

SUREME COURT OF INDIA

C.P. Sarathy Mudaliar

Vs.

Commissioner of Income-Tax, Andhra Pradesh

(J Shah, V Khare and Y Chandrachud JJ.)

21.09.1966

JUDGMENT

SHAH, J.

1. The assessee is a Hindu undivided family of which the manager is Sarathy. There are in the family two other adult male members : Doraiswamy and Singharan. Sarathy holds 2,797 shares, Doraiswamy holds 100 shares and Singharan holds 100 shares in a limited company styled "The Chittoor Motor Transport Company (Private) Limited." In this company the public are not substantially interested within the meaning of section 23A of the Income-tax Act, 1922. The shares were acquired with the funds of the Hindu undivided family, and, therefore, were taken to be the property of the Hindu undivided family. The dividend earned on these shares was also regarded as the income of the Hindu undivided family and was assessed accordingly. Sarathy was the managing director of the company, and the managing director's remuneration too was treated and assessed as the income of the Hindu undivided family.

2. In the assessment years 1955-56 and 1956-57, the Hindu undivided family was sought to be charged to tax in respect of the sums of Rs. 5,790 and Rs. 39,085 advanced as loans on the footing that they represented divided income falling within section 2(6A)(e) of the Income-tax Act in the respective years. The assessee disputed the inclusion on diverse grounds, one of which was that the dividend income could not be assessed as the income of the assessee, "the Hindu undivided family not being the shareholder to whom the payment of advance or loan was made."

3. It was held by the Tribunal that the undivided family was not itself and could not be the registered shareholder of the company, and the individual members were the registered shareholders; therefore, the advance of loan to the assessee which was not a registered shareholder, could not be treated as dividend income of the assessee.

4. On application made to the Tribunal, the following question was referred to the High Court of Andhra Pradesh :

"Whether, on the facts and in the circumstances of the case, the amounts of Rs. 5,790 and Rs. 39,085 could be deemed to be the dividend income of the Hindu undivided family in the respective

assessment years ?"

5. At the hearing of the reference, the High Court set aside the order of the Tribunal and remitted to the Tribunal for consideration the question whether the payments were made on behalf of or for the benefit of the shareholders. The High Court observed in its short judgment :

"The only argument put forward on behalf of the department in this case is that the Tribunal has not considered the applicability of section 2(6A)(e) of the Income-tax Act as amended in 1955. Its decision rested on the opinion that payments made to the beneficial owner, namely, the undivided joint Hindu family, are not tantamount to payments made to the shareholders in that the family was not the legal owner of the shares. The Tribunal has not considered the further question whether these payments were made on behalf of or for the benefit of the shareholders or not. The question has to be answered not only with reference to the payments made to a shareholder either by way of advance or loan but also with reference to payments made by any such company on behalf of or for the individual benefit of a shareholder.

The order of the Tribunal is set aside and it is remitted to the Tribunal for a consideration of this question."

6. We need express no opinion on the correctness or otherwise of the view expressed by the High Court in this judgment, for we are clearly of the view that the procedure followed by the High Court is erroneous. The High Court, in a reference under section 66 of the Income-tax Act, is exercising advisory jurisdiction; it is not sitting in appeal over the judgment of the Tribunal. If a question is raised by the Tribunal and referred to it, it is the function of the High Court to answer that question. The Tribunal will thereafter give effect to the opinion of the High Court. If the High Court finds that material facts are not stated in the statement of the case, or the Tribunal has not stated its conclusions on material facts, the High Court may call upon the Tribunal to submit a supplementary statement of case under section 66(4). But the High Court has no power to set aside the order of the Tribunal even if it is of the view that the Tribunal has not considered the question which, in the opinion of the High Court, should have been considered. The High Court must answer the question posed before it; thereafter, it is the duty of the Tribunal to pass such orders as are necessary to give effect to the judgment of the High Court conformably to that judgment.

7. We must, therefore, set aside the order passed by the High Court and direct that this proceeding be remanded to the High Court to be dealt with and disposed of in accordance with law. There will be no order as to costs in these appeals.

8. Appeal allowed. Case remanded.