

SUREME COURT OF INDIA

Mathura Prasad

Vs.

Commissioner of Income-Tax, Uttar Pradesh

(J Shah, K S Rao and S Sikri JJ.)

09.12.1965

JUDGMENT

SHAH, J.

1. A Hindu undivided family consisting of five brothers - Jagan Prasad, Har Prasad, Mathura Prasad, Sheo Prasad, Basdeo Prasad and their nephew, Dilsukh Rai (son of Badri Prasad, deceased), owned considerable property and carried on different businesses in the names of Messrs. Agarwal Iron Works, Agra, Messrs. Jagan Prasad Sheo Prasad, Messrs. Jagan Prasad Har Prasad and Messrs. Nek Ram Jagan Prasad. On October 11, 1948, a partition of the properties and the businesses of the family was made among the six branches and as a result of that partition a sixth share was allotted in the assets partitioned to the smaller Hindu undivided family of which Mathura Prasad was the manager.

2. After partition of the joint family estate, the managers of the six branches entered into an agreement of partnership to carry on in the name of Badri Prasad Jagan Prasad the businesses which were formerly conducted on behalf of the larger Hindu undivided family. By clause 8 of the partnership agreement, it was provided :

"That the business of a shall be managed by one of the members who reside at a place of the business to the best of his or their ability. The allowances of the managing partners of a particular place shall be debited to the profit and loss account of that place at the end of the year. But such allowance shall not be more than profits disclosed by that business of that place in that particular year. If the business is managed by more than one partner, such allowance shall be divided equally between them. The member or members shall be entitled to withdraw for such allowance a sum of money monthly which will approximately be proportionate to the expected profits of the year. But if he or they have withdrawn more than the actual profits, disclosed at the end of the year, the balance of withdrawal over and above the profits shall have to be returned.

As to Agra office, i.e., Agarwal Iron Works, Shri Mathura Prasad who will manage (sic) the allowance of Rs. 1,500 but for him too the terms mentioned above will apply, i.e., if the profits disclosed at the place do not justify the withdrawals in the manner mentioned above, he will have to refund the excess of the withdrawals over the profits."

3. For the assessment year 1950-51 the Hindu undivided family of Mathura Prasad filed a return for the previous year Samvat 2006. Mathura Prasad filed another return in the status of an individual for the same previous year and in that year he disclosed an income of Rs. 21,000 "received as remuneration from the firm of Messrs. Badri Prasad Jagan Prasad". The Income-tax Officer, F-Ward, Agra, held that the income disclosed by Mathura Prasad as an individual was liable to be taxed in the hands of the Hindu undivided family and directed inclusion of that amount in the assessment of the Hindu undivided family of Mathura Prasad. The order passed by the Income-tax Officer was confirmed in appeal by the Appellate Assistant Commissioner and by the Income-tax Appellate Tribunal.

4. The appellant then applied under section 66(1) of the Indian Income- tax Act, 1922, for an order referring the following question to the High Court for its opinion :

"Whether, on the facts and in the circumstances, the sum of Rs. 21,000 (received by Shri Mathura Prasad as salary from Agarwal Iron Works, Agra) was the income of the assessee family or Shri Mathura Prasad in his personal capacity ?"

5. The Tribunal rejected the application, and refused to state a case to the High Court. A petition submitted to the High Court under section 66(2) of the Act was also rejected. The Tribunal and the High Court were of the view that the question of law sought to be raised was concluded by a judgment of this court in Commissioner of Income-tax v. Kalu Babu Lal Chand and need not be referred for opinion. With special leave, the appellant has appealed to this court.

6. Counsel for the appellant has raised two contentions in support of the appeal :

(1) the Tribunal and the High Court were in error in holding that no question of law arose from the order of the Tribunal; and

(2) that the principle of Commissioner of Income-tax v. Kalu Babu Lal Chand decided by this court did not apply to the facts of this case.

7. It was conceded before the Tribunal that Mathura Prasad, the manager of the Hindu undivided family, had entered into a partnership as representing the Hindu undivided family of which he was the manager and for the benefit of the family. There is also no dispute that in the firm of Badri Prasad Jagan Prasad the assets of the appellant- Hindu undivided family were invested. The Tribunal found that Mathura Prasad, the manager, became a partner in the firm with the help of joint family funds and as partner he was entrusted with the management of the Agarwal Iron Works. Allowance received by Mathura Prasad was, therefore, directly related to the investment of the family funds in the partnership business.

8. In Kalu Babu Lal Chand's case one Rohatgi, manager of a Hindu undivided family, who took over a business as a going concern, promoted a company which was to take over the business. The articles of association of the company provided that Rohatgi would be the first managing director at a remuneration specified in the articles. The shares which stood in the name of Rohatgi and his brother were acquired with funds belonging to the joint family and the family was in enjoyment of the dividends paid on those shares, and the company was floated with funds provided by the family, and the company was at all material times financed by the family. In proceedings for assessment of

the Hindu undivided family, it was claimed that the managing director's remuneration were personal earnings of Rohatgi and could not be added to the income of the Hindu undivided family. This court negated the contention and held that the managing director's remuneration received by Rohatgi was, as between him and the Hindu undivided family, the income of the family and should be assessed in its hands. In reaching that conclusion, the court first observed that a Hindu undivided family cannot enter into a contract of partnership with another person or persons. The karta of the Hindu undivided family, however, may, and frequently does, enter into partnership with outsiders on behalf and for the benefit of his joint family, but when he does so, the other members of the family do not, vis-a-vis the outsiders, become partners in the firm. so far as the outsiders concerned, it is the manager who is recognised as a partner. Whether in entering into a partnership with outsiders, the manager acted in his individual capacity and for his own benefit, or he did so as representing his joint family and for its benefit, is a question of fact. If, for the purpose of contribution of his share of the capital in the firm, the karta brought in monies out of the till of the Hindu undivided family, then he must be regarded as having entered into the partnership for the benefit of the Hindu undivided family, and as between him and the other members of his family he would be accountable for all profits received by him as his share out of the partnership profits, and such profits would be assessable as income in the hands of the Hindu undivided family. The court then proceeded to consider whether that principle was applicable to the income derived by a the manager as the managing director of the company, and held that if the manager was appointed a managing director as representing the Hindu undivided family, the income received would be taxable as the income of the Hindu undivided family. It was observed as page 130 :

"The articles of association of the company provided for the appointment as managing director of the very person who, as the karta of the family, had promoted the company. The acquisition of the business, the flotation of the company and the appointment of the managing director appear to us to be inseparably linked together. The joint family assets were used for acquiring the concern and for financing it and in lieu of all that detriment to the joint family properties the joint family but also, as part and parcel of the same scheme, the managing directorship of the company when incorporated... The finding in this case is that the promotion of the company and the taking over of the concern and the financing of it were all done with the help of the joint family funds and the said B. K. Rohatgi did not contribute anything out of his personal funds, if any. In the circumstances, we are clearly of opinion that the managing director's remuneration received by B. K. Rohatgi was, as between him and the Hindu undivided family, the income of the latter and should be assessed in its hands.

9. In the present cases the Tribunal has found that Mathura Prasad had become a partner in the firm of Badri Prasad Jagan Prasad with the aid of the funds of the Hindu undivided family, and as a partner of the firm he was entrusted with the management of the Agarwal Iron Works and he earned the allowance which was claimed to be salary. The right to draw the allowance was, in the view of the Tribunal, made possible by the use of family funds. The family funds enabled him to become a partner and to claim the allowance for the services rendered. There was in the view of the Tribunal an inseparable connection between the joint family funds and the allowance received. The right to draw the allowance therefore arose directly from the joint family funds.

10. It may be recalled that in the second paragraph of clause 8 of the partnership agreement, though a monthly of Rs. 1,500 was named as the amount which Mathura Prasad was entitled to withdraw, the amount was liable to be reduced, if the profits earned did not justify the withdrawals, and Mathura Prasad was bound to refund the excess of the withdrawals over his appropriate share in the profits. Therefore, by the agreement it was intended that subject to a maximum of Rs. 1,500 per

month, Mathura Prasad will be entitled to make withdrawals commensurate with the profits of the firm. In the light of the principle laid down by this court in Kalu Babu Lal Chand's case it must be held that on the finding recorded by the Tribunal, the question, which it was claimed should be referred to the High Court, was concluded by the judgment of this court, and any further elaboration would have been academic. It cannot be denied and it was not disputed that the Tribunal is entitled to reject an application for reference, if the question of law, even though arising from the order, is academic or is concluded by a judgment of the highest court.

11. The decision in Piyare Lal Adishwar Lal v. Commissioner of Income-tax, on which reliance was sought to be placed, has no bearing on the question sought to be raised in this appeal. That was a case in which a member of a Hindu undivided family had furnished as security the properties of the family under an agreement whereby he was appointed treasurer of a bank. Remuneration received by the manager of the family for working as a treasurer was claimed to be income of the Hindu undivided family, because the properties of the family were furnished as security, but this court rejected that claim. We see no analogy between a case in which the property of the Hindu undivided family is sought to be encumbered for obtaining a benefit which is essentially personal to the manager, and a case in which with the aid of the family funds the manager of the family is able to enter into a partnership and to earn allowance, which he would not otherwise have been entitled to receive.

12. The second contention needs no elaboration. It was suggested that Mathura Prasad earned the allowance sought to be brought to tax because of the special aptitude he possessed for managing the Agarwal Iron Works, and the allowance claimed by him was not earned by the use of the joint family funds. But no such contention was raised before the High Court. We have been taken through the petition filed in the High Court under section 66(2) of the Act, and there is no averment to the effect that Mathura Prasad had any special aptitude for management of the Agarwal Iron Works, and what was agreed to be paid to him was as remuneration for performing services because of such aptitude. Again, the Tribunal found as a fact that the right to draw the allowance was made possible by the use of the joint family funds which enabled Mathura Prasad to become a partner and claim remuneration. The finding was based on evidence, and the High Court could not ignore that finding.

13. It is unnecessary, therefore, to consider whether remuneration earned by a person from a partnership in which he is inducted because he brings into the partnership his joint family funds, would be regarded as separate income of such person and not taxable in the hands of the Hindu undivided family, if he possesses some special aptitude for performing the duties with which he is entrusted by the partnership.

14. In our view the High Court was right in refusing to direct a case to be stated under section 66(2) of the Act. The appeal, therefore, fails and is dismissed with costs.

15. Appeal dismissed.