

Jitmal Bhuramal vs Commissioner Of Income-Tax, Bihar And ... on 2 February, 1962

Equivalent citations: [1962]44ITR887(SC)

Bench: J.C. Shah, M. Hidayatullah

JUDGMENT

Hidayatullah, J.

1. This is an appeal by special leave from a judgment of the High Court of Patna in a reference under section 66(2) of the Income-tax Act. The assessee is the appellant. Messrs. Jitmal Bhuramal (assessee) is a Hindu undivided family consisting of the four sons and grandsons of Bhuramal. We are concerned with the four brothers, whose names are Hiralal, Gulzarilal, Kunjlal and Madanlal, and one Gobhardanlal, son of Gulzarilal. The family does business in grains, kirana etc. at Madhupur, under two names, Jitmal Bhuramal and Bhuramal Hiralal. The family through its karta was also a partner in another firm called Hiralal Gulzarilal, in which the karta had a 12 annas share, and one Rameshwar Lal, a stranger to the family, had the remaining 4 annas share.

2. We are concerned with the assessment year, 1953-54. Hiralal, the karta, entered into two agreements with the other members of the family, by which the junior members agreed to serve the Hindu undivided family on monthly payments of Rs. 200 to Gulzarilal, Rs. 150 each to Kunjlal and Madanlal, and Rs. 100 to Gobhardanlal. By the first agreement, Gulzarilal and Madanlal were to look after the interests of the Hindu undivided family in the partnership, and the two others were to look after the business of the Hindu undivided family.

3. In the year of account relative to the assessment year, 1953-54, Rs. 6,600 were paid as remuneration to the four junior members. Rs. 3,850 were paid to Gulzarilal and Madanlal for their services to the partnership and Rs. 2,750 to Kunjlal and Gobhardanlal for their services to the Hindu undivided family. The Income-tax Officer, Santhal Parganas, by his assessment order dated December 31, 1953, only allowed as expenses a payment of Rs. 50 per month to Gobhardanlal. The rest of the claim made under section 10(2)(xv) of the Income-tax Act amounting to Rs. 6,000 was disallowed. The order of the Income-tax Officer was confirmed by the Appellate Assistant Commissioner; but the Income-tax Appellate Tribunal on appeal allowed the deduction of the full remuneration paid to Gobhardanlal and Kunjlal. The Tribunal, however, did not allow the deduction of the amounts paid to Gulzarilal and Madanlal, which, as already stated, totalled Rs. 3,850. The assessee made an application under section 66(1) of the Income-tax Act;

"Whether in the facts and circumstances of the case, the assessee, namely, the Hindu undivided family, who is a partner in the partnership business of Hiralal Gulzarilal, is

entitled to a deduction of Rs. 3,850 from the assessment of income-tax for the relevant year under section 10(2)(xv) of the Income-tax Act ?"

4. This question was answered by the high Court against the assessee. The High Court unfortunately erred in apprehending the finding of fact given by the Tribunal, and much is made of this in the appeal before us. The High Court in the course of its judgment observed [[1959] 37 I.T.R. 528, 532.] :

"We, therefore, proceed upon the footing that the finding of fact of the income-tax authorities in this case is that neither Gulzarilal nor Madanlal has rendered any service to the partnership business nor contributed to the earning of profits to the Hindu undivided family from the share of the partnership business ?"

5. What the Tribunal held was mentioned in the case stated to the High Court. There, the Tribunal observed :

"The Tribunal by its order dated September 28, 1955 which is annexure 'B' hereto and forms part of the case, held that these payments of salaries to the persons who worked for the Hindu undivided family were admissible but that the payment to Gulzarilal and Madanlal, amounting to Rs. 3,850, was not, as the members did not render any service to the Hindu undivided family's business but to the firm, which was a separate entity and for services for which the liability was on the firm."

6. In our opinion, this finding of the Tribunal, which has been relied upon by the assessee, makes its case even more difficult. A Hindu undivided family is allowed to deduct salaries paid to members of the family, if the payment is made as a matter of commercial or business expediency; but the service must be to the family. It was held by this court in *Dulichand Laxminarayan v. Commissioner of Income-tax*, that "partnership" being the relation between persons, who have agreed to share the profits of a business carried on by all or any of them acting for all, and "persons" who enter into the partnership being called individually "partners" or collectively "a firm" the word "person" contemplates only natural or artificial, i.e., legal persons and neither a firm nor a Hindu undivided family can be that person. It was again recently emphasised in the case of *Charandas Haridas v. Commissioner of Income-tax*, that where a Hindu undivided family becomes a partner through its karta, the coparcenary has no place in the partnership but only the karta is everything, and in *Commissioner of Income-tax v. Nandlal Gandala* it was pointed out that both, under the Hindu law and under the law of partnership, the Hindu undivided family as such can exercise no control and management over the business of a partnership, Of which the coparcenary is a member through the karta.

7. All these cases show that if the junior members of the coparcenary were serving the partnership, they were serving an entity, which was separate and distinct from the Hindu undivided family. If the coparcenary had no place in the partnership, any service to the partnership any service to the partnership cannot be described as service to the Hindu undivided family, sufficient to attract the application of section 10(2)(xv) of the Income-tax Act, because it cannot be said to be wholly and

exclusively for the Hindu undivided family.

8. In our opinion, the answer to the question was rightly stated by the High Court in the negative, though for reasons which we have indicated here.

9. The appeal fails, and is dismissed with costs.

10. Appeal dismissed.