenary rights in the family even from the date of his conception, considered that this proposition applied only as far as the minor's rights inter se other members were concerned, and as far as the claims of the State or outsiders were concerned, he thought that an unborn son would not come into the picture. Therefore, he recognised the family only from the date of the birth of the child, viz., December 11, 1952. The Appellate Assistant Commissioner upheld his view and the assessee also failed before the Appellate Tribunal. The High Court answered the question against the assessee.

Mr. A. V. Viswanatha Sastri, the learned counsel for the assessee, contends that under the Act Hindu undivided family is a separate unit and in determining whether a Hindu undivided family exists or not, and if it exists, from what date it has come into being, regard must be had to the principles of Hindu law for the Act does not lay down any principles regarding this matter. He then urges that it is well- settled that, according to Hindu law, a son conceived has the same rights of property as a living son, and this rule, he says, is not a matter of fiction but a substantive rule of Hindu law. He further says that it is well-settled, according to Hindu Law, that a joint Hindu family comes into existence from the date a son is conceived, and, as in this case the son was conceived in March, 1952, the Hindu undivided family was in existence from the beginning of the year 1952-53.

The learned Attorney-General, who appears on behalf of the revenue, does not dispute the existence of the doctrine of Hindu law relied on by Mr. Sastri, but says that this doctrine applies only for a special purpose, the purpose being to safeguard the rights of the son to property, and that Hindu law itself recognises that this doctrine is not of universal application. He urges, in the alternative, that at any rate the Act is concerned with realities; under the Act the person to whom income accrues must be a visible reality, and, he says, the only visible person who existed up to December 11, 1952, was the assessee. He further says that we would be introducing anomalies in the working of the Act if this fiction is applied to the instant case. In addition, he relies on the form of return of income-tax which, he says, would be difficult to fill if the return is filed before the birth of the son.

In C. B. C. Deshmukh V. Mallappa Chanbasappa this court had occasion to consider the scope of the doctrine that, under Hindu law, a son conceived or in his mother's womb is equal in many respects to a son actually in existence in the matter of inheritance, partition, survivorship and the right to impeach an alienation made by his father. But this court refused to extend it to adoption. Subba Rao J., speaking for the court, observed :

> "But there is an essential distinction between an alienation, partition and inheritance on the one hand and adoption on the other : his right to set aside an alienation hinges on his secular right to secure his share in the property belonging to the family, as he has a right by birth in the joint family property and transactions effected by the father in excess of his power when he was in the embryo are voidable at his instance; but, in the case of adoption, it secures mainly spiritual benefit to the father and the power to adopt is conferred on him to achieve that object. The doctrine evolved wholly for a secular purpose would be inappropriate to a case of adoption. We should be very reluctant to extend it to adoption, as it would lead to many anomalies and in some events defeat the object of the conferment of the power itself. The scope of the power must be reasonably construed so as to enable the done of the power to discharge his religious duty. We, therefore, hold that the existence of a son in embryo d

The question that arises is whether this doctrine of Hindu law can be applied for the purpose of determining the coming into being of a Hindu undivided family as an assessable entity. As this court held in C. B. C. Deshmukh v. Mallappa Chanbasappa, the doctrine is not of universal application and it applies mainly for the purpose of determining rights to property and safeguarding such rights of the son. It seems to us that this doctrine does not fit in with the scheme of the Act, and it could not have been the intention of the legislature to have incorporated the special doctrine into the Act. Section 3 of the Act charges the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually. Section 4 includes in the total income of any person all income, profits and gains, inter alia, if such person is resident, which

accrue or arise or are d

#----------Serial No. Names of members Relationship Age at the Remarks of the family at end of the end of the previous year previous year who were entitled to claim partition.----------##

This form clearly proceeds on the basis that all members were in existence at the end of the previous year. Has a son in the womb at the end of the previous year and born in the assessment year any age at the end of the previous year ? Would it have a name at the end of the previous year ? We find it extremely difficult to reconcile this doctrine of Hindu Law with the aforesaid provisions of the Act. We would not be justified in introducing uncertainties and anomalies in the working of the Act by introducing this doctrine for the purpose of section 3 of the Act.

Apart from the difficulty of reconciling this doctrine with the scheme of the Act, Mr. Sastri has not been able to satisfy us that any rights of the son are being affected by not recognising his existence for the purposes of section 3 of the Act till he is actually born. Income-tax is a liability and it could not have been the intention of the legislature to impose a liability on persons yet unborn.

Mr. Sastri contends in the alternative that what we are concerned with is the status at the end of the accounting year and that at least in this case where the child was in existence at the end of the accounting year, the status would be that of a Hindu undivided family. This point was not raised before and the learned Attorney-General rightly objected to it being raised at this stage. But even if a Hindu undivided family was in existence towards the end of the accounting year, still the whole income received or accrued in the accounting year did not thereby become the assessable income of the Hindu undivided family. Till the child was born the income which accrued to, or arose to, or was received by the assessee was his income. The Act disregards subsequent application of income and profits once they have arisen. When the income and profits arose, they belonged to the assessee, as no Hindu undivided family was then in existence. This position cannot be displaced by the birth of the son, which brought into e

In the result, we agree with the High Court that the answer to the question must be in favour of the revenue. The appeal fails and is dismissed with costs.

Appeal dismissed.

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