

Padampat Singhanian vs Commr. Of Income-Tax, U.P. And ... on 9 April, 1953

Equivalent citations: AIR1953ALL773, [1953]24ITR141(ALL), AIR 1953 ALLAHABAD 773, AIR 1953 ALLAHABAD 775

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. A number of references, some under the Income-tax Act and others under the Excess Profits Tax Act, have been lumped up together and numbered as above. During the course of argument, with the consent of learned counsel, we found it necessary to number the cases separately and Miscellaneous Case No. 139 of 1948, was confined only to the reference under Section 66 (1), Income-tax Act in Reference Application No. 226 of 1947-48 before the appellate Tribunal, which related to the income of the firm Harishankar Gopal Hari.

2. The question referred to us in this reference is as follows:

"Whether in the circumstances of the case, the income of Gopal Hari, a minor member of the Hindu undivided family of Sir Padampat Singhanian arising from Share and interest on deposits in the firm of M/s. Hari Shankar Gopal Hari represents the income of the Hindu undivided family liable to assessment in the hands of Sir Padampat Singhanian as its Karta?"

The facts as they appear from the Statement of the Case and the Appellate Order of the Tribunal are that there is a J. K. Cotton Spinning and Weaving Mills Co., Ltd., at Kanpur. The sole selling agency of the products of the J. K. Cotton Spinning and Weaving Mills Co., Ltd., (hereafter called the Company) was held by Messrs. Juggilal Kamlatpat. The partners of this registered firm were Sir Padampat Singhanian, Lala Kailashpat Singhanian, Lala Lakshmipat Singhanian, each holding a 5 annas share, and the mother of the three Singhanian brothers mentioned above, who had a one anna share. The three brothers were separate and were being separately assessed. The sole selling agency contract terminated and a new firm Harishankar Gopal Hari was registered and it entered into a contract with the Company and became its sole selling agent. The constitution of this firm is as follows:

"1.

Radhakishan Singhanian ... 0-1-0.

2. P. D. Chandrana ... 0-0-6.

3. Gopikrishan Jaipuria ... 0-0-6.

4. Harishankar, minor son of L. Lakshmipat Singhanian ... 0-4-9.

5. Gopal Hari, minor son of Sir Padampat Singhanian ... 0-4-6.

6. Vijaipat, minor son of L. Kailashpat Singhanian ... 0-4-9."

As shown above, the last three were minors and were aged 10, 10 and 4 years respectively in the year 1947 when the Appellate Assistant Commissioner made the assessment, and were the sons of L. Lakshmipat Singhanian, Sir Padampat Singhanian and L. Kailashpat Singhanian, who were partners of the firm Messrs. Juggilal Kamlapat. We do not know anything about the other three. Evidently they were strangers.

3. The facts found and not disputed are as follows:

1. That the sole selling agency contract was with Messrs. Juggilal Kamlapat;
2. That the partners in the firm were the fathers of the three minors, who were admitted to the benefits of the partnership of the firm Harishankar Gopal Hari;
3. That on termination of the sole selling agency contract of Messrs. Juggilal Kamlapat the Company entered into a fresh contract with the firm. Harishankar Gopal Hari;
4. That in this firm of Harishankar Gopal Hari 14 annas shares were held by the three minors who were admitted to the benefits of the partnership in Harishankar Gopal Hari;
5. That the three minors are members of the joint Hindu family with their respective fathers, who are separate 'inter se'; and lastly,
6. That there was no evidence to prove that the minors had any separate funds of their own which they might have invested in the business.

4. The question in this reference is whether on those facts it could be found that the income of Gopal Hari minor, son of Sir Padampat Singhanian, was really the income of the joint family and could be assessed as such is, the hands of Sir Padampat Singhanian as the Karta of the Hindu undivided

family.

5. The law is now well settled that it is open to a member of a Hindu undivided family to carry on a business and there is no presumption that any such business belongs to the joint family (see -- 'Annamalai Chetty v. Subramanian Chetty', AIR 1959 PC 1 (A)). In that case a member of a joint family had been engaged actively in money-lending business.

With the income of that business he acquired some property and the question was whether that property could be held to be joint family property. Their Lordships of the Judicial Committee held that:

"A member of a joint undivided family can make separate acquisition of property for his own benefit, and unless it can be shown that the business grew from joint family property, or that the earnings were blended with joint family estate, they remain free and separate."

There is no presumption that any business carried on by a member of a joint Hindu family is joint family business and it is for those to prove it who allege that it is so. In the case before us there is no question of any blending of income. The only question for decision is whether Gopal Hari was admitted to the benefits of the partnership in his own right or he was there merely as representing the Hindu undivided family so that the income of his share was the share of the Hindu undivided family. There is no finding that any funds of the Hindu undivided family were invested in the firm Harishankar Gopal Hari. Learned counsel for the Department has placed before us the assessment order of the Income-tax Officer, the Appellate Assistant Commissioner's order and the Appellate Tribunal's order. No mention is made in the first two about any investments at all, nor is there any suggestion that any family funds were used. The Appellate Tribunal, however, instead of considering whether any joint family funds were invested in the business, considered the question whether the minor had any separate funds of his own and observed that there was no evidence to hold that any funds other than those of the Hindu undivided family were used by or for the minors. There is nothing on the record to show whether funds of any kind were invested at all and we cannot from this very ambiguous sentence conclude that there was any investment of joint family funds. All that we understand the sentence to mean is that on behalf of the assessee no evidence had been given that the minor had any separate funds of his own which he could have invested in the firm Hari Shankar Gopal Hari.

6. We have discussed the question whether a Hindu undivided family as such can be a partner and whether it can be held that a member of a Hindu undivided family, who is a partner in a business with strangers, represents that family so far as the members of the Hindu undivided family are concerned: -- 'In re Mangal Chand Mohanlal', (1952) 21 ITR 164 (All) (B). In that case we laid stress on the point that the entire funds were supplied by the old business which was the business belonging to the Hindu undivided family.

7. The point was also considered in -- 'Ram-kumar Ramniwas v. Commr. of Income-tax', AIR 1953 All 150 (C) in which we have discussed the question whether a Hindu undivided family can be a

partner at all and, if any member of a Hindu undivided family is a partner in a firm, what the rights of the other members of the Hindu undivided family may be against him and against the partnership.

8. It has been urged by Mr. Das that there was no reason why the three strangers, who must be the working partners in this firm, should admit to the benefits of the partnership three minors and give them the larger share of the profits, unless the minors represented their fathers' interest and unless their fathers had made substantial investments. If any investments were made by the three Singhania brothers from joint family funds, it should have been easy for the Department to give evidence on the point and prove it. From the fact that no mention is made in the orders of the Income-tax Officer and the Appellate Assistant Commissioner that there were any such investments, we take it that there was no evidence to show that any fund of the Hindu undivided family was utilised in the business Harishankar Gopal Hari. As regards the point, why strangers should admit the three minors to the benefits of the partnership, the answer appears to us to be plain enough. The three Singhania brothers might have found it unnecessary or unprofitable to take the sole selling agency contract as it would only add to the burden of Income-tax and Super tax etc., and they might have agreed to use their influence to get the sole selling agency contract for the firm Harishankar Gopal Hari if their minor sons were benefited by being admitted to the benefits of the partnership. There being no evidence that any joint family funds were used in the business of the firm Harishankar Gopal Hari or any joint family funds were invested in that business, it is not possible to hold that the three minors, who were members of their respective joint families of which their fathers were Kartas, merely represented the joint families and were not there in their own rights. There was thus no material on which the Tribunal could come to the conclusion that it did.

9. Before we leave this point, however, we may mention that, in the statement of the case when making the reference, the Tribunal probably realised that the finding given in the Appellate Order was not satisfactory and it added certain words which are not to be found in the Appellate Order. In the Appellate Order, dealing with the question of funds, the Tribunal said as follows:

"There is no evidence to hold that any funds other than of the Hindu undivided families were used by or for the minors"

In the statement of the case after these words the Tribunal added-

"in investing any capital in the firm of M/s Harishankar Gopal Hari."

10. The result, therefore, is that this reference must be answered in the negative. The assessee is entitled to his costs which we assess at Rs. 400/-.