The Commissioner of Income-Tax, Madras

Vs

M. K. K. R. Muthukaruppan Chettiar

Civil Appeals Nos. 1664-1665 of 1968

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

06.09.1969

JUDGMENT

RAMASWAMI, J. –

1. Karuppan Chettiar, his son, Muthukaruppan and the latter's minor sons all together formed a Hindu undivided family which was assessed as such till the end of the assessment year 1948-49. In the course of assessment proceedings for 1949-50 the family claimed of February 7, 1951, that the several businesses of the Muthukaruppan Chettiar and his sons forming a separate family on the other. Following up this claim the returns in response to the notice under section 22(2) of the Income-tax Act, 1922 (hereinafter called the Act), issued to the family for the assessment years 1950-51, 1951-52 and 1952-53 were made by Karuppan Chettiar in his individual capacity showing the income from the several sources that fell to his share. The Income-tax Officer rejected the claim of partition and assessed the Hindu undivided family for the aforesaid three years treating Karuppan Chettiar's returns as the proper returns for the family. An appeal was made by the assessee to the Appellate Assistant Commissioner in which complete partition as required by section 25-A of the Act was accepted by the Appellate Assistant Commissioner by his order dated December 18, 1954. In keeping with this order he also counseled the assessments of the family for the aforesaid years. In the course of his order he observed :

> "I therefore hold that there is no asset left in the hands of the Hindu undivided family which can be brought to tax and that the Hindu undivided family is no longer in existence. As such the present assessment requires to be annulled and the income considered in this assessment requires to be considered in the hands of the separating coparceners. I therefore annul these assessments."

2. Meanwhile, Muthukaruppan and his minor sons forming the family, the assessee in this case, filed returns for the Tamil years Virethi, Vikruthi and Kara as the 'previous years' for the assessment years 1950-51, 1951-52 and 1952-53 as follows :

> #Assessment year Return under section Date of return (voluntary)1950-51 22(3) 8-2-19511951-52 22(2) 5-2-19521952-53 22(2) 2-12-1952##

The Income-tax Officer closed the assessments as 'no assessments' by his notes in the order sheet dated June 18, 1953, reproduced below :

> "The assessee is a member of the family of A. M. K. M. K. Karuppan Chettiar, assessed in F. 1005-A. I have held in the family file in my order for income-tax year

> 1949-50 that there has been no division between father and son. This being the case, there is no source of income to be separately assessed in the assessee's hands. The return of income in this file relates to the alleged share of income consequent on partition. Since partition has not been accepted, this file has only to be clubbed with the father's file. If, for any reason, it is ultimately held on appeal that a separate assessment should be made, it will no doubt be possible to take action under the provision of section 34 as now amended. Since there is no separate income, the pending proceedings will be closed as N.A. and for income-tax year 1953-54 the file will be remove and clubbed with the family file F. 1005-A."

The Income-tax Officer in giving effect to the aforesaid order of partition under section 25-A of the Act and cancelling consequentially the family assessments, simultaneously issued notice under section 34 on March 2, 1957, for the three assessment years 1950-51, 1951-52 and 1952-53 to the assessee family after obtaining the previous approval of the Commissioner. In response to the notice the assessee submitted its returns on April 9, 1957, for the three assessment years under protest. On the basis of these returns the Income-tax Officer assessed the assessee by his order of the same date for all the three years, ignoring the protest. The assessee appealed to the Appellate Assistant Commissioner but the appeal was dismissed. The assessee took the matter in appeal to the Appellate Tribunal but was unsuccessful. The Appellate Tribunal stated a case to the High Court under section 66(2) of the Act on the following question of law :

> "Whether the aforesaid assessments for the years 1950-51, 1951-52 and 1952-53 are valid?"

3. The High Court by its judgment dated September 16, 1964, recorded an answer in the affirmative. In the view of the High Court, the order passed by the Appellate Assistant Commissioner and the direction given by him lifted the bar of limitation prescribed by section 34(3) of the Act for making the assessment.

4. It is not necessary to decide whether the observations made by the Appellant Assistant Commissioner in his order declining to assess the income of the Hindu undivided family operated to lift the bar of limitation as regards the assessment of income of the separated members by the application of the principle of the judgments of this court in Income-tax Officer v. Murlidhar Bhagwandas (52 ITR 335 : AIR 1965 SC 342) and N. Kt. Sivalingam Chettiar v. Commissioner of Income-tax. In our opinion the orders passed by the Income-tax authorities and confirmed by the Tribunal suffer from a fundamental defect. As we have already stated, Karuppan Chettiar submitted returns of his income in his individual capacity for the years 1950-51, 1951-52 and 1952-53 in response to the notice issued under section 22(2) of the Act. By his order dated June 18, 1953, the Income-tax Officer closed the assessments as 'no assessments' and added that since there was no separated income, the pending proceedings would be closed as N.A. and for income-tax year 1953-54 the file would be removed and clubbed with the family file F. 1005-A. Thereafter the assessee filed two sets of returns for the aforesaid three years, once on February 23, 1955, and again on March 30, 1956. These returns were submitted by the assessee in response to (sic.) the notice issued on March 2, 1957. It is manifest that in these circumstances notice under section 34 of the Act cannot be issued to Muthukaruppan Chettiar and his minor sons unless the returns which had already been filed by that family were disposed of.

5. It was held by this court in Commissioner of Income-tax v. Ranchhoddas Karsondas (36 ITR 569 : AIR 1959 SC 1154) that the return in answer to the general notice under section 22(1) of the Act

can, under section 22(3), be filed at any time before assessment and for this there is no limit of time. When in respect of any year a return has been voluntarily submitted before assessment, the Income-tax Officer cannot ignore the return and the notice of reassessment and consequent assessment under section 34 ignoring the return are invalid. In the present case we are of opinion that the order of the Income-tax Officer dated June 18, 1953, is not an order to terminate the proceedings and the result, therefore, is that the original returns submitted by the assessee under section 22(2) and (3) have not been properly and legally proceeded with. In the case before us the order of the Income-tax Officer dated June 18, 1953, should be interpreted in the light of circumstances in which that order was passed. So interpreted it appears to us that the Income-tax Officer did not intend to conclude the proceedings before him. It follows, therefore, that there is no disposal of the voluntary returns made by the respondent for the assessment years 1950-51, 1951-52 and 1952-53. It is manifest that the assessment proceedings under section 34(1) of the Act for the aforesaid three years are invalid.

6. In the Estate of the late A. M. K. M. Karuppan Chettiar v. Commissioner of Income-tax ((1969) 72 ITR 403) it was held by this court that notices under section 34 could not be issued against Karuppan Chettiar in his individual capacity unless the returns which had been filed by him are also disposed of and the assessments made pursuant to the notice under section 34 were, therefore, invalid for the three years 1950-51, 1951-52 and 1952-53. The principle of this case governs the present case also as the material facts are not different.

7. For the reasons we hold that these appeals fail and must be dismissed with costs. There will be one set of hearing fee.

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