M/S. Gauri Shankar Chandrabhan

Vs

C. I. T., U. P., Lucknow

Civil Appeal No. 886 of 1971

(A.C. Gupta, Jaswant Singh JJ)

03.05.1976

JUDGMENT

JASWANT SINGH, J. -

1. This is an appeal by certificate of fitness granted by the High Court of Judicature at Allahabad under Section 66-A(2) of the Indian Income-tax Act, 1922 (hereinafter referred to as 'the Act') from its judgment dated September 18, 1969 in I.T.R. Misc. Case No. 836 of 1963.

2. The facts giving rise to this appeal are : The appellant, a Hindu undivided family consisted of Gauri Shankar, the father, and his three sons viz. Chandrabhan, Bengali Lal and Brij Kishan. Gauri Shankar, the karta of the family who was incharge of the affairs of the family during the relevant year which extended from April 13, 1945 to April 12, 1946, the assessment year being 1946-47, died on April 2, 1946. He was succeeded by his son, Chandrabhan as karta of family. The appellant had, in the first instance, filed a return showing an income of Rs. 9,701. On scrutiny of the relevant material, the Income Tax Officer found a number of discrepancies in the accounts of the appellant and also noted the existence of cash credits to the appellant's account in the books of another firm viz. M/s. Tilyani Glass Works and a certain sum deposited in an account styled as Abdul Wahid Khan & Sons. He thereupon issued a notice dated March 15, 1957, calling upon the appellant to explain the discrepancies in the accounts as also in the cash credits and to show cause why a penalty under Section 28(1)(c) of the Act be not imposed upon it. In response to the notice, a representative of the appellant appeared before the Income Tax Officer and voluntarily agreed to a sum of Rs. 15,000 being treated as its income. After hearing the appellant's representative, the Income Tax Officer felt satisfied that the appellant had deliberately concealed its income and furnished an inaccurate return. Accordingly, by his order dated March 20, 1958, he added a sum of Rs. 68,550 to the income of the appellant and imposed on it a penalty of Rs. 26,000. Meanwhile, on March 19, 1957, an application under Section 25-A of the Act was made to the Income Tax Officer for an order recording partition of joint family property in definite portions, which according to the application had taken place amongst the members of the Hindu undivided family on June 22, 1956. The Income Tax Officer on being satisfied after making enquiries that a complete partition of the joint family property has taken place, recorded an order under Section 25-A(1) of the Act on March 26, 1962, accepting the partition with effect from June 22, 1956, as claimed. Against the penalty of Rs. 26,000 imposed by the Income Tax Officer by his order dated March 20, 1958, the appellant preferred an appeal to the Appellate Assistant Commissioner, who reduced the penalty to Rs. 15,000. Not satisfied with this reduction, the appellant went up in further appeal to the Income-tax Appellate Tribunal and raised before it a number of contentions. Amongst other things, it was urged before the tribunal that since the Hindu undivided family had disrupted on June 22, 1956, as accepted by the Income Tax Officer in his aforesaid order dated March 26, 1962, passed under

Section 25-A(1) of the Act, the imposition of the penalty by the Income Tax Officer on March 20, 1958, after the disruption of the family was bad in law and could not be sustained. While rejecting the other contentions raised on behalf of the appellant, the tribunal upheld this contention by its order dated March 6, 1963. Thereupon the Commissioner of Income-tax, U.P. made an application before the Income-tax Appellate Tribunal under Section 66(1) of the Act requesting that the following question of law arising from its decision be referred to the High Court :

> Whether in the facts and circumstances of the case the imposition of penalty under Section 28(1)(c) on the Hindu undivided family after it had disrupted within the meaning of Section 25-A is bad in law.

3. Acceding to the request of the Commissioner of Income Tax, the tribunal referred the abovementioned question to the High Court which answered the same in the negative. The appellant thereupon applied to the High Court and obtained the aforesaid certificate of fitness for appeal to this Court. This is how the matter is before us.

4. Relying on Commissioner of Income Tax v. Sanichar Sah Bhim Sah ((1957) 27 ITR 307 (Pat)); S. A. Raju Chettiar v. Collector of Madras ((1956) 29 ITR 241 (Mad)); Mahankali Subba Rao, Mahankali Nageswara Rao v. Commissioner of Income-tax, Hyderabad ((1957) 31 ITR 867 (AP)) and Commissioner of Income-tax, Punjab v. Mothu Ram Prem Chand ((1967) 66 ITR 638 (P & H)), Counsel for the appellant has reiterated before us that since the Hindu undivided family had dissolved on June 22, 1956 as accepted by the Income Tax Officer vide his order dated March 26, 1962 passed under Section 25-A of the Act and the Act did not provide any machinery for imposition of the penalty on the Hindu family after its disruption, the imposition of penalty on March 20, 1958 was bad in law and could not be sustained. Counsel appearing on behalf of the Revenue has, on the other hand, urged that imposition of impugned penalty cannot be challenged as in view of Section 25-A(3) of the Act, a Hindu undivided family must be deemed to have continued in existence till the date of the passing of the order under Section 25-A(1) of the Act.

5. For a proper determination of the question, it is necessary to refer to Section 25-A of the Act which at the relevant time stood as under :

> 25-A. (1) Where, at the time of making an assessment under Section 23, it is claimed by or on behalf of any member of a Hindu family hitherto assessed as undivided that a partition has taken place among the members of such family, the Income-tax Officer shall make such inquiry thereinto as he may think fit, and, if he is satisfied that the joint family property has been partitioned among the various members or groups of members in definite portions, he shall record an order to that effect :
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> Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.
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> (2) Where such an order has been passed, or where any person has succeeded to a business, profession or vocation formerly carried on by a Hindu undivided family, whose joint family property has been partitioned on or after the last day on which it carried on such business, profession or vocation, the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such, as if no partition had taken place, and each member or group of members shall, in addition to any income-tax for which he or it may be separately liable and

> notwithstanding anything contained in sub-section (1) of Section 14, be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it; and the Income-tax Officer shall make assessments accordingly with the provisions of Section 23 :
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> Provided that all the members and groups of members whose joint family property has been partitioned shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family as such.
>
> (3) Where such an order has not been passed in respect of a Hindu family hitherto assessed as undivided, such family shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family.

6. It will be noticed that sub-section (3) of the abovequoted section embodies a legal fiction according to which a Hindu family which has been previously assessed as 'undivided' is to be continued to be treated as 'undivided' till the passing of the order under sub-section (1) of the section. This view gains strength from two decisions of this Court in Additional Income-tax Officer, Cuddapah v. A. Thimmayya ((1965) 55 ITR 666 : (1965) 2 SCR 91 : AIR 1965 SC 1238) and Joint Family of Udayan Chinubhai v. Commissioner of Income-tax, Gujarat ((1967) 63 ITR 416 : (1967) 1 SCR 913 : AIR 1967 SC 762) where it was held that so long as no order under Section 25-A(1) of the Act is recorded, the jurisdiction of the Income Tax Officer to continue to assess as undivided despite partition under personal law a Hindu family which has hitherto been assessed in that status remains unaffected. It will be profitable in this connection to refer to the following observations made in A. Thimmayya's case (supra) :

> The section makes two substantive provisions (i) that a Hindu undivided family which has been assessed to tax shall be deemed, for the purposes of the Act, to continue to be treated as undivided and therefore liable to be taxed in that status unless an order is passed in respect of that family recording partition of its property as contemplated by sub-section (1); and (ii) if at the time of making an assessment it is claimed by or on behalf of the members of the family that the property of the joint family has been partitioned among the members or groups of members in definite portions, i.e. a complete partition of the entire estate is made, resulting in such physical division of the estate as it is capable of being made, the Income-tax Officer shall hold an inquiry, and if he is satisfied that the partition had taken place, he shall record an order to that effect ..... The Income-tax Officer may assess the income of the Hindu family hitherto assessed as undivided notwithstanding partition, if no claim in that behalf has been made to him or if he is not satisfied about the truth of the claim that the joint family property has been partitioned in definite portions, or if on account of some error or inadvertence he fails to dispose of the claim. In all these cases his jurisdiction to asses the income of the family hitherto assessed as undivided remains unaffected, for the procedure for making assessment of tax is statutory.

7. In face of the aforesaid decisions of this Court, it is not necessary to burden the record by discussing the decisions cited by Counsel for the appellant.

8. In the present case there was not a whisper of the application under Section 25-A(1) of the Act by the appellant on March 15, 1957 when the penalty proceedings were initiated against it. Even on March 25, 1958, when the penalty was imposed, there was no order under Section 25-A(1) of the

Act. It was only on March 26, 1962, that the partition was recognised and order under Section 25-A(1) of the Act was passed. There was thus no bar to the imposition of the impugned penalty. Accordingly, we find no force in the contention of Counsel for the appellant and are of the opinion that the question was rightly answered in the negative by the High Court.

9. The appeal, therefore, fails and is dismissed but in the circumstances of the case without any order as to costs.

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