

V. D. Dhanwatey

Vs

Commissioner of Income-Tax, Madhya Pradesh, Nagpur and Bhandara

Civil Appeal No. 1371 of 1966

(R. S. Bachawat, G. K. Mitter, V. Ramaswami JJ)

26.10.1967

JUDGMENT

RAMASWAMI J. –

This appeal is brought, by certificate, on behalf of the assessee from the judgment of the Bombay High Court dated July 23, 1963, in Income-tax Reference No. 5 of 1962.

The appellant (hereinafter called the "assessee") is a Hindu undivided family of which Shri M. D. Dhanwatey is the karta. The assessment year involved in this appeal is 1954-55, the corresponding accounting year being the year ended September 30, 1953. Shri M. D. Dhanwatey was a partner in the partnership firm carrying on business under the name and style of M/s. Shivraj Fine Art Litho Works. The share capital of Shri M. D. Dhanwatey was entirely contributed by the assessee Hindu undivided family. The rights of the partners were governed at the relevant time by a partnership agreement dated April 1, 1951. According to the agreement to the partnership was of lithography and art printing and was carried on by means of a press under the name and style of "Shivraj Fine Art Litho Works". Clause (4) of the partnership deed enumerated various capital contributions of the partners. The share contribution of Shri M. D. Dhanwatey was shown as Rs. 1,96,875. It is admitted that his amount belonged to the Hindu undivided

"Whether, on the facts and circumstances of the case, the payment of Rs. 7,500 (Rupees seven thousand five hundred) paid to Shri M. D. Dhanwatey for rendering services to the firm, could be included in the total income of the assessee-family?"

The High Court answered the reference in favour of the income-tax department and against the assessee. The High Court observed that Shri M. D. Dhanwatey was one of the partners in the partnership as representing the Hindu undivided family consisting of himself and his two minor sons. There was no evidence whatever to show that Shri M. D. Dhanwatey was in the service of the partnership firm in his individual capacity and the High Court held that what was paid to him in the form of remuneration was only for the purpose of adjustment of the rights inter se between the partners. The remuneration paid to the karta was, therefore, the income of the Hindu undivided family and it cannot be said on the facts found in the case, that the remuneration paid to Shri M. D. Dhanwatey was without any detriment to the joint family property. It was also found that the share capital contributed by Shri M. D. Dhanwatey came from the joint family assets.

The material facts of the present case are almost identical with those in V. D. Dhanwatey v. Commissioner of Income-tax, judgment of in which had been pronounced today. For the reasons elaborately set out in that case we hold that the decision of the question of law in the present case is

governed by the decision of this Court in Commissioner of Income-tax v. Kalu Babu Lal Chand, and in Mathura Prasad v. Commissioner of Income-tax.

We are accordingly of the opinion that the question referred to the High Court was rightly answered against the assessee and this appeal must be dismissed with costs.

HEGDE J. - I

agree with the conclusion reached by my learned brothers. For the reasons stated in my judgment in Civil Appeals 1372 and 1373 of 1966, V. D. Dhanwatey v. Commissioner of Income-tax. I am unable to subscribed to the observation in the majority judgment that the material facts of the present case are almost indential with in V. D. Dhanwatey v. Commissioner of Income-tax.

Appeal dismissed.

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