Commissioner Of Income-Tax, Poona vs H.H. Raja Of Bhor on 21 March, 1967

Equivalent citations: [1967]65ITR634(SC), AIRONLINE 1967 SC 28, (1967) 65 ITR 634

Bench: J.C. Shah, S.M. Sikri

JUDGMENT

Ramaswami, J.

1. The question for consideration in these appeals is whether the respondent, a Hindu undivided family, is entitled to exemption from taxation in respect of the interest income from Government securities held by it, under a notification of the Government of India dated March 21, 1922, issued under section 60 of the Income-tax Act, 1922.

2. The late Raja of Bhor held certain Government securities and up to the assessment year 1953-54, he was assessed in the status of individual in respect of his income. He died on October 9, 1954. His estate including the Government securities thereupon passed to his three sons who constituted a Hindu undivided family. The eldest of them succeeded to the title of Raja of Bhor. For the assessment years 1954-55 to 1958-59 the present Raja of Bhor filed returns as a Hindu undivided family consisting of himself and of his two brothers. He claimed exemption in respect of the interest income with regard to the Government securities on the ground that it was exempt under the notification issued under section 60 of the Income-tax Act, 1922. Section 60 empowers the Central Government, by notification in the Official Gazette, to make exemption, reduction in the rate or other modifications in respect of the income-tax in favour of any class of persons. In exercise of its powers under section 60, the Central Government issued a notification on March 21, 1922, which was to the following effect :

> "The following classes of income shall be exempt from the tax payable under the said Act and they shall not be taken into account in determining the total income or salary of an assessee for the purposes of the said Act except for the purposes of sub-section (4) of section 48 :.....
>
> (8) the interest on Government securities held by, or on behalf of, Ruling Chiefs and Princes of India as their private property."

3. The Income-tax Officer rejected the claim of the assessee on the ground that the securities were the "properties of the Hindu undivided family of whom the present ruler and his brothers are members and they cannot lay claim to these securities as their private properties as they belong to

the Hindu undivided family". The assessee preferred an appeal to the Appellate Assistant Commissioner who took the view that the Hindu undivided family was holding securities on behalf of the Ruling Chief or Princes of Indian States, and as such the exemption contained in the notification was application. In this view of the matter he allowed the appeal of the assessee. The income-tax department took the matter in appeal to the Appellate. Tribunal which affirmed the decision of the Appellate Assistant Commissioner and dismissed the appeal. At the instance of the income-tax department the Appellate Tribunal stated a case to the High Court on the following question of law :

> "Whether, on the facts and circumstances of the case, the interest on securities assessable under section 8 of the Income-tax Act was exempt from tax in the assessee's hands in view of the Notification No. 878F dated March 21, 1922, issued under section 60 of the Income-tax Act ?"

4. By its judgment dated October 19, 1962, the High Court of Bombay answered the question in the affirmative and in favour of the assessee. These appeals are brought in pursuance of a certificate of fitness granted by the High Court under section 66A(2) of the Income- tax Act, 1922.

5. It was argued by Mr. Mitra, in the first place, that the Raja of Bhor and his two brothers were not "Ruling Chiefs" or "Princes" within the meaning of the notification of the Central Government dated March 21, 1922, and the High Court was not therefore justified in holding that the assessee was entitled to claim exemption under clause 3 of the notification. It is, however, not possible for us to entertain this argument, because the appellant had conceded before the Appellate Tribunal that the present Raja of Bhor was a Ruling Chief and his two brothers were princes within the meaning of the notification referred to above, and it is therefore not open now to the appellant to contend that the securities were not held for or on behalf of the Ruling Chief and Princes of India within the meaning of the notification. The concession made by the appellant is expressly noted by the Appellate Tribunal in its order dated February 9, 1961, and reference has also been made to the concession of the appellant in the agreed statement of the case dated July 28, 1961, submitted to the High Court under section 66(1) of the Income-tax Act. The question of law regarding the interpretation of the notification does not therefore arise out of the order of the Appellate Tribunal since no such question was ever raised or argued before it. It is not therefore open to Mr. Mitra to re-agitate this point in the present appeals.

6. It was then contended by Mr. Mitra on behalf of the appellant that the securities belonged to the Hindu undivided family which was a separate unit of assessment in contradistinction to its members. It was therefore argued by Mr. Mitra that since the securities belonged to the Hindu undivided family, the exemption contained in the notification dated March 21, 1922, will not apply to the present case. In our opinion, there is a fallacy lurking in this argument. It is true that for the purposes of income-tax the Hindu undivided family is assessed as a distinct entity or unit of assessment under the provisions of the Income-tax Act, 1922; in respect of the joint estate of the members the Hindu undivided family in taxed, though in respect of their separate income the members are separately taxed. But the question as to whether the present Raja of Bhor and his two brothers have proprietary right in the Government securities must be answered not with reference

to the context and background of Hindu law. Merely because for the purpose of income-tax the Hindu undivided family is treated as a separate unit of assessment, it does not follow that in the eye of Hindu law the property of the Hindu undivided family belongs to its as a corporate unit with a separate legal personality as distinct from the individual family members composing it. In the present case, the Raja of Bhor and his two brothers constituted a Mitakshara coparcenary and it is well-established that the essence of a coparcenary under the Mitakshara law is unity of ownership. The ownership of the coparcenary property is in the whole body of coparceners. As observed by the Judicial Committee in Katama Natchiar v. Rajah of Shivagunga :

> "There is community of interest and unity of possession between all the members of the family, and upon the death of any one of them the other may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession".

7. But it is also true that no individual members of a Hindu coparcenary, while it remains undivided, can predicate of the joint and undivided property, that he, that particular members, has a definite share, one- third or one-forth - (Lord Westbury in Appovier v. Rama Subba Aiyan). His interest in the coparcenary property is a fluctuating interest which is capable being enlarged by death in the family and liable to be diminished by birth in the family. It is only on partition that the coparcener is entitled to a definite share. But the important thing to notice is that the theory of ownership being acquired by birth has given rise to the doctrine of samudavika swatwa or aggregate ownership in the Mitakshara school. Till partition therefore all the coparceners have got rights extending over the entirety of the coparcenary property. It is therefore manifest, in the present case, that the property is held by the assessee on behalf of the present Raja of Bhor and his two brothers and the assessee is therefore entitled to exemption from income-tax on the income from the securities.

8. For these reasons we hold that the High Court rightly answered the question in favour of the assessee and these appeals must be dismissed with costs.

9. Appeals dismissed.