

SUPREME COURT OF INDIA

Commissioner of Income Tax, A.P.

Vs.

Venugopal Inani, Hyderabad

(S Sen and S S Ahmad JJ.)

28.08.1997

ORDER

1. Leave granted in SLP No. 6765 of 1992.

2. This is a case of partial partition of a Hindu joint family. The claim of the assessee was that the joint family had effected partial partition in respect of certain properties of the family. The claim was rejected by the Tribunal but was upheld by the High Court. The properties in question, as set out in the judgment of the

Tribunal are:

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By cash in hand Rs 3500.00 Telephone deposit Rs 350.00 Osmangund Extension Co-op . Society Rs 54,750.00 M/s. Hiranand Ramsukh Bankers Rs 1,20,122.68 Balmukund, M adnoor Rs 91,504.54 M/s. Balaji Venugopal Rajahmundry Rs 1 ,53,392.56 Treasury s avings deposit Rs 11,000.00 By annuity deposit Rs 8250.00 Shares Account Rs 8245 .00 ---- Rs 4,50,114.68 ----

3. The case of the assessee is that they have not divided these joint properties by metes and bounds but it is permissible in law in case of partial partition not to divide these properties invested in business in case of continuing business. The members of a Hindu undivided family may continue doing business and at the same time notionally divide the properties among the various constituents of the family. As a proposition of law, the contention may be correct but turning to the facts of the case, it is found that each of the nine items of properties is capable of physical partition. This is not a case where Hindu undivided family itself was carrying on its business before partial partition with these assets. The Hindu undivided family had investments in various businesses. Investments in a cooperative society to the tune of Rs 54,750 or monies deposited with bankers to the tune of Rs 1,20,122.68 are capable of being divided among the joint family members. There are also treasury savings deposit of Rs 11,000 and annuity deposit of Rs 8250. There is no reason why the parties could not divide these assets by metes and bounds.

4. Although mere severance of status of the family may tantamount to partition under the Hindu law of joint family, the requirement of the Income Tax Act is a little more. A partition to be recognised under the Income Tax Act must lead to physical division of the joint properties. Partition and partial partition have been defined

in Section 171 as:

"Explanation.--In this section-

(a) 'partition' means-

(i) where the property admits of physical division, a physical division of the property, but a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition; or

(ii) where the property does not admit of a physical division, then such division as the property admits of, but a mere severance of status shall not be deemed to be a partition;

(b) 'partial partition' means a partition which is partial as regards the persons constituting the Hindu undivided family, or the properties belonging to the Hindu undivided family, or both."

5. The contention of the assessee which found favour with the High Court was that the assets mentioned hereinabove were employed in business and, therefore, were not capable of division and it was possible for the family to have a partial partition with regard to these assets without physically dividing them.

6. We are of the view that the decision of the High Court is erroneous. If the properties belonging to a Hindu undivided family are not partitioned at all by dividing it among the members, even though capable of division, then the members of the family cannot say that so far as those properties are concerned they stand divided. In the case of *Kalloomal Tapeswari Prasad (HUF) v. CIT*, a partial partition was effected in respect of properties which were not physically divided. The Income Tax Officer declined to record the partition. It was held by this Court that mere severance in status was not sufficient to establish partition. The requirement of Hindu law

and requirement of Income Tax Act were different in this regard.

7. Several other cases were also referred i.e. *R.B. Tunki Sah Baidyanath Prasad v. CIT*, , *ITO v. N.K. Sarada Thampatty*, 1991 Supp (2) SCC 737 and *Jt. Family of Udayan Chinubhai v. CIT*, . It is not necessary to refer to these cases in detail. The basic principle appearing from the section itself is that in order to claim partition in respect of any property, division of the property is a prerequisite. The Hindu undivided family cannot say that it stands divided in respect of the property and at the same time enjoy the property jointly. Whatever may be the position under Hindu law, Section 171 of the Income Tax Act is quite clear in this regard.

8. In that view of the matter these appeals must succeed. The appeals are allowed. The judgment under appeal is set aside. There will be no order as to costs.