Commissioner Of Income Tax And Ors. vs N. Ramanatha Reddiar (Huf) And Ors. on 26 September, 1996

Equivalent citations: [1996]222ITR765(SC), (1997)10SCC478, AIRONLINE 1996 SC 230, (1996) 222 ITR 765, 1997 (10) SCC 478, (1997) 139 CUR TAX REP 480, (1997) 137 TAXATION 102

Bench: B.P. Jeevan Reddy, Suhas C. Sen

ORDER

1. A common question arises in these appeals, viz., whether it is permissible for the Income-tax Department to make assessment on the respondents herein in the status of the Hindu undivided families once the Kerala Joint Hindu Family System (Abolition) Act, 1975 (for short "the Act"), has been brought into force. The said Act was enacted to abolish the joint family system among the Hindus in the State of Kerala. It has been brought into force on and with effect from December 1, 1976. Several Division Benches of the Kerala High Court have consistently taken the view that after the commencement of the Act, it is not permissible or open to the Income-tax Department to continue to make assessment in the status of the Hindu undivided family. May be that prior to the commencement of the said Act they were being so assessed, but once the joint family system has been statutorily abolished by a competent Legislature, it is held, it is not open to make an assessment on such non-existing assessee any longer.

2. We may refer to the first of the judgments in this behalf which was rendered on August 18, 1981, by the Division Bench of the Kerala High Court (which has been reported in WTO v. K. Madhavan Nambiar . The matter arose under the Wealth-tax Act. It was held that after the commencement of the aforesaid Act, an assessment made on the Hindu undivided family is not valid. The Division Bench referred to the various provisions of the Act and held that "it is not a case of the family disrupting by partition. It is a case of statutory extinction of joint families", It has been further observed that by virtue of the provisions of the said Act, the members of a Hindu undivided family holding coparcenary property as on December 1, 1976, shall be deemed to be holding such coparcenary property as tenants-in-common as if a partition had taken place among all the members of that Hindu undivided family. It is held that since no Hindu undivided family is in existence, there can be no question of addressing any adult member of the joint Hindu family in order to serve a notice intended for the family and that no proceedings can be validly taken for assessment of such family. The Bench then considered the co-relation between Section 20 of the Wealth-tax Act and the provisions of the aforesaid Kerala Act. It is observed that Section 20 could not have and did not contemplate a situation like the one arising 'from the said Act and that in any event Section 20 was not available and cannot be applied to continue to treat the Hindu undivided family as existing for the purpose of assessment. This judgment has been followed by other Division Benches in WTO v. K. Madhavan Nambiar ; P. G. Narayanaswamy v. CIT ;J. Dinesh Kumar v. CIT and Deputy Commr. of Agrl. I. T. v. R. S. Chidambaram [1994] 209 ITR 531 and by a learned single judge in Sreepadam v. C'WT . It is true that a learned single judge of the Kerala High Court has

taken a contrary view in Sankara-narayannn Bhattathiripad v. ITO , a judgment rendered on March 14, 1984. The learned judge held that there is no repugnancy or inconsistency between Section 20 of the Wealth-tax Act and the provisions of the Kerala Act. The learned judge likened the effect of the Kerala Act as bringing about a disruption in the status and held that a mere disruption in the status of an Hindu undivided family does not disable the Wealth-tax Officer from making an assessment on the Hindu undivided family until and unless a finding is recorded as contemplated by Section 20 of the Wealth-tax Act.

3. May be that two views are possible on the question. But since a consistent view has been taken by the Kerala High Court (except for one dissonant voice) commencing from the year 1981, we are not inclined to take a different view at this distance of time. We do not think it would be advisable to upset the consistent line of authority laid down by the High Court, particularly because the Act in question is a State enactment and not an all-India enactment.

5. Accordingly, these appeals are dismissed. No costs.