

SUPREME COURT OF INDIA

Sajan Kumar Bhawsinka

Vs.

Commissioner of Income Tax, Orissa

(B Kirpal and S Kurdukar JJ.)

22.01.1998

ORDER

1. The question involved in this appeal is whether the house property in question belongs to the appellant in his individual capacity or it belongs to the Hindu Undivided Family of which he is a member.
2. Under the Wealth Tax Act the property in question was regarded as belonging to Hindu Undivided Family in the years prior to 1981-82, which is a relevant year in question. The appellant had been including income from this house property in his Income Tax Return on the basis of that it was his individual income for the year 1981-82 but then filed a revised return claiming the income to be assessable in the hand of the HUF However, the appellant's claim that as the property belongs to the Hindu Undivided Family, therefore, the income should also be assessed in the hands of the Hindu Undivided family, was not accepted by the Income Tax Officer whereupon the appellant filed a Revision Petition under Section 264 of the Income-tax Act before the Commissioner of Income-tax.
3. The Commissioner of Income Tax by a cryptic order dated 20th May, 1985 rejected the said petition by observing that there was no merit therein and mere assertion without any corroborative evidence could not be allowed to disturb the settled matter.

4. Writ petition filed against the aforesaid order of the Commissioner of Income Tax was dismissed by another cryptic order wherein it was stated that after hearing the counsel for the parties, the High Court did not find any merit in the writ petition.

5. In our opinion, the contentions which were raised by the appellant required a more careful examination and a considered decision should have been given both by the Commissioner of Income Tax as well as by the High Court. This having not been done, it will be appropriate that the Revision Petition filed by the appellant under Section 264 of the Income Tax Act is re-considered by the Commissioner of Income-tax.

6. We, accordingly, while allowing this appeal, set aside the decision of the High Court as well as of the Commissioner of Income Tax and direct that the Revision Petition under Section 264 filed by the appellant to be decided afresh by the Commissioner of Income Tax at an early date. There will be no order as to costs.