

# SUPREME COURT OF INDIA

Commissioner of Income Tax

Vs.

P.L. Karuppan Chettiar

(S Ranganathan, V Ramaswamy and R Sahai JJ.)

11.05.1992

## ORDER

### **S. RANGANATHAN, J.**

1. At the instance of the Commissioner of Income-tax, Madurai, by this application under Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), presented on August 11, 1982, we proceed to draw up a statement of the case and refer the question arising out of the Tribunal's order in I.T.A. No. 1100/(Mds) of 1981, relating to the income-tax assessment for the year 1977-78.

2. There was one Palaniappa Chettiar who, along with his wife, Anandavalli Achi, their son, Karuppan Chettiar, and their daughter-in-law, constituted a Hindu undivided family. There was a partition in this family on March 22, 1954, under which Palaniappa Chettiar was allotted certain properties as and for his share and he got separated. This partition was recognised by the Income-tax Department under Section 25A of the Indian Income-tax Act, 1922. Thereafter, Karuppan Chettiar, son of Palaniappa Chettiar, and his wife and their subsequently born sons and daughter constituted a Hindu undivided family which is the assessee in the present reference and has been assessed in that status. Palaniappa Chettiar, the father, died on September 9, 1963, leaving behind his widow, Anandavalli Achi, and Karuppan Chettiar, his son, who is also the karta of the assessee-Hindu undivided family as his legal heirs. These two persons succeeded to the properties left by Palaniappa Chettiar under Section 8 of the Hindu Succession Act and divided the same between themselves.

3. In the assessments made on the assessee-Hindu undivided family for the assessment years 1966-67 to 1970-71, the Income-tax Officer included in the computation of the total income, the income received from the properties inherited by Karuppan Chettiar from his father, Palaniappa Chettiar. The assessee-family appealed to the Appellate Assistant Commissioner contending that the said properties did not belong to the Hindu undivided family as such, but only to Karuppan Chettiar as an individual and consequently the income derived therefrom could not be assessed as the income of the assessee-Hindu undivided family. The Appellate Assistant Commissioner rejected this submission and thereafter the matter was taken in appeal to the Appellate Tribunal.

4. The Tribunal, following the decision of the Allahabad High Court in CIT v. Ram Rakshpal Ashok Kumar [1968] 67 ITR 164, held that the properties did not form part of joint family properties so that income ; there from could be assessed as the income in the hands of the family consisting of Karuppan Chettiar and his sons and other members.

5. It is this order of the Tribunal which was challenged by the Com missioner in the reference decided by a Full Bench of the Madras High; Court whose decision is reported in CIT(Addl.) v. P.L. Karuppan Chettiar: . The question referred at the instance of the Com missioner to the Madras High Court was as under (at page 525):

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the properties inherited by Karuppan Chettiar from his divided father constituted his separate and individual properties and not the properties of the joint family consisting of himself, his wife, sons and daughters and hence the income there from is not assessable in the hands of the assessee-Hindu undivided family ?

6. The High Court in its: judgment answered the question in the affirmative, in favour of the assessee and against the Department.

7. For the assessment year 1977-78, under the present reference, the Income-tax Officer, in spite of the Madras High Court decision in the assessee's own case, included the income derived by P.L. Karuppan Chettiar from properties of his deceased father inherited by him on intestate succession on the ground that there were conflicting views expressed by the Gujarat and Madras High Courts and the matter has been taken to the Supreme Court and that the assessment is made as a protective measure.-In the appeal preferred by the assessee, the Appellate Assistant Commissioner accepted the assessee's claim following the binding decision of the Madras High Court in the assessee's own case reported in CIT (Addl.) v. P.L. Karuppan Chettiar . The Department came up in appeal to the tribunal contending that the Madras High Court decision has not been accepted and that the issue has been taken to the Supreme Court. The Tribunal;, however, in view of the direct binding decision of the Madras High Court in the case of the very same assessee on an identical issue rejected the objection of the Department.

8. At the hearing of the reference application before us, the learned Departmental representative pointed out that a debatable question of law arises out of the order of the Tribunal, and as there is a conflict of views between different High Courts on this point as is seen from the contrary view expressed by the Gujarat High Court reported in CIT v. Dr. Babubhai Mansukhbhai , a direct reference may be made to the Supreme Court as provided for in Section 257 of the Act.

9. The Allahabad High Court in CIT v. Ram Rakshpal Ashok Kumar [1968] 67 ITR 164 held, on a detailed consideration of the provisions of the Hindu Succession Act, 1956, particularly Sections 4(1), 6 and 8, that the rule under the Mitakshara School of Hindu law that all properties inherited by a male Hindu from his father, father's father, or father's father's father are ancestral property in which sons, grandsons and great grandsons of the person inheriting the property acquire an interest in it by birth right from the moment of birth and therefore such person cannot deal with the property as an absolute owner is superseded by the provisions of the Hindu Succession Act and only in the event the deceased had an interest in Mitakshara coparcenary property, Section 6 of the Hindu Succession Act would operate to preserve devolution by survivorship under the Mitakshara law. In the case of separate property (or divided share) of the deceased, it was held that it devolves on his

heir by succession under Section 8 of the Hindu Succession Act. The Gujarat High Court in CIT v. Dr. Babubhai Mansukhbhai dissented from the view of the Allahabad High Court and held that the correct status of an assessee in respect of the properties inherited by him on the death of his father was as representing his Hindu undivided family and not as an individual. Reference was made to and reliance placed on the commentary of Sir Dinshaw Mulla on Hindu Law, Fourteenth edition, page 847, as setting out the correct legal position. In particular, illustration (a) at page 849 is referred to. The Madras High Court in its Full Bench decision in the assessee's own case reported in CIT (Addl.) v. P.L. Karuppan Chettiar has agreed with the Allahabad High Court view and dissented from the view of the Gujarat High Court. The court also pointed out that the passage quoted in the Gujarat High Court decision from the commentary on Hindu law by Mulla did not deal with the effect of Section 8 of the Act; that what has been illustrated is also the position under the Hindu law untrammelled by statutes, and it occurs in the commentaries to Section 6 of the Act which deals with survivorship and the saving by that section of that principle to the extent to which it had been done. It was observed that this passage is of no assistance in determining the impact of Section 8 on the principles of devolution of property on the death on the principles of inheritance.

10. In view of the clear conflict of views among the High Courts on, the subject and as it is a question of immense public importance (it is likely to arise in a number of cases), we deem it fit to make a direct reference through the President to the Supreme Court in respect of the following question:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the properties inherited by Karuppan Chettiar from his divided father constituted his separate and individual properties and not the properties of the joint family, consisting of himself, his wife, sons and daughters and hence the income there from is not assessable in the hands of the assessee-Hindu undivided family?

11. A draft statement was sent to the parties for suggestion. The Department has no suggestions to make while minor suggestions, of, the assessee have been incorporated in the statement. The statement is now finalised and submitted to the Supreme Court, as stated above.

12. Dr. S. Narayanan, Senior Advocate (Ranbir Chandra, P. Parameswaran and Ms. A. Subhashini, Advocates, with him) for the petitioner.

13. Mrs. Janaki Ramachandran, Advocate, for the respondent.

14. In view of the decision of this Court in CWT v. Chancier Sen , the question referred to this Court directly by the Tribunal under Section 257 of the Income-tax Act, 1961, is answered in favour of the assessee by saying that the income from the properties in question is not assessable in the hands of the assessee-Hindu undivided family. The reference is answered accordingly. There will be no order as to costs.

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