

Jethamal Sada Sukh vs Commr. Of Income-Tax on 1 April, 1953

Equivalent citations: AIR1953ALL697, [1953]23ITR443(ALL), AIR 1953 ALLAHABAD 697

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Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is a reference under Section 66(1), Income-tax Act in which the Income-tax Appellate Tribunal has referred the following three questions for our decision :

"1. Whether, in the circumstances of the case, the mere fact that the Income-tax Officer treated the income of 13 months and 5 days as the income of the previous year of 12 months ending Kartik Samvat 2000 made the entire assessment proceedings 'ultra vires' although the Tribunal in appeal excluded the income of one month five days from the assessment?

2. Whether, in the circumstances of the case, the date of succession for purposes of Section 25 (4), Income-tax Act is the date of actual succession viz. 1-11-41 as fixed in the order passed under Section 25A(1) or the date on which the order is actually passed during the assessment year 1944-45?

3. Whether, in the circumstances of the case, the relief under Section 25 (4) was open to the applicant in the assessment year 1944-45?

2. In this reference the relevant assessment year is 1944-45. The relevant accounting period for the assessment year 1944-45 began from 8-11-1942 to some date in November 1943. The assessee, however, did not close his accounts at the end of one year but made computation of the account from 8-11-1942 to 13-12-1943, i.e. for a period of thirteen months and five days. The assessee claimed that though he had closed his accounts at the end of 13 months and 5 days, assessment for the year 1944-45 should be made on the basis of income made during one year, the previous accounting period, and claimed that the account made up by him for 13 months and 5 days should be proportionately reduced. This was not accepted by the Income-tax Officer and the appellate Assistant Commissioner, who were of the opinion that the assessee having made up his account for a

period between 8-11-1942 and 13-12-1943, the income made during the whole of that period should be taken into account in making the assessment. The Appellate Tribunal, however, made the necessary correction and held that assessment can be made only on the income made during the previous accounting period which must be a period of twelve months. The Tribunal rightly relied on Section 2(11), Income-tax Act which defines previous year as the twelve months ending on 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said 12 months in respect of a year ending on any date other than the said 31st day of March then at the option of the assessee the year ending on the day to which his accounts have so been made up. On behalf of the assessee, however, it was claimed that the entire assessment proceedings were vitiated by reason of the fact that the Income-tax Officer had treated the income of 13 months and 5 days as the income of the previous year. Learned counsel has not been able to suggest any reason why the whole assessment proceedings were vitiated by reason of the fact that the Income-tax Officer had treated the account for 13 months and 5 days as the profits of the previous year and why it was not open to the Tribunal to correct the mistake and accept the assessee's own contention that the income for 12 months out of the 13 months and 5 days should be treated as income for the previous year.

3. Our answer, therefore, to the first question is in the negative.

4. We fail to see how the second and the third questions arise. But as the learned counsel has argued them at great length and with great vehemence it seems necessary to give a few dates.

5. The assessee, Jethamal Sadasukh, was assessed as a Hindu undivided family in the assessment year 1941-42 and in assessment years previous to that year and in the same status in the assessment years 1942-43 and 1943-44. The relevant accounting period for the assessment year 1942-43 ended on 20-11-1941. In 1942-43 the assessee was assessed on an income of Rs. 16,003/- as a Hindu undivided family. In the year 1943-44 the assessee was assessed on an income of Rs. 69,759/- as a Hindu undivided family. The accounting period for 1943-44 was 21-11-1941 to 7-11-1942. Then came the assessment year 1944-45 with which we are concerned & the accounting period for which was 8-11-1942 to 13-12-1943. It appears that though the assessee was being assessed as Hindu undivided family, as a matter of fact, there had been a disruption on 1-11-1941, when the assets had been divided. As no claim, however, was made on behalf of any member of the Hindu undivided family Under Section 35A (1) the Income-tax Officer, by reason of the provisions of Section 25A (3), continued to make the assessment treating the assessee as a Hindu undivided family. On some date in 1946 a claim was made that the Hindu undivided family had disrupted and there had been a division of its assets. An order was passed by the Income-tax Officer on 30-3-1946, holding that the division had taken place on 1-11-1941. On 30-3-1946, when the order was passed the assessment for the year 1944-45 had not been completed and on the same day the Income-tax Officer made the assessment for the year 1944-45.

The question that was discussed at the bar was whether 1-11-1941, should be treated as the date of disruption or 30-3-1946 should be treated as the date when the Hindu undivided family ceased to exist, i.e., what was the date when there was a succession and change in the persons carrying on the business. A Bench of the Oudh Chief Court had held in -- 'Ganeshdas Ramgopal v. Commr. of

Income-tax, U. P., C. P. and Berar', AIR 1947 Oudh 230 (A), that the actual date of disruption should be treated as the date of succession and not the date on which the order was passed. Learned counsel has urged that the case was wrongly decided and the date of succession should be the date of the order, i.e., 30-3-1946. But, whether the date of succession is 1-11-1941, or 30-3-1946, it cannot affect the assessment for the year 1944-45 as neither of the two dates falls within the relevant accounting period for this assessment year. If the date of succession be held to be 1-11-1941, that part of the income, which was earned between the beginning of the previous year relating to the assessment year 1942-43 and the date of succession, would not be liable to tax as the date of succession would then fall in the accounting period relevant to the assessment year 1942-43. Similarly, if the date of succession be held to be 30-3-1946, no tax would be payable on a part of the income earned during the previous year relevant to the assessment year 1947-48. In no case would any part of the income earned in the accounting period relevant to the assessment year 1944-45 be exempt from liability to income-tax. In the circumstances, we fail to see how questions 2 and 3 framed by the Tribunal arise in this case.

6. Our answer to these two questions is that the questions do not arise out of the appellate order for the assessment year 1944-45.

7. The assessee must pay the costs which we assess at rupees four hundred.