Additional Commissioner of Income-Tax

Vs

Maharani Raj Laxmi Devi

Civil Appeals Nos. 1415-19 of 1979, Appeals By Special Leave From The Judgment and Order Dated April 22, 1978, of the Allahabad High Court In I.T.R. No. 372 of 1975

(S. C. Agarwal, K. S. Paripoornan JJ)

11.02.1997

JUDGMENT

These appeals, by special leave, arise out of a reference made by the Income-tax Appellate Tribunal, Allahabad Bench (hereinafter referred to as "the Tribunal"), under section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), whereby the following question was referred for the opinion of the Allahabad High Court :

> "Whether, on the facts and in the circumstances of the case, one-sixth income from the computation of income of the assessee-Hindu undivided family could be excluded pertaining to the minor son as Maharaja ?"

By the impugned judgment the High Court has answered the said question against the Revenue and in favour of the assessee. The High Court has placed reliance on its earlier decision in Kalloomal Tapeshwari Prasad v. CIT [1973] Tax LR 697. Briefly stated the facts are as follows.

Maharaja P.P. Singh of Balrampur was being assessed as an individual up to and including the assessment year 1964-65. He had no issue of his own. On December 28, 1963, he adopted Maharaja Dharmendra Pratap Singh, who was a minor, as his son. After the said adoption, the status of Maharaja P.P. Singh was taken as that of the Hindu undivided family. Maharaja P.P. Singh died on June 20, 1964. Thereafter his wife, Maharani Raj Laxmi Devi, became the karta of the Hindu undivided family consisting of herself and the aforesaid minor son, Maharaja Dharmendra Pratap Singh. For the assessment year 1966-67, the assessee filed a return declaring the total income of the Hindu undivided family as Rs. 28,935. Subsequently, she filed another return showing the total income as Rs. 25,288. The difference between the original and revised returns was explained on the basis that the revised return had been filed by the Hindu undivided family after excluding the 1/6th share belonging to the minor son, Maharaja Dharmendra Pratap Singh, as an individual because according to section 6 of the Hindu Succession Act, 1956, the 1/3rd share of the late Maharaja P.P. Singh in the Hindu undivided family property devolved on his two heirs, Maharaja Dharmendra Pratap Singh (minor son) and Maharani Raj Laxmi Devi (wife). The Income-tax Officer held that the Act is a separate, distinct and complete statute in itself and under the Act a change in the Hindu undivided family status can be effected only by claiming partition either partial or complete and that such partition could become operative if a claim of partition has been preferred and after examining the evidence produced, an order under section 171 accepting the claim of partition has been accepted by the Income-tax Officer, and that in the case of the assessee both the elements were missing. He, therefore, held that the assessee Hindu undivided family continued to be as it was before. The said view was followed by the Income-tax Officer in the assessments for the subsequent

assessment years 1967-68 to 1970-71. The said view of the Income-tax Officer was upheld in appeal by the Appellate Assistant Commissioner. On further appeal, the Tribunal reversed the said view and held that the case of the assessee was not of a partition contemplated in section 171 and, therefore, no claim was necessary and the absence of an order under section 171 does not mean that the whole estate should be deemed to belong to the assessee Hindu undivided family. The Tribunal, following the decision of the Allahabad High Court in the case of Kalloomal Tapeshwari Prasad [1973] Tax LR 697, further held that assuming the assessee's case came under section 171, the estate of the assessee Hindu undivided family having been diminished in terms of section 6 of the Hindu Succession Act, 1956, but with regard to which an order accepting the claim for partial partition has not been made, the income from such property could not be included in the computation of the income of the Hindu undivided family. The Tribunal referred the question abovementioned to the High Court for its opinion and the said question was answered by the High Court in favour of the assessee and against the Revenue. The High Court has followed its decision in the case of Kalloomal Tapeshwari Prasad [1973] Tax LR 697 (All). Hence, this appeal.

Shri P.A. Choudhary, learned senior counsel appearing for the Revenue, has argued that the High Court was in error in upholding the view of the Tribunal that section 171 of the Act was not applicable in the present case. Shri Choudhary has pointed out that the decision of the High Court in Kalloomal Tapeshwari Prasad [1973] Tax LR 679 (All) on which reliance has been placed by the High Court in the impugned judgment has been reversed by this court in Kalloomal Tapeswari Prasad (HUF) v. CIT [1982] 133 ITR 690, and the said decision has been followed in the later decisions in ITO v. Smt N.K. Sarada Thampatty [1991] 187 ITR 696, and R.B. Tunki Sah Baidyanath Prasad v. CIT [1995] 212 ITR 632.

Shri Janendra Lal, learned counsel for the assessee, has sought to distinguish the aforementioned decisions of this court on the ground that in those cases partial partition was claimed to have been effected and they fell within the ambit of section 171 of the Act. The submission is that in the present case there was inheritance of the share of the late Maharaja P.P. Singh by his widow and minor son under section 6 of the Hindu Succession Act, 1956, and that in such a case where on account of inheritance by virtue of statute, there is a diminution of the assets of the Hindu undivided family, section 171 of the Act has no application.

In Kalloomal Tapeswari Prasad (HUF) v. CIT [1982] 133 ITR 690 (SC), there was a partial partition in respect of 18 immovable properties which were divided amongst 10 members of the family. There was no actual division of the properties because it was felt that physical division of each of the 18 properties into 10 portions was not possible. The Income-tax Officer did not, however, accept that division of properties was not possible and, while considering the claim of the assessee under section 171 of the Act, he did not accept the case of the assessee that there was a partial partition for the purpose of section 171 of the Act. The said view was affirmed by the Appellate Assistant Commissioner and the Tribunal. The Tribunal referred two questions for the opinion of the Allahabad High Court. The first question was whether the Tribunal was right in holding that the properties in dispute were capable of division in definite portions amongst 10 coparceners as contemplated in Explanation (a)(i) to section 171 of the Act. The second question was whether the Tribunal was justified in holding that the income from the properties in dispute which were accepted to have been partitioned under the Hindu law but with regard to which an order accepting the claim of partial partition was not made, was liable to be included in the computation in the income of the assessee, a Hindu undivided family. The High Court answered the first question in the affirmative and upheld the view of the Tribunal that it was possible to divide the properties in question physically into different lots so that each member could take his rightful share in them. The High

Court, however, answered the second question in favour of the assessee and held that the income accruing from 18 immovable properties after the partial partition was not liable to be included in the computation of the income of the Hindu undivided family. This court, while agreeing with the answer given by the High Court on the first question, did not agree with the view of the Allahabad High Court on the second question. On an interpretation of the provisions of section 171 of the Act this court has held (at pages 704 and 709) :

> "Where there is no claim made that a partition - total or partial - had taken place or where it is made and disallowed a Hindu undivided family which is hitherto being assessed as such will have to be assessed as such notwithstanding the fact that a partition had in fact taken place as per Hindu law. A finding to the effect that partition had taken place has to be recorded under section 171 by the Income-tax Officer.
>
> We have already held that section 171 of the Act applies to all partitions - total and partial - and that unless a finding is recorded under section 171 that a partial partition has taken place the income from the properties should be included in the total income of the family by virtue of sub-section (1) of section 171 of the Act."

This court has taken note of the decision of the Madras High Court in A. Kannan Chetty v. CIT [1963] 50 ITR 601, 612, wherein it was observed (at page 709 of 133 ITR) :

> "For instance, if the karta of a family effects an alienation or even makes a gift, in so far as the taxing department is concerned, it is the income of the members of the Hindu undivided family that can be assessed, and if by reason of an alienation, whether it is binding upon the members of the joint family or not, an item of property ceases to be in the hands of the joint family, it would not be open to the Department to say that they would ignore such an alienation, notwithstanding that the possession of the properties and its income may pass into the hands of a stranger."

This court did not agree with these observations and said (at page 710) :

> "As long as a finding is not recorded under section 171 holding that a partial partition had taken place, the Hindu undivided family should be deemed for the purposes of the Act to be the owner of the property which is the subject-matter of partition and also the recipient of the income from such property. The assessment should be made as such and the tax assessed can be recovered as provided in the Act."

The same view was reiterated in ITO v. Smt. N.K. Sarada Thampatty [1991] 187 ITR 696 (SC). It was a case where a preliminary decree for partition had been made out but the final decree had not been passed and no division of the properties by metes and bounds had taken place.

In R.B. Tunki Sah Baidyanath Prasad v. CIT [1995] 212 ITR 632 (SC), the Hindu undivided family consisted of Raj Bahadur Tunki Sah, the karta, his wife, Budhi Devi, son, Baidyanath Prasad, and daughter-in- law, Godawari Devi. Raj Bahadur Tunki Sah died in 1955 and on his death Baidyanath Prasad became the karta of the Hindu undivided family. Budhi Devi, widow of Raj Bahadur Tunki Sah, was entitled to a limited interest in the property under the provisions of the Hindu Women's Right to Property Act, 1937. After the coming into force of the Hindu Succession Act, 1956, her limited interest turned into an absolute one and she acquired absolute ownership rights under section

14(1) of the said Act. Budhi Devi died in 1960 or thereabout and her share was inherited by her only son, Baidyanath Prasad. Baidyanath Prasad and his wife, Godawari Devi, adopted Nand Kumar as their son some time in 1961. On May 3, 1969, Baidyanath Prasad executed a registered gift deed in respect of his share in the property which he had inherited from his mother to his adopted son, Nand Kumar, which gift was accepted by the Gift-tax Officer. During the assessment years 1970-71 and 1971-72 the Income-tax Officer, while assessing the Hindu undivided family and Nand Kumar, accepted the contention of the assessee that only 50 per cent. of the income from the property and business was assessable in the hands of the Hindu undivided family and the balance in the hands of the adopted son, Nand Kumar. In the subsequent years 1972-73 to 1975-76, the Income-tax Officer rejected the assessee's contention that the income was liable to be divided 50 : 50 between the Hindu undivided family and the adopted son, Nand Kumar, and assessed the entire income as income of the Hindu undivided family. The said view of the Income-tax Officer was upheld by the Appellate Assistant Commissioner but the Tribunal held that only 50 per cent. of the income should be assessed as the income of the Hindu undivided family leaving the balance 50 per cent. to be assessed as the income of the adopted son, Nand Kumar. The High Court, on a reference, reversed the view taken by the Tribunal and upheld the view taken by the Appellate Assistant Commissioner. Before this court the question for consideration was whether compliance with the provisions of section 171 of the Act was necessary. This court has laid down (at page 635) :

> "Sub-section (1) of section 171 in terms provides that a Hindu undivided family hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be a Hindu undivided family, except where and in so far as a finding of partition has been given under this section in respect of the Hindu undivided family. On a plain reading of this sub-section it becomes clear that a Hindu family which is assessed as undivided has for the purposes of the Act to be deemed to continue as such unless there is evidence of partition and a finding is recorded to that effect under the Act in respect of such family. The section creates a deeming fiction of continuing the Hindu undivided family except where a finding of partition has been given in respect of the concerned Hindu undivided family. Before this finding is recorded an inquiry has to be undertaken on the question whether there has been a total or partial partition of the joint family property and if there has been any such partition, the date on which it took place."

In the instant case, admittedly, no inquiry was undertaken on the question whether there had been a total or partial partition of the joint family property and, if yes, the date on which it had taken place. That being so, in view of the language of section 171(1), the Hindu undivided family would be liable to be taxed as undivided notwithstanding the effect of section 14(1) of the Hindu Succession Act.

Reliance has been placed by the court on the decisions in Kalloomal Tapeswari Prasad (HUF) v. CIT [1982] 133 ITR 690 (SC) and ITO v. Smt. N.K. Sarada Thampatty [1991] 187 ITR 696 (SC). On behalf of the assessee it was urged that in view of the language of section 14(1) of the Hindu Succession Act, 1956, the widow acquired an absolute right by statute and, therefore, if the view urged by the Revenue was accepted as correct, it would be setting the clock back to the position as existed prior to the Hindu Succession Act, 1956, which could not be the intention of the Legislature. The said contention was rejected by the court by referring to the decision of the Madras High Court in A. Kannan Chetty v. CIT [1963] 50 ITR 601 holding that an alienation by the karta of the family in favour of a stranger could not be ignored by the Department and the observations of this court in Kalloomal Tapeswari Prasad (HUF) v. CIT [1982] 133 ITR 690 disagreeing with the said view of

the Madras High Court.

It is no doubt true that in Kalloomal Tapeswari Prasad (HUF) v. CIT [1982] 133 ITR 690 (SC) and ITO v. Smt. N.K. Sarada Thampatty [1991] 187 ITR 696 (SC), this court was dealing with cases of partial partition by way of voluntary act of the parties which is directly covered by section 171 of the Act. But R.B. Tunki Sah Baidyanath Prasad v. CIT [1995] 212 ITR 632 (SC), was a case where a claim was made on the basis of statute, viz., the provisions of section 14(1) of the Hindu Succession Act, 1956, and it was held that section 171 of the Act would govern the matter in so far as income-tax law is concerned. For the same reason, it must be held that though for the purpose of the Hindu undivided family, section 6 of the Hindu Succession Act, 1956, would govern the rights of the parties but in so far as income-tax law is concerned, the matter has to be governed by section 171(1) of the Act.

For the reasons aforementioned, the question referred to the High Court must, therefore, be answered in favour of the Revenue and against the assessee and it is so answered. The appeals are allowed accordingly. No order as to costs.