T. S. Srinivasan vs Commissioner Of Income Tax, Madras on 29 November, 1965

Equivalent citations: 1966 AIR 984, 1966 SCR (2) 755, AIR 1966 SUPREME COURT 984, 1966 (1) ITJ 1, 1966 2 SCR 755, 1966 60 ITR 36, 1967 2 ANDHLT 44, 1967 SCD 503, 1966 (1) SCJ 105

Author: S.M. Sikri

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

PETITIONER:
T. S. SRINIVASAN

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, MADRAS

DATE OF JUDGMENT:
29/11/1965

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
SUBBARAO, K.
SHAH, J.C.

CITATION:
1966 AIR 984 1966 SCR (2) 755
CITATOR INFO :
D 1970 SC 14 (10)

ACT:
Income Tax Act, 1922, s. 3-Hindu undivided family-Whether comes into being on conception of son or on birth.

HEADNOTE:
A son was born to the assessee, a Hindu, on December 11, 1952, and' it was common ground that the conception of the child must have taken' place sometime in March 1952. For the assessment year 1953-54 (accounting year April 1, 1952 to March 31. 1953) the assessee claimed that certain income received by him should be assessed as the income, of a Hindu undivided family, which, according to him had come

into existence in or about March 1952 when the son was conceived. The Income Tax Officer however recognised the family as a Hindu undivided family only from the date of the birth of the child. This view was upheld by the appellate authorities and the High Court, upon a reference,.also answered the question against the assessee.

It was contended on behalf of the assessee that under the Income-tax Act, a Hindu undivided family is a separate unit and in determining whether a Hindu undivided family exists or not, and if it exists, from what date it has come into being, regard must be had to the principles of Hindu Law, for the Act does not lay down any principles on this,point; that it is well settled and it is a substantive rule of Hindu Law that a son conceived has the same rights of property as a living son and that a joint Hindu family comes into existence from the date the son is conceived.

HELD:The doctrine of Hindu Law that a son conceived is equal in, many respects to a son actually in existence is not of universal application and it applies mainly for the purpose of determining the rights of property and safeguarding such rights of the son. This doctrine does not fit in with the scheme of the Income Tax Act and it could not have between the intention of the legislature to have incorporated this special' doctrine into the Act. [758 F-G]

In the present case,' no rights of the son would be affected by not recognising his existence for the purposes of s. 3 of the Act till he was actually born. Income-tax is a liability and it could not have been the intention of the legislature to impose a liability on unborn persons. [760 B]

C.B.C. Deshmukh v. I. Mallapa Chanbassappa A.I.R. (1964) S.C. 510; referred to.

Even if a Hindu undivided family was in existence towards the end' of the accounting year, the whole income received or accrued in the accounting year did not thereby become the assessable income of the Hindu undivided family; till the child was born, the income was the assessee's income. [760 D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 853 of 1964.

Appeal from the Judgment and Order dated the 9th August, 1961 of the Madras High Court in Case Referred No. 86 of 1957.

A. V. Viswanatha Sastri, S. Swaminathan and R. Gopalakrishnan, for the appellant.

C. K. Daphtary, Attorney-General, Gopal Singh, B. R. G. K. Achar and R. N. Sachthey, for the respondent.

The Judgment of the Court was delivered by Sikri, J. This appeal, by certificate of the High Court of Madras, is directed against its judgment in a reference made to it under S. 66(1) of the Indian Income Tax Act, 1922, hereinafter referred to as the Act, by the Income Tax Appellate Tribunal, Madras. The question referred to was "whether the assessment of the income of the assessee, other than his salary in the hands of the assessee, as an individual and not as a Hindu undivided family till 11th December, 1952, for the assessment year 1953-54 is valid."

The question arose out of the following facts. The appellant, hereinafter referred to as the assessee, is the youngest son of T. V. Sundaram Ayyangar, who was the Karta of a Hindu undivided family consisting of a number of persons. There was a partial partition of the above family and 150 shares of Rs. 1,000 each in T. V. Sundaram Iyengar and sons Limited, a private limited company, were divided equally among the coparceners, the assessee getting 25 shares of the value of 25,000. With the aforesaid shares as nucleus, the assessee acquired houseproperties, shares and deposits up to March 31, 1952. As the assessee was also the Service Manager of the aforesaid private limited company, he also received substantial remuneration. The first son, named Venugopal, was born to the assessee on December 11, 1952, and it is common ground that the conception of the child must have taken place sometime in March, 1952.

For the assessment year 1952-53, the assessee was assessed as an individual with reference to all his sources of income. For the assessment year 1953-54 (accounting year April 1, 1952 to March 31, 1953) the assessee claimed that income from all sources, except salary, should be assessed in the hands of H.U.F., consisting of himself and his son Venugopal, which according to him had come into existence in or about March 1-952 when Venugopal was conceived.

The Income Tax Officer, while admitting that a male child acquires coparcenary rights in the family even from the date of his conception, considered that this proposition applied only as far as the minor's rights inter se other members were concerned, and as far as the claims of the State or outsiders were concerned, he thought that an unborn son would not come into the picture. 'therefore, he recognised the family only from the date of the birth of the child, viz., December 11, 1952. The Appellate Assistant Commissioner upheld his view and the assessee also failed before the Appellate Tribunal. The High Court answered the question against the assessee.

Mr. A. V. Viswanatha Sastri, the learned counsel for the assessee, contends that under the Act Hindu undivided family is a separate unit and in determining whether a Hindu undivided family exists or not, and if it exists, from what date it has come into being, regard must be had to the principles of Hindu Law for the Act does not lay down any principles regarding this matter. He then urges that it is well-settled that according to Hindu Law, a son conceived has the same rights of property as a living son, and this rule, he says, is not a matter of fiction but a substantive rule of Hindu Law. He further says that it is wellsettled according to Hindu Law that joint Hindu family comes into existence from the date a son is conceived, and as in this case the son was conceived in March 1952, the Hindu undivided family was in existence from the beginning of the accounting year 1952-53.

The learned Attorney-General, who appears on behalf of the Revenue, does not dispute the existence of the doctrine of Hindu Law relied on by Mr. Sastri, but says that this doctrine applies only for a special purpose,, the purpose being to safeguard the rights of the son to property, and that Hindu Law itself recognises that this doctrine is not of universal application. He urges, in the alternative, that at any rate the Act is concerned with realities; under the Act the person to whom income accrues must be a visible reality, and, he says, the only visible person who existed up to December 11, 1952, was the assessee. He further says that we would be introducing anomalies in the working of the Act if this fiction is applied to the instant case. In addition he relies on the form of return of income tax which he says would be difficult to fill if the return is filed before the birth of the son.

In C. B. C. Deshmukh v. l. Mallappa Chahbasappa(1) this Court 'had occasion to consider the scope of the doctrine that (1) A.I.R. 1964 S.C. 510.

under Hindu Law a son conceived or in his mother's womb is equal in many respects to a son actually in existence in the matter of inheritance, partition, survivorship and the right to impeach an alienation made by his father. But this Court refused to extend it to adoption. Subba Rao, J., speaking for the Court,observed "But there is an essential distinction between an alienation, partition and inheritance on the one hand and adoption on the other : his right to set aside an alienation hinges on his secular right to secure his share in the property belonging to the family, as he has a right by birth in the joint family property and transactions effected by the father in excess of his power when he was in the embryo are voidable at his instance; but, in the case of adoption, it secures mainly spiritual benefit to the father and the power to adopt is conferred on him to achieve that object. The doctrine evolved wholly for a secular purpose would be inappropriate to a case of adoption. We should be very reluctant to extend it to adoption, as it would lead to many anomalies and in some events defeat the object of the conferment of the power itself. The scope of the power must be reasonably construed so as to enable the donee of the power to discharge his religious duty. We, therefore, hold that the existence of a son in embryo does not invalidate an adoption."

The question that arises is whether this doctrine of Hindu Law can be applied for the purpose of determining the coming into being of a Hindu undivided family as an assessable entity. As this Court held in C. B. C. Deshmukh v. l. Mallappa Chanbasappa(1), the doctrine is not of universal application and it applies mainly for the purpose of determining rights to property and safeguarding such rights of the son. It seems to us that this doctrine does not fit in with the scheme of the Act, and it could not have been the intention of the Legislature to have incorporated the special doctrine into the Act. Section 3 of the Act charges the total income of the previous year of every indi- vidual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually. Section 4 includes in the total income of any person all income, profits and gains, inter alia, if such person is resident, which (1) A.I.R. 1964 S.C. 510.

accrue or arise or are deemed to accrue or arise to him in the taxable territories during such year. Income can accrue or arise day-to-day or at the end of the year, and it would be surprising to say that for the purpose of the Act it is not known at a particular time to which entity income is accruing or arising. At the relevant time, under s. 22 of, the Act, the Income Tax Officer was required to give

notice by publication in the press and by publication in the prescribed manner, requiring every person whose total income in the previous year exceeded the maximum amount which is not chargeable to income tax to furnish within such period not being less than sixty days as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner, setting forth his total income and total world income during that year. Under sub-s. (2), the Income Tax Officer could serve a notice upon a particular person requiring him to furnish within a period not less than 30 days a return In the prescribed form. The person had then to file a return. If the contention of Mr. Sastri is right, in many cases an assessee would not have been able to file a return. Suppose the wife of an assessee conceived in February, 1954, and his accounting year was the year ending March 31, 1954. By June/July, 1954, the assessee would not know whether he should file the return as an individual or as Hindu undivided family because he would not know whether the child was going to be a son or a daughter. However, if a conditional return was filed, the Income Tax Officer would have to hold his hands and not assess till the child was delivered. Part IIIA of the prescribed form required the following particulars to be filled up in the case of a Hindu undivided family

---------- Serial Name of members of the Relationship Age at Remarks No. family at the end of the the end previous year who were of the entitled to claim parti- previous tion. year

---------- This form clearly proceeds on the basis that all members were in existence at the end of the previous year. Has a son in the womb at the end of the previous year and born in the assessment year any age at the end of the previous year ? Would it have a name at the end of the previous year? We find it extremely difficult to reconcile this doctrine of Hindu Law with the aforesaid provisions of the Act. We would not be justified in introducing uncertainties and anomalies in the working of the Act by introducing this doctrine for the purpose of s. 3 of the Act. L8SupCI/66-2 Apart from the difficulty of reconciling this doctrine with the scheme of the Act, Mr. Sastri has not been able to satisfy- us that any rights of the son are being affected by not recognising his existence for the purposes of s. 3 of the Act till he is actually born. Income-tax is a liability and it could not have been the intention of the legislature to impose a liability on persons yet unborn.

Mr. Sastri contends in the alternative that what we are concerned with is the status at the end of the accounting year and that at least in this case where the child was in existence at the end of the accounting year, the status would be that of Hindu undivided family. This point was not raised before and the learned Attorney-General rightly objected to it being raised at this stage. But even if a Hindu undivided family was in existence towards the end of the accounting year, still the whole income received or accrued in the accounting year did not thereby become the assessable income of the Hindu undivided family. Till the child was born the income which accrued to, or arose to, or was received by the assessee was his income. The Act dis- regards subsequent application of income and profits once they have arisen. When the income and profits arose, they belonged to the assessee, as no Hindu undivided family was then in existence. This position cannot be displaced by the birth of the son, which brought into existence a Hindu undivided family.

In the result we agree with the High Court that the answer to the question must be in favour of the revenue. The appeal fails and is dismissed with costs.

Appeal dismissed.