

Commissioner of Income Tax Ludhiana

Vs

Om Parkash

Civil Appeal No. 4234 of 1983

(S. P. Barucha, B. N. Kirpal, S. Rajendra Babu, S. S. Mohammed Quadri , M.B. Shah, JJ)

27.07.1999

JUDGMENT

S.S. Mohammed Quadri, J. –

1. Leave is granted in S.L.P. (C) No. 1608/80.

2. The common question posed in these cases relates to interpretation of the term "individual" in Section 64(1)(i)(ii) of the Income Tax Act, 1961 (as it stood prior to April 1, 1976). The conflict of judicial opinion of various High Courts with regard to connotation of that term gave rise to these cases, which needs to be resolved by this Court.

3. For appreciating the question involved in these cases, it will suffice to refer to the facts in Civil Appeal No. 4234 of 1983 which pertains to the assessment year 1973-74. The respondent was a partner in the partnership firm, M/s. Rockman Cycle Industries, Ludhiana in his capacity as Karta of the Hindu Undivided Family. Two minor children of the respondent, a daughter, Miss Neeru, and a son, Pankaj, were admitted to the benefits of the partnership. Similarly, they were also partners in another partnership firm, M/s. Munjal Gases, Ludhiana. The income arising in the hands of minor children was sought to be included in this total income. That was objected to by him on the ground that he was a partner in the firms in the capacity of Karta of the Hindu Undivided Family, so section 64 of the Income Tax Act did not apply. The Income Tax Officer rejected that contention, included the share income of the minors in his total income and assessed him accordingly. The Appellate Assistant Commissioner upheld the order of the assessing authority, in appeal. On further appeal, the Income Tax Appellate Tribunal, Amritsar set aside the order of the Appellate Authority taking a contrary view and thus allowed the appeal of the respondent. Out of that order, at the instance of the Revenue, the following question was referred to the High Court under Section 256(1) of the Income Tax Act, 1961 :

"Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in law in holding that the income of the minor children of the assessee from the two firms was not includable in his individual assessment under Section 64(1)(i) (ii) of the Income Act Tax, 1961."

4. A Division Bench of the High Court of Punjab & Haryana answered the question in the affirmative, in favour of the respondent-assessee and against the Revenue in Income Tax Reference No. 153 of 1979 by its order dated October 29, 1979. Against the said order and judgment of the High Court, the Revenue is in appeal before this court.

5. Initially, a two-Judge Bench of this Court in *Commissioner of Income-Tax & others v. Shri Om Prakash & others, 1996(217) ITR 785* confirmed the judgment of the High Court and dismissed the appeal. But, on review, that judgment was set aside. However, in the meanwhile, three-Judge Bench of this Court approved it in *Commissioner of Income-Tax, Maduari v. Shri S.S. Krishnamoorthy, Dingigul, TRC Nos. 6 to 10 of 1982*. Thereafter, this case came up for hearing before a bench of three learned Judges who referred it and other connected cases to a larger Bench and thus all the cases have come up before us.

6. On the question whether a Karta of the Hindu Undivided Family falls in the term "individual" in Section 64(1)(i)(ii) of the Income-Tax Act, 1961 (hereinafter referred to as 'the 1961 Act'), there is divergence of opinion in various High Courts. The High Courts of Andhra Pradesh, Gujarat, Punjab & Haryana, Delhi, Karnataka, Kerala and Rajasthan took the view that the Karta of the Hindu Undivided Family did not fall within the meaning of the expression "individual" in Section 64(1)(i)(ii) of the 1961 Act. The High Courts of Allahabad, Madras, Madhya Pradesh and Orissa took the contrary view.

7. We have heard learned counsel appearing for the Revenue and assesses.

8. Here, it is useful to refer to Section 64(1) of the 1961 Act, as it stood prior to 1.4.1976. It reads thus :

"(1). In computing the total income of any individual, there shall be included all such income as arises directly or indirectly -

(i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner;

(ii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm in which such individual is a partner;

Explanation. For the purpose of clause (i), the individual in computing whose total income the income referred to in that clause is to be included shall be the husband or wife whose total income (excluding the income referred to in that clause) is greater; and, for the purpose of clause (ii), where both the parents are members of the firm in which the minor child from the partnership shall be included in the income of that parent whose total income (excluding the income referred to in that clause) is greater; and where any such income is once included in the total income of either spouse or parent, any such income arising in any succeeding year shall not be included in the total income of the other spouse or parent unless the Income-tax Officer is satisfied, after giving that spouse or parent an opportunity of being heard, that it is necessary so to do."

9. This provision occurs in Chapter V of the Act which deals with income of other persons included in assessee's total income. It provides that in computing the total income of any individual all such income arising directly or indirectly (i) to the spouse of such individual from the membership of the spouse in a firm; and (ii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm, in which such individual is a partner, shall be included in computing the total income of such individual. The Explanation directs that for purposes of clause (i) partnership income of the spouse shall be included in the income of the spouse of such individual

(husband or wife) whose total income, excluding the income in question, is greater. So also for purpose of clause (ii) it provides that where both such individual and the spouse are members of the partnership in which the minor child is also a partner, the income in question has to be included in the income of that parents whose total income excluding the income in question, is greater. The same position will apply to the succeeding year also unless the Income Tax Officer hold otherwise after due notice to the spouse or parents.

10. The precursor of this provision was Section 16(3)(a)(i) and (ii) of the Income Tax Act, 1922 (hereinafter referred to as 'the 1922 Act') as amended by Act IV of 1937. While upholding the constitutional validity of the said provision of the 1922 Act, a Constitution Bench of this Court in *Balaji v. Income-tax Officer, Special Investigation Circle, Akila & others, 1961(43) ITR 393* observed :

"But it (the relevant provision of the Income-Tax Act which enabled the share of each partner of a registered firm to add to his other income for being charged as part of his total income) gave an effective handle to evade taxation in another direction. A husband or a father could nominally take his wife or his minor sons in partnership with him so that the tax burden might be lightened, for, if the income was divided between a number of people, the income derived by an individual therefrom might fall under the limits of taxable income or under a less onerous slab. This device enables an assessee to secure the entire income of the business but at the same time to evade income tax which he would have otherwise been liable to pay."

11. Section 16(3)(a)(i)(ii) was enacted to prevent evasion of tax by an individual doing business under a partnership entered with his wife and/or minor children. It may be noticed here that in that case the appellant did not base his challenge to the said provisions as Karta of the Hindu Undivided Family.

12. The import of the expression 'any individual' in Section 16(3)(a) of the 1922 Act fell for consideration of this Court in *Commissioner of Income-Tax, Madhya Pradesh and Bhopal v. Sodra Devi, 1957(32) ITR 615*. There Sodra Devi and her major children formed a partnership firm to which her minor children were admitted to the benefits of the partnership. Under the said provision, share income of the minor children in the partnership was sought to be added in the income of Sodra Devi. It was contended that the expression 'any individual' did not include 'the female' so the said income of their money. By a majority, that contention was accepted holding that the words 'any individual' and 'such individual' occurring in Section 16(3) are restricted in their connotation to mean only the male but not the female of the species.

13. The said provision of the 1922 Act is embodied in Section 64(1) of the 1961 Act with the changes that the word 'wife' is replaced by the word 'spouse' in clause (i) of Section 64(1) and the explanation is added thereto. Now, both the male and the female are covered by the expressions 'any individual' and 'such individual' in Section 64(1)(i) and (ii) of the 1961 Act.

14. Here again interpretation of the same expression arises, albeit in a different context. We have to discern the true meaning of the term 'individual' to resolve the conflict and to decide whether the High Court is right in answering the question, extracted above, the way it did.

15. It has been noticed above that to attract the provisions of Section 64(1)(i) and (ii), the spouses/minor child should be a partner in the partnership firm carrying on a business in which 'any

individual' is a partner. It is only then the share income of the spouse/minor child from that firm can be included in the computation of the total income of such individual. The income arising to such individual need not necessarily be from the partnership firm alone. If such individual has nil income from the partnership firm but has income from other sources then the income of the spouse/minor child from the partnership firm in which such individual is a partner will be added to that other income of such individual. There is no controversy on this aspect. What is put in issue is that when a Karta of the Hindu Undivided Family is a partner in the firm, he cannot be regarded as an individual for purposes of Section 64(1)(i) and (ii) of the 1961 Act.

16. Now, what does the term 'individual' means ? It is not defined in the Act. It is not a term of art. The meaning of term 'individual' given in the Concise Oxford Dictionary is :

"single, particular, special; not general, having a distinct character, characteristic of a particular person, designed for use by one person, a single member of a class, a single human being as distinct from a family or group, a person (a most unpleasant individual)".

In contradiction to a class or a family, the term is used to denote a single person, may be a male or female of the species. In a wider sense, a Karta, a trustee, or any one acting in a representative capacity will also be within the ambit of the term. Is it, in that sense, that the said term is used in Section 64(1)(i) and (ii) of the 1961 Act or is it used only in a narrower sense of one entity, one distinct being, not in a representative capacity ? The Full Bench of the High Court of Allahabad in *Sahu Govind Prasad v. CIT, 1983(144) ITR 851* approving *Madho Prasad, Pilibhit v. Commissioner of Income Tax, 1978(112) ITR 492* and the High Court of Madras in *CIT, Tamil Nadu-I v. S. Balasubramaniam, 1984(147) ITR 732* and in *Commissioner of Income-Tax v. Shri Manakram, 1990(183) ITR 382 MP* took the view that the term is used in the said provision in the wider sense. But a contrary view is taken by the High Courts of Andhra Pradesh in *Commissioner of Income Tax v. Sanka Sankaraiyah, 1978(113) ITR 313*, Gujarat in *Dinubhai Ishvarlal Patel v. K.D. Dixit, 1979(118) ITR 122*, Punjab & Haryana in *CIT v. Anand Sarup, 1980(121) ITR 873*, Delhi in *Prayag Dass Rajgarhia v. CIT, 1982(138) ITR 291* and Full Bench of Karnataka High Court in *Arunachalam v. CIT, 1985(151) ITR 172*.

17. Here, it is necessary to bear to mind the distinction between the rights and obligations of partners of the partnership firm and coparceners of Hindu Undivided Family.

18. In *Commissioner of Income Tax, Madras v. Bagyalakshmi & Co., 1965(55) ITR 660*, this Court observed :

"A partnership is a creature of contract. Under Hindu Law a joint family is one of status and right to partition is one of its incidentsExcept where there is a specific provision of the Income-Tax Act which derogates from any other statutory law or personal law, the provision will have to be considered in the light of the relevant branches of law. A contract of partnership has no concern with the obligation of the partners to others in respect of their shares of profits in the partnership. It only regulates the rights and liabilities of the partners. A partner may be the karta of a joint Hindu family; he may be a trustee; he may enter into a sub-partnership with others; he may, under an agreement, express or implied, be the representative of a group of persons; he may be a benamidar for another. In all such cases he occupies a dual position. Qua the partnership, he functions in his personal

capacity; qua the third parties in his representative capacity."

19. We are in respectful agreement with the aforesaid observations.

20. When a Karta of the Hindu Undivided Family is a partner in a partnership firm, he had dual capacity; qua the partnership, he functions in his personal capacity and qua third parties, in his representative capacity. Under the Income Tax act, when is assessed in respect of the income derived by him from the partnership firm as a partner, it is in his representative capacity as Karta of the Hindu Undivided Family and not as an individual as such. That is because his capacity vis-a-vis spouse/minor children who are members of the Hindu Undivided Family is that of Karta and not as individual though vis-a-vis other partners of the partnership firm he functions in his personal capacity. This being the position, the income of a Karta's spouse/minor child cannot be included in computation of his total income for that is the income of Hindu Undivided Family and not his individual income. Section 64 will be attracted only when on assessee's own income is being assessed and not that of an Hindu Undivided Family. If a Karta is brought within the ambit of 'individual' in Section 64(1), the share income of the spouse of the Karta and his minor children will, in effect, be included in the income of the Hindu Undivided Family which is not what is contemplated by Section 64(1)(i) and (ii) which, with respect we say, has rightly been held to be impermissible by this Court in *L. Hirday Narain v. Income-Tax Officer, A Ward, Bareilly, 1970(78) ITR 26*, *Commissioner of Income-Tax v. Harbhajan Lal, 1983(204) ITR 361* and *Commissioner of Income-Tax v. Jayantilal Prem Chand Shah, 1995(211) ITR 111*.

21. In a Hindu Undivided Family which consists of a Karta, his sons, their wives and minor grand children, if along with the Karta the spouse of a son and their minor children are admitted to the benefits of the partnership or are partners of the partnership firm, obviously, their share income from the firm could not be added in computing the total income of the Karta as in such a case Section 64(1) will not be attracted. But if the Karta's spouse and minor children are admitted to the benefits of the partnership or are joined as partners of the partnership firm, their share income from the firm will have to be added up in the income of the Karta. Obviously, the expression cannot be so interpreted to yield such inequitable and inconsistent result which could not have been contemplated by the Parliament.

22. It will be pertinent to note here that under Section 4 of the 1961 Act, the charging section, the total income of the previous year or years of every person is charged for any assessment year at the rate or rates prescribed by the Finance Act. We may notice here the definition of the term 'person' which is defined in Section 2(31) of the 1961 Act, and reads as under :

"2(31). "person" includes -

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) a local authority, and

(vii) every artificial judicial person, not falling within any of the preceding sub-clauses."

23. A plain reading of the definition, extracted above, shows that both 'an individual' and 'a Hindu Undivided Family' are *inter alia* constitution of the meaning of the term 'person'. The expression 'any individual' is narrower than the terms 'person' and 'assessee' defined in Section 2(7); an individual is a person but every person need not be an individual. So also an individual may be an assessee but every assessee need not be an 'individual'. Had the Parliament intended to give wider meaning to the word 'individual' in Section 64(1)(i) and (ii) so as to include the Karta of a Hindu Undivided Family it would have drafted the provision differently. It is thus clear that 'individual' in Section 64(1) does not take in Karta of the Hindu Undivided Family within its import.

24. Yet another aspect which militates against bringing in Karta within the meaning of the term 'individual' in Section 64(1) is that it speaks of total income of any individual and total income of the Hindu Undivided Family need not be total income of Karta as an individual.

25. The object of Section 64(1) of the 1961 Act, like the object of Section 16(3) of the 1922 Act, is to check the tax evasion resorted to by individuals forming partnership as a cloak to perpetrate fraud on taxation. But cases of genuine partnership where any individual takes the spouse and minor children as partners will also be within the clutches of Section 64(1), a fact adverted to by *Balaji's* case (supra). It is true that if Karta is held not to fall within the meaning of the term 'individual' in Section 64(1), the tax evasions sought to averted would continue in the case of the Hindu Undivided Family where a Karta takes the spouse or minor children to the benefits of the partnership or as members in the partnership firm. But it cannot be lost sight of that 'individual' and Hindu Undivided Family are two different tax entities and Parliament had chosen to confine the application of Section 64(1) for purposes of tax evasion in regard to individuals without being Kartas of the Hindu Undivided Family in the fold of section either by defining individual or otherwise. On the ground that Karta of a Hindu Undivided Family will draw an unfair advantage of this interpretation, we cannot enlarge the meaning of the term 'individual' by the process of interpretation so as to rope in Karta within the meaning of the term 'individual' and by implication, the Hindu Undivided Family within the clutches of Section 64(1) of the 1961 Act.

26. From the above discussion, it follows that income in the hands of Karta of the Hindu Undivided Family as partner of a partnership firm cannot be treated as income of individual and, if that be so, the income arising to the spouse or minor child of the Karta of the Hindu Undivided Family cannot be included in his income as such under Section 64(1)(i) and (ii) of the 1961 Act.

27. For the above reasons, we are inclined to take the view that the expressions 'any individual' and 'such individual' in Section 64(1)(i) and (ii) are employed in restricted sense and do not include a Karta of a Hindu Undivided Family. Accordingly, we approve the judgments of the High Courts of Andhra Pradesh, Gujarat, Punjab & Haryana, Delhi, Kerala, Rajasthan and Karnataka and overrule the judgments of the High Courts of Allahabad, Madras, Madhya Pradesh and Orissa taking a contrary view.

28. In the light of the above discussion, we answer the question, referred to above, in the affirmative, in favour of the Assessee and against the Revenue.

29. In the result, Civil Appeals Nos. 4234/83, 2979-81/89, 10629-10631/95, 2900/80, 2287/80, 2335-41(NT)/91, 968-970(NT)/91, 1222(NT)/87, 1222-23/86, 11553-11554/95, 1217-19/86, 37/88, 2435-39(NT)/95 and C.A. No./99 @ S.L.P. (C) No. 1608/80 filed by the Revenue against the orders of the High Courts are dismissed; in Civil Appeals Nos. 309-311(NT)/85, 654-55(NT)/85 and 650-652/87, filed by the assesseees, the orders of the Madras high Court are set aside, the questions referred to are answered in the affirmative, i.e., in favour of assesseees and against the Revenue and the appeals are allowed.

30. T.R.C. No. 1/83 is allowed. We shall take it that the following question is referred to us :

"Whether, the Appellate Tribunal was justified and in law correct in holding that the share income determined by the assessee's wife from M/s. Madurai Mahalakshim Agencies, cannot be included under Section 64 of the Income-Tax Act, 1961 in the total income of the assessee who is assessed in the status of an individual ?" and we answer the question in the affirmative in favour of the assessee and against the Revenue.

There shall be no order as to costs.