Commissioner Of Agricultural ... vs Raja Ratan Gopal on 21 September, 1964

Equivalent citations: [1966]59ITR728(SC), AIRONLINE 1964 SC 5, (1966) 59 ITR 728

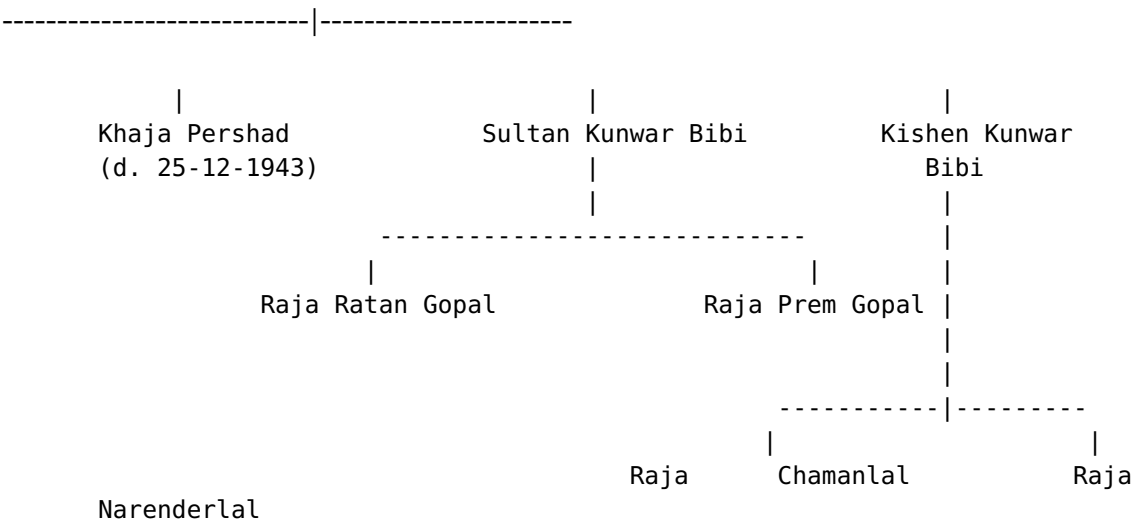
Bench: J.C. Shah, K. Subba Rao, S.M. Sikri

JUDGMENT

Subba Rao, J.

1. This appeal by certificate is directed against the judgment of the High Court of Judicature of Andhra Pradesh and raises the within the meaning of the Hyderabad Agricultural Income-tax Act, 1950 (XIII of 1950).

2. The following genealogy will be useful to appreciate the contentions raised by the parties.



3. After the death of Maharaja Kishan Pershad in 1940, his son, Raja Khaja Pershad, succeeded to his estate and he died on December 25, 1943. On the recommendation of a special commission appointed to ascertain the heirs of Raja Khaja Pershad, His Exalted Highness the Nizam of Hyderabad issued a firman dated December 12, 1948. Under that firman, Raja Ratan Gopal, Raja prem Gopal, Raja Chamanlal and Raja Narenderlal, the sons of two sisters of Raja Khaja Pershad, were declared to be his heirs and entitled to succeed to his estate. Under the firman each of the four heirs became entitled to 1/4 share in the estate. The estate was under the superintendence of the Nizam Government till the year 1950 when it was handed over to Raja Ratan Gopal with effect from May 1, 1950.

4. During that period each of the heirs was being given 1/4 share of the income of the estate. On may 9, 1950, the Secretary to the Board of Revenue wrote a letter to Raja Ratan Gopal informing his that the four brothers were declared heirs to the estate and they were entitled to the same. Indeed, after the brothers succeeded to the estate, they were filing separate returns of their income under the Hyderabad Income-tax act and each one of them was individually assessed thereunder. After the abolition of the Jagirs, it appears from the certificate of the jagir administrator that the commutation amount was paid to all the four as equal shareholders in the estate. For the assessment year 1359 Fasli, Raja Ratan Gopal filed a return under the Hyderabad Agricultural Income-tax Act, 1950 (XIII of 1950), hereinafter called the Act, in respect of his share of the income of O. S. Rs. 20,426 from the estate. The agricultural Income-tax Officer rejected the return and assessed him to tax on the total income of four co-sharers on the basis of "association of persons". The total income was ascertained at a sum of O. S. Rs. 3,75,218 and the respondent was assessed to a tax of O.S. Rs. 86,263. The respondent preferred an appeal against that assessment to the Deputy Commissioner of Agricultural Income-tax on three grounds, namely, (1) he should not have been assessed on the basis of "association of persons" but only on his individual income; (ii) he should have been allowed a deduction of expenditure incurred on maintenance of palace buildings and other buildings of the estate, and (iii) he should have been allowed a deduction of the amounts paid to dependents under the terms of the will of the late Maharaja. The Deputy Commissioner allowed the third objection, but rejected the first two. Against the said order the respondent filed a revision before the commissioner of Against the said order the respondent field a revision before the Commissioner of Agricultural Income-tax, but that was dismissed. The respondent thereupon preferred a revision to the High Court of Hyderabad under section 26(3) of the Act. After the formation of the Andhra Pradesh High Court, the said court directed the Commissioner to submit the following two question for its opinion : (1) Whether in the circumstances of the case of the income of the state can be assessed on the unitary basis as the income of an association of individuals or whether the income of the assessee has to be assessed for the purpose of agricultural income-tax at 1/4th of the income of the state after deducting of the allowables, and (2) whether the items of expenditure of Rs. 47,574 been expenditure for the place maintenance and other buildings of the estate is not liable to be deducted as admissible expenditure under clause (a) or clause (b) of the sub-section (5) of the section 14 of the Hyderabad income-tax Act, 1357 Fasil, as expenditure not being private or personal but incurred in connection with the administration of the estate or expenditure compulsory under the law." After the Commissioner stated the case, a Division Bench of the High court disposed of the same by its order dated on December 13, 1960. The High Court gave the following two answers to the questions referred to it : (i) the income of the assessee has to be assessed for the purpose of the Act on his 1/4

share of the income for the estate after deducting the allowables; and (2) the assessee in entitled to deductions under section 6(e) of the Act and the same should be computed at the time of making an assessment. This appeal has been filed by certificate issued by the High Court against the said order of the High Court.

5. Learned Additional Solicitor-General contested the Correctness of the said two answers given by the High Court.

6. The first question is whether the High Court was right in holding that the respondent should be assessed on his share of the income and not on the income of the four brothers as "association of individuals." Under section 3 of the Act for the financial year commencing on April 1, 1950, and for every subsequent financial year, agricultural income- tax shall be charged in accordance with and subject to the provisions of the Act on the total agricultural income of the previous year of every person. "Person" has been defined in section 2(k) of the Act to mean "any individual or association of individuals, owning or holding property for him self or for any other, or partly for his own benefit and partly for another, either as owner, trustee, receiver, common manager, administrator, or executor or in any capacity recognized by law, and includes an undivided Hindu family, firm or company." A combined reading of these two provisions indicates that assessment can be made on an individual or an association of individua "An association of persons must be one in which two or more persons join in a common purpose or common action, and as the words occur in a section which imposes a tax on income, the association must be one the object of which is produce income, profits or gains."

7. The learned judge then given the caution that there is no formula of universal application and that the question must depend on the particular facts and circumstances of each case. On the facts found in that case, the court held that the widows were only co-heirs of the estate of the deceased husband and that they could not be assessed as an association of person within the meaning of section 3 of the Indian Income-tax Act. This court again in Mohamed Noorullah v. Commissioner of Income-tax considered the question in the context of an income realized by receives appointed by consent of the heirs to run the business of the decreased, Khan Saheb Mohmed Oomer Sahib. Kapur J., speaking for the court laid down the same test accepted by this court in the earlier judgment and held that on the facts of that case the co-heirs, who carried on the business by consent as one unit, formed an association of persons within the meaning of section 3 of the Indian Income-tax Act, for the purpose of producing income, profits or gains. The said decisions laid down the test that, to constitute an association of individuals two are more individuals should have joined in the promotion of a joint enterprise with the object of producing income, profits or gains. In the present case, the said test is not satisfied. The four nephews of Raja Khaja Pershad succeeded to the estate as co-sharers and each one of them was entitled to 1/4 share of the income from the estate. They did not form a unit for the promotion of any joint enterprise to earn income, profits or gains. The collection of the entire income from the estate by one of the shares or even by a common employee will not make that income an from a joint venture. Each of the shares gets his income as an individual and not as an association of individuals. In this view, the High Court was right in answering the first question in favour of the respondent.

8. There are no merits in the second contention either. The question is whether the assessee is entitled to a deduction under section 6(e) of the Act is respect of the expenditure incurred by him for the maintenance of the palace and other buildings of the estate. Learned Additional Solicitor-General contends that by reason of section 51 of the Act the respondent would not be entitled to any deduction under section 6(e) of the Act.

9. It is not clear from the record when the assessment was completed. We shall assume that it was completed before April 1, 1950. Section 51(3) of the Act reads :

> "Where the assessment of the income-tax payable by an assessee for the year 1359F. Under the said Act has not been completed before the 1st day of April, 1950 the tax so payable shall be assessed in accordance with the provisions of the said Act on the assessee's agricultural income as defined in this Act of the previous year as determined under the said Act, and appeals from, and all other proceeding arising out of, the assessment shall be regulated by this Act."

10. This section cannot have any application for the assessment in question, for its was completed before April 1, 1950. The assessment has to be made under the Act and the respondent would be entitled to deductions under the section 6(e) of the Act.

11. That apart, even if the assessment was not completed before April 1, 1950, the respondent would not be in a worse position, for there is a corresponding provisions in the Hyderabad Income-tax Act, 1357F., which entitled the respondent to the said deduction. Section 14(5) (a) of the said Act allowed the following deduction from the income :

> "all such expenditure, not being in the nature of capital, private or personal expenditure, incurred by the assessee in connection with land or its inhabitants for administration or on works of general improvement and benefit."

12. This court in construing the said provisions held that the expenditure incurred in connection with the land and its administration was deductible under the said provision : see Rajah S. V. Jagannath Rao v. Commissioner of Income-tax. Whether section 6(e) of the Act applies or section 14(5) (a) of the Hyderabad Income-tax Act, 1357F, applies, the respondent would be entitled to a deduction from his income of the expenditure incurred by him for the maintenance of the palace and other buildings of the estate. The answer given by the High Court to the second question is also correct.

13. In the result, the appeal fails and is dismissed with costs.