

Commissioner Of Income-Tax, Mysore vs Gurunath V. Dhakappa on 23 July, 1968

Equivalent citations: [1969]72ITR192(SC), AIR ONLINE 1968 SC 84

Bench: A.N. Grover, J.C. Shah

JUDGMENT

Shah, J.

1. By a deed dated August 26, 1957, thirteen persons agreed to carry on business in partnership in cardamoms, betel nuts, pepper and other condiments. G. V. Dhakappa, one of the partners, was appointed manager of the partnership on a remuneration of Rs. 500 per monsoon. The firm was registered and the total share of profits allocated to G. V. Dhakappa in the assessment for the assessment year 1960-61 was Rs. 14,734 which included the amount of Rs. 6,000 which was salary payable to him for managing the business of the partnership. G. V. Dhakappa was the karta of a Hindu undivided family and he represented that the family in the partnership. Before the Income-tax Officer the Hindu undivided family contended that the amount of Rs. 6,000 which was included in the total share allocated to G. V. Dhakappa was not liable to be assessed as the income of the family and that it was liable to be assessed as G. V. Dhakappa's personal income. The departmental authorities rejected the contention. They held that, since the remuneration received by Dhakappa was paid to him as a representative of the Hindu undivided family, it must be treated as income of the family.

2. The Tribunal also agreed with that view. At the instance of the assessee the following question was referred by the Tribunal to the High Court of Mysore :

"Whether, on the facts of this case, and having regard to section 10(4) (b) and section 16(1) (b) of the Income-tax Act, 1922, the salary paid as per clause 7 of annexure A is liable to be excluded from the assessment of the assessee Hindu Undivided family and assessed in the hands of the individual, Shri G. V. Dhakappa ?"

3. The High Court recorded on this question the answer that the salary was to be excluded from the total income of the assessee family. It is unnecessary for the purpose of this case to set out the authorities which the High Court referred because, in our view, the question is concluded by a recent judgment of this court. In *V. D. Dhanwatey v. Commissioner of Income-tax* this court held that, where a member of a Hindu undivided family represents the family in a partnership, the remuneration received by him for working in the partnership is liable to be treated as the income of the Hindu undivided family if it is directly related to the investment in the partnership business with the assets of the Hindu undivided family. In *V. D. Dhanwatey's* case the court held that because

there was real and sufficient connection between the joint family funds and the remuneration paid by the partnership to the manager of the Joint Hindu undivided family, who was a partner, the remuneration was taxable as the income of the Hindu undivided family. In the present case there is no such finding recorded by the Tribunal. As we have already observed, the departmental authorities merely proceeded on the footing that, where a member of Hindu undivided family becomes a partner in a firm as representing the family, everything that he receives must be treated as the income of the family. That rule is inconsistent with the judgment of this court in V. D. Dhanwateys case. In the absence of a finding that the income which was received by G. V. Dhakappa was directly related to any assets of the family utilised in the partnership, the income cannot be treated as the income of the Hindu undivided family.

4. The appeal must, therefore, be dismissed. There will be no order as to costs of this appeal.
5. Appeal dismissed.