

S. Rm. Ct. Pl. Palaniappa Chettiar

Vs

Commissioner of Income-Tax, Madras

Civil Appeal No. 1055 of 1966

(CJI K. N. Wanchoo, G. K. Mitter, R. S. Bachawat, K. S. Hegde, V. Ramaswami -I JJ)

26.10.1967

JUDGMENT

RAMASWAMI J. -

This appeal is brought, by certificate, from the judgment of the Madras High Court in T. C. No. 151 of 1962 dated October 17, 1963.

The appellant (hereinafter referred to as "the assessee") is a Hindu undivided family consisting of the father and four major sons. The assessee became a shareholder in the Trichy-Sri Rangam Transport Company Ltd. (hereinafter referred to as "the company") in 1934 and owned 90 shares out of the 300 shares of the company. The shares were acquired with the funds of the Hindu undivided family of the father and his four major sons. There were initially four shareholders including the assessee, two of whom were director. On the death of one of the directors, the assessee became a director in 1941 and on the death of another director who was managing the business, the assessee became the managing director with effect from 1942. By a resolution dated April 16, 1944, the company granted him an honorarium of Rs. 3,000 for the year 1943-44 and subsequently raised it gradually till it became Rs. 1,000 per month with 12 1/2 per cent. commission on the net profits of the company. The managing director had control over th

"The qualification of a director including the first director shall be the holding in his own right alone and not jointly with any other person of not less than 25 shares and the qualification shall be acquired within two months of appointment."

From 1938-39 to 1959-60 the assessee had been submitting returns in the status of Hindu undivided family and up to 1949-50 the assessments were completed in that status. For the assessment years 1950-51 to 1955-56, the assessments were completed in the status of individual, though returns were submitted in the status of Hindu undivided family and the remuneration was included in those assessments. For the assessment year 1956-57, the assessee submitted the returns in the status of Hindu undivided family but claimed for the first time that the remuneration and sitting fees from the company should be assessed separately in the karta's hands. The claim was accepted and a separate assessment made on him as an individual in respect of the remuneration and commission received from the company. This continued till the assessment for the year 1958-59. For the year ended April 13, 1959, which was the previous year for the assessment year 1959-60, the assessee-family returned an income of Rs. 26,780 which did not inc

"Whether sums of Rs. 9,000, Rs. 8,133 and Rs. 1,550 received by the assessee as managing director's remuneration, commission and sitting fees are assessable as the

income of the Hindu undivided family on which Palaniappa Chettiar is the karta ?"

The High Court took the view that the decision in Commissioner of Income-tax v. S. N. N. Sankaralinga Iyer was not authoritative as this court had subsequently impliedly overruled that decision in Commissioner of Income-tax v. Kalu Babu Lal Chand and the later decision of this court in Piyare Lal Adishwar Lal v. Commissioner of Income-tax was distinguishable. The High Court held that the case was governed by the ruling of this court in Commissioner of Income-tax v. Kalu Babu Lal Chand and accordingly decided the question of law against the assessee in favour of the income-tax department.

On behalf of the assessee Mr. Gopalakrishnan put forward the argument that the High Court was in error in holding that the present case was governed by the decision of this court in Commissioner of Income-tax v. Kalu Babu Lal Chand, that the remuneration earned by the managing director was not earned as a result of the utilisation of the joint family funds in the business and there was no detriment to the joint family assets or the use of the joint family assets in the business. It was not therefore a right proposition to state that under the principles of Hindu law the remuneration of the managing director in the present case was directly an accretion from the utilisation of the joint family funds and, therefore, constituted the income of the Hindu joint family. It was pointed out that in Commissioner of Income-tax v. Kalu Babu Lal Chand the income of the managing director arose directly from the use of joint family funds, but the material facts in the present case are different. In our opinion, the argumen

In Commissioner of Income-tax v. Kalu Babu Lal Chand, 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 joint family was in enjoyment of the dividend paid on those shares, and the company was floated with funds provided by the family, and 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 constituted the personal earnings of Rohatgi and could not be added to the income of the Hindu undivided family. The claim was rejected by this court and it was held that the managing director's remuneration received by Rohatgi was, as between

"The karta was one of the promoters of the company which he floated with a view to take over the India Electric Works as a going concern. In anticipation of the incorporation of that company the karta of the family took over the concern, carried it on and supplied the finance at all stages out of the joint family funds and the finding is that he never contributed anything out of his separate property, if he had any. 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 floatation of the company and 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 got not only the shares standing in the names of two members of the family but also, as part and parcel of the same s

Now, what are the facts found by the Appellate Tribunal in the present case ? In 1934, the joint

family had acquired 90 shares out of the 300 shares of the company. The shares were acquired with the funds of the Hindu undivided family of which the father was the karta. On the demise of one of the directors, the assessee became a director in 1941 and on the death of another director who was managing the business the assessee became the managing director with effect from 1942. It is apparent, therefore, that the joint family had control only of 90 out of 300 shares and the shares were purchased in the ordinary course of business and not for the purpose of the qualification of the karta to become a director. The shares were purchased in 1934, about 8 years before the karta was appointed as the managing director. It is apparent that the shares were purchased by the joint family not with the object that the karta should become the managing director but in the ordinary course of investment. To put it differently,

For these reasons we hold that the amounts of Rs. 9,000, Rs. 8,133 and Rs. 1,550 received by the assessee as managing director's remuneration, commission and sitting fees, respectively, are not assessable as income of the Hindu undivided family of which Palaniappa Chettiar is the karta. We accordingly allow this appeal, set aside the judgment of the High Court and answer the question in favour of the assessee and against the income-tax department. The appellant is entitled to costs here and in the High Court.

Appeal allowed.

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