

Commissioner of Income-Tax, Mysore

Vs

D. C. Shah

Civil Appeals Nos. 817 and 818 of 1966

J.C. Shah, V. Ramaswami - I, A.N. Grover JJ)

06.02.1969

JUDGMENT

RAMASWAMI J. -

The respondent is a Hindu undivided family (hereinafter called "the assessee") of which Shir D. C. Shah is the karta. The assessment years are 1959-60 and 1960-61 and the relevant accounting periods are Samvat years 2014 and 2015. The assessee through its karta, Shir D. C. Shah, was a partner in the firms of (1) M/s. C. U. Shah and Co. and (2) M/s. Oriental Can Manufacturing Co. as per terms and conditions set out in the instrument, of partnership dated 5th June, 1961, and 11th September, 1957. Shir D. C. Shah was paid a remuneration of Rs. 12,000 per year for both the assessment years by M/s. C. U. Shah and Co. He was paid Rs. 10,000 for the assessment year 1959-60 by the Oriental Can Manufacturing Co. the amounts received by Shir D. C. Shah were shown by the assessee in its returns of income along with balance of the share income from the aforesaid firms. The Income-tax Officer in assessing the Hindu undivided family included the remuneration received by Shir D. C. Shah as a part of the hare

"8. The partner No. 1 Shir D. C. Shah who has been managing the business of this firm shall hereinafter also continue to act as managing partner for conducting the said business free from any interference of other partners, of whatsoever nature. the said managing partner shall manage, direct, appoint and/or remove any one of the employees, and/or do all other things, which include right to draw cheque, to make, deliver and accept documents either legal or commercial in respect of the partnership business as may be deemed necessary for effectively carrying on the partnership business. The said managing partner shall be paid Rs. 1,000 (rupees one thousand only) per month in addition to all other benefits that he is entitled to enjoy as a partner of the firm.

9. The said managing partner shall continue to be the managing partner for his lifetime or his retirement whichever is earlier.

10. All other partners shall devote as much time to the furtherance of the partnership business as they think proper, necessary and advisable."

Clauses 14, 15 and 16 of the instrument of partnership dated 11th September, 1957, are to the following effect :

"14. The partner No. 2 shall be the managing partner for conducting the said business

free from any interference of whatsoever nature by others. The said managing partner shall manage, carry, direct, appoint and/or remove any of the employees and/or agent and do all other things, as may be deemed necessary, for effectively carrying on the partnership business. The said managing partner shall be entitled, in addition to all other benefits, to a monthly remuneration of Rs. 2,000 (rupees two thousand only).

15. The partner No. 2 shall continue to be the managing partner for his lifetime or retirement. In the event of partner No. 2's demise or retirement, whichever is earlier, the partner No. 1 shall then act and perform duties and functions of managing partner. In the event of the demise or retirement of partner No. 1, the managing partner shall be appointed by the remaining partners or their legal representatives, as the case may be.

16. Partner No. 3 shall be responsible for the duties and functions to be performed under the direction of No. 2, the managing partner. In the event of failure on the part of No. 3 to perform duties and functions or otherwise entrusted by No. 2, the managing partner, the matter shall be referred to No. 2 and his decision shall be binding on No. 3."

The Appellate Assistant Commissioner accepted the contention of the assessee and held that the remuneration paid and received by Shir D. C. Shah should be deleted from the assessment of the assessee. The Income-tax Officer thereafter preferred appeals to the Income-tax tribunal which set aside the order of the Appellate Assistant Commissioner and held that the remuneration paid should be included on the total income of the assessee. At the instance of the assessee, the Income-tax Appellate Tribunal stated as case to the High Court on the following question of law :

"Whether, on the facts and in the circumstances of the case, was the salary received by D. C. Shah from the two firms of M/s. C. U. Shah & Co. and M/s. Oriental Can Manufacturing Co. includible in the assessment of the Hindu undivided family of which Shir D. C. Shah was the karta ?"

The High Court, relying upon its earlier decision in *Gurunath V. Dhakappa v. Commissioner of Income-tax*, held that the salary received by Shir D. C. Shah from the aforesaid firms cannot be included in the assessment of the Hindu undivided family of which he was the karta. These appeals are brought by special leave on behalf of the Commissioner of Income-tax, Bangalore, from the judgment of the Mysore High Court dated 19th January, 1965, in Income-tax Reference No. 1 of 1964.

The question whether the remuneration earned by a member of a Hindu undivided family as an officer of a company or a firm in which the office has been acquired with the aid of the funds of the family is the income of the family or the individual income of the member has been the subject-matter of consideration in several cases before this court. In *V. D. Dhanwatey v. Commissioner of Income-tax*, V, the karta of a Hindu undivided family, contributed to the capital of a firm out of the funds of the family. Under the agreement of partnership the general management and supervision of the partnership business was to be in the hands of V. and he was to be paid a monthly remuneration out of the gross earnings of the partnership business. It was found that V joined the partnership as representing the family and became a partner on account of the investments of the joint family assets in the capital of the partnership and that the remuneration received by V was only an increased share of the profits paid to him as repres

In S. R. M. CT. PL. Palaniappa Chettiar v. Commissioner of Income-tax, the material facts were different. The karta of a Hindu undivided family acquired 90 out of 300 shares in a transport company with the funds of the family. In course of time he became the managing director of the company. As managing director the karta was entitled to salary and commission on the net profits of the company, and was entrusted with control over the financial and administrative affairs of the company. The only qualification under the articles of association for the office of a director was the holding of not less than 25 shares in his own right. It was found that the shares were acquired by the family not with the object that the karta should become the managing director, but in the ordinary course of investment and there was no real connection between the investment of the joint family funds in the purchase of the shares and the appointment of the karta as managing director of the company. It was held, therefore, that

In P. N. Krishan Iyer v. Commissioner of Income-tax (Since reported in (Civil Appeal No. 1997 of 1966, decided on 3-9-1968), the principle laid down in V. D. Dhanwatey's case was applied. It was held that the remuneration received by the assessee from the company of which he was the managing director together with commission and "setting fee", should be included in the assessment of the Hindu undivided family. It was pointed out that the shares which qualified the assessee to become a member of the company were purchased with the aid of the joint family funds. The shares which were allotted to the assessee in lieu of his services were also treated as shares belonging to the joint family. It was pointed out that the shares which qualified the assessee to become a member of the company were purchased with the aid of the joint family funds. The shares which were allotted to the assessee in lieu of his services were also treated as shares belonging to the joint family. The centre capital assets of the company

In Commissioner of Income-tax v. Gurunath V. Dhakappa the principle laid down in V. D. Dhanwatey's case was applied again. It was held that there was no finding that the income which was received by G. V. Dhakappa was directly related to any assets of the family utilised in the partnership, and, therefore, the income of G. V. Dhakappa cannot be treated as the income of the Hindu undivided family.

In our opinion, the present case falls within the principle laid down by this court in S.R.M. CT. PL. Palaniappa Chettiar's case. It has been found that Shri D. C. Shah was a man of rich experience in the line of business which these two firms were carrying on. Clauses 9 and 10 of the partnership deed dated 5th June, 1961, indicate that the remuneration was paid not because of the family funds invested in the partnership but for the personal qualification of Shri. D. C. Shah. In the case of Oriental Can Manufacturing Co. clause 14 provided for Shri K. K. Dhote being appointed as the managing partner. After the said Shri Dhote retired Shri D. C. Shah was appointed as the managing partner during the assessment year 1959-60. Clause 15 of the partnership deed provided for such an appointment. A reading of clauses 14, 15 and 16 of the partnership deed indicates that the remuneration was paid for the specific acts of management done by Shri D. C. Shah resting on his personal qualification and not because he represents

For these reasons we hold that there is no merit in these appeals which are accordingly dismissed with costs. There will be one hearing fee.

Appeals dismissed.

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