

P.N. Krishna Iyer vs Commissioner Of Income-Tax, Kerala on 3 September, 1968

Equivalent citations: AIR1969SC893, [1969]73ITR539(SC), [1969]1SCR943, AIR 1969 SUPREME COURT 893

Bench: A.N. Grover, J.C. Shah, V. Ramaswami

JUDGMENT

Shah J.

1. P. N. Krishna Iyer - hereinafter called "the assessee" - set up in 1923 a motor transport business in the former State of Travancore. In 1945 there arose disputes between the assessee and his brother about the division of estate of the joint family of which they were members. The disputes were settled by mutual agreement dated October 23, 1951, and the motor transport business together with the "workshop, stores, agency, cinema companies, etc." were treated the business of the joint family, and on partition were allotted to the assessee. An application held by the assessee before the 1st Additional income-tax officer Trichur, or for recording the partition was accepted.

2. In the meantime, on the July 3, 1952, a private limited company, P. S. N. Motors (Private) Ltd. was floated with the object of taking over the motor transport business carried on by the assessee. By the articles of association, the assessee was to be the governing director of the company for life and to draw such remuneration and exercise such powers detailed in the agreement to be entered not between him and the company in that behalf, and so long as he held the office of governing director, the general management of the company's business was to remain in his hands. The assessee purchased 100 shares of the company of the face value of the Rs. 100 each. On August 18, 1952, the assessee was appointed by the company governing director with an officer allowance of Rs. 3,000 per mensem of a commission of 15 per cent. On the net profit. On the same day the directors approved the purchase from the Hindu undivided family of the assessee of assets (but not the liabilities) of the transport business valued at Rs. 8,01,074-1-4. In the books of the company credit entries were posted in the name of the Hindu undivided family. On August 18, 1952, the directors passed certain resolutions relating to the repayment of the amount due to the Hindu undivided family. On September 28, 1952, the company passed a special resolution that in consideration of the "valuable services" rendered by the assessee in the promotion of the company and of the "large sacrifices" made by him in agreeing to place his services at the disposal of the company and the benefit that the company received on account of his "long experience, goodwill and reputation in this line of business", the assessee be allotted 4,880 fully paid up shares of the company.

3. The Income-tax officer brought to tax in the assessment year 1954-55 the remuneration received by the assessee from the company together with the commission, "sitting fee" and income from property business and other sources as the separate income of the assessee. The Appellate Assistant Commissioner modified that order, and directed that the income other than salary, commission and

"sitting fee" received by from the company by included in the assessment of the Hindu undivided family. The income-tax Officer then carried out the direction and included the income from property, business and other sources in the total income of the Hindu undivided family and made corresponding modification in the assessment of the assessee of as an individual.

4. But the Commissioner of a Income-tax being of the opinion that the order passed by the Income-tax Officer was wrong and prejudicial to the interests of the revenue, revised the order of the Income-tax Officer exercising power under section 33B of the Income-tax Act, 1922 and included the income from salary, commission and "sitting fee" aggregating to Rs. 43,240 in the total income of the Hindu undivided family. In appeal against the order, the Tribunal reversed the order the of the Commissioner and ordered that the these items be excluded from the assessment of the Hindu undivided family.

5. At the instance of the commissioner of Income-tax, following question was referred by the Tribunal to the High Court of Kerala :

"Whether, on the facts and in the circumstances of the case, of the Tribunal was justified in holding that the income from salary, commission and sitting fees obtained by Sri P. N. Krishna Iyer from M/S. P. S. N. Motors (Private) Ltd., Trichur, represented his individual income and not the income of the Hindu undivided family of which he is the karta ?"

6. At the instance of the assessee the following question also was referred by the Tribunal :

7. "Whether the Commissioner has jurisdiction to revise the order of the Income-tax Officer in view of the decision of the Appellate Assistant Commissioner in appeals for the assessment years 1954-55 to 1957-58 in the assessment of Sri P.N. Krishna Iyer in the status of an individual?"

8. The High Court answered the question referred at the instance of the Commissioner in the negative and the question referred at the instance of the assessee in the affirmative. The assessee has appealed to this court with special leave granted by this court.

9. The question relating to jurisdiction of the Commissioner to revise to the order of the Income-tax Officer present little difficulty. Sub- section (1) of section 33B of the Income-tax Act, 1922, provides :

"The Commissioner may all for and examine the record of any proceeding under this Act and in he considers that any order passed therein by the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue he may..... pass such order thereon as the circumstance of the justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

10. Counsel for the assessee urged that the Commissioner has no power under section 33B to revise an order the Income-tax officer it had been carried in appeal to the Appellate Assistant

Commissioner, and also urged that an order passed by an Income-tax officer in pursuance of a direction by the Appellate Assistant Commissioner could not be revised by the Commissioner in exercise of the power under section 33B. But in our judgment there is no ground for holding that the Commissioner has attempted to revise the order of the Appellate Assistant Commissioner. In computing the income of the assessee as an individual the Appellate Assistant Commissioner has directed certain modification to be made, and pursuant thereto, the assessments of the assessee and of the Hindu undivided family of which the assessee was the karta were rectified. The order of assessment of the Hindu undivided family was never challenged in appeal to the Appellate Assistant Commissioner. The Commissioner revised the order passed by the Income-tax Officer in so far as it related to the Hindu undivided family. It is true that, in consequence of the order of the Commissioner, the salary, commission and the "sitting fee" received by the assessee had to be excluded from the total income of the assessee. But the Commissioner had power to revise the order passed by the Income-tax Officer which had not been appealed from. Modification in the order of the Income-tax Officer in so far as it related to the assessment of the assessee was consequential upon that order : it was made to prevent double taxation of the same income. It is true that the assessment of the assessee as an individual had become final before the order of the Commissioner, but that did not bar the exercise of jurisdiction by the Commissioner under section 33B(1). The question referred at the instance of the assessee was, therefore, rightly answered by the High Court.

11. Turning to the other question, the relevant facts which are undisputed may be recapitulated. Rs. 10,000 paid by the assessee for purchasing 100 shares of the company belonged to the undivided family and were not firm the personal fund the assessee. The company took over the assets belonging to the family and merely credited the family with rupees eight lakhs odd. The company valued the services rendered by the assessee in "the promotion of the company and the very large sacrifices he had made in agreeing to the place his services at he disposal of the company and the immense benefit that the company received on account of the his long experience goodwill and reputation in this line of business", at rupees five lakhs and allotted to the assessee 4,880 fully paid up shares of the company of the face value of Rs. 100 each. Dividends from the shares standing in the name of the assessee were credited not to the personal account of the assessee but to the account of the Hindu undivided family.

12. In the view of the Tribunal the income from salary, commission and "sitting fee" earned by the assessee was his separate income, because the transport business was "built up with the sole effort of the assessee". The High Court held that the business was at the partition of 1951 treated as the business of the joint family of the assessee and his brothers and was allotted to the assessee as an item of the family property; that the assets of..... the business were on that account the assets of the Hindu undivided family of the assessee and his sons, that those assets were made available to the company without receiving any cash consideration, that the shares initially purchased by the assessee were purchased with the aid of the family fund, and that the shares allotted to the assessee were also treated as belonging to the family and to the assessee.

13. Whether remuneration earned by a member of a Hindu undivided family as an officer of a company or a firm, in which the assets of the Hindu undivided family have either been invested or the officer has been acquired with the aid of the funds of the family is the income of the family or the

individual income of the member has arisen in several cases before this court : Commissioner of Income-tax v. Kalu Babu Lal Chand , Piyare Lal Adishwar Lal v. Commissioner of Income-tax , Mathura Prasad v. Commissioner of Income-tax , S. RM. CT. PL. Palaniappa Chettiar v. Commissioner of Income-tax , V. D. Dhanwatey v. Commissioner of Income-tax and M. D. Dhanwatey v. Commissioner of Income-tax . No useful purpose will be served by making an analysis of the earlier cases, because in our view three recent judgments of this court lay down the principle which govern this class of the cases. In V. D. Dhanwatey's case , V, the karta of a Hindu undivided family, contributed to the capital of a firm out of the funds of the family. Under the agreement of partnership the general management and supervision of the partnership business was to be in the hands of V, and he was to be paid a monthly remuneration out of the gross earnings of the partnership business. V joined the partnership as representing the family and he became a partner on account of the investments of the joint family assets in the capital of the partnership and the remuneration received by V was only an increased share of the profits paid to him as representing the family. This court (Hegde J. dissenting) held that the remuneration paid to V was directly related to the investments from the assets of the family in the partnership business and "there was real and sufficient connection between the investment from the joint family funds and the remuneration paid to V". The salary paid to V was, therefore, assessable as the income of the Hindu undivided family.

14. In M. D. Dhanwatey's case , the facts were parallel to the facts in V. D. Dhanwatey's case and salary received by the karta of the Hindu undivided family was treated as income of the family.

15. In S. RM. CT. PL. Palaniappa Chettiar's case , the karta of a Hindu undivided family acquired 90 out of 300 shares in a transport company with the funds of the family. In course of time he became the managing director of the company. As managing director the karta was entitled to salary and commissioner on the net profits of the company, and was entrusted with control over the financial and administrative affairs of the company. The only qualification under the articles of association for the officer of a director was the holding of not less than 25 shares in his own right. It was held that the shares were acquired by the family not with the object that the karta should become the managing director, but in the ordinary course of investment, and there was no real connection between the investment of joint family funds in the purchase of the shares and the appointment of the karta as managing director of the company. The remuneration of the managing director, it was held, was not earned on account of any detriment to the joint family assets, and the amounts received by the karta as managing director's remuneration, commission and "sitting fee" were not assessable as the income of the Hindu undivided family. the managing director, it was held, was not earned on account of any detriment to the joint family assets, and the amounts received by the karta as managing director's remuneration, commission and "sitting fee" were not assessable as the income of the Hindu undivided family.

16. Income received by a member of a Hindu undivided family from a firm or a company in which the funds of the Hindu undivided family are invested, even though the income may be partially traceable to personal exertion of the member, is taxable as the income of the Hindu undivided family, if it is earned by detriment to the family funds of with the said aid or assistance of those funds; otherwise it is taxable as the member's separate income.

17. Counsel for the assessee contended that the Tribunal had found that the business of M/S. P. S. N. Motors was built up "by the sole exertions" of the assessee and when the business was converted into a private limited company the shares therein were allotted to the assessee in view of "the valuable services rendered " by him in the promotion of the company and the "large sacrifices" he had made in agreeing to place his services at the disposal of the company and "the immense benefit" that the company received "on account of his long experience, goodwill and reputation in the line of business," and, therefore, the salary, commission and "sitting fee" were in consideration of the services which the assessee rendered and were not attributable to the fact that the family and had contributed to the main capital of the company. Counsel and that this was a finding of fact which was binding upon the High Court. But this court in V. D. Dhanwatey's case , has held that the question whether the income was the income of the Hindu undivided family or the individual income was a finding on a mixed question of law and fact, and the final conclusion drawn from the primary evidentiary facts was open to challenge on the plea that the relevant principle had been misapplied by the Tribunal.

18. The shares which qualified the assessee to become a member of the company were purchased with the aid of joint family funds. The shares which were allotted to the assessee in lieu of his services were also treated as shares belonging to the joint family. The entire capital assets to the company originally belonged to the joint family were and were, and available to the company in consideration of a mere promise to pay the amount for which the assets were valued. The income was primarily earned by utilising the joint family assets or funds and the mere fact that in the process of gaining the advantage an element of personal service or skill or labour was involved did not alter the character of the income. In case of this class the character of the receipt must be determined by reference to its source, its relation to the assets of the family of which the recipient was the member, and the primary object with which the benefit received was disbursed. The conclusion of the High Court cannot be said to be vitiated by any error.

19. The appeal fails and is dismissed with costs.

20. Appeal dismissed.