

Prem Nath And Ors. vs Commissioner Of Income-Tax, Delhi And ... on 12 August, 1970

Equivalent citations: [1970]78ITR319(SC), (1970)2SCC477, AIRONLINE 1970 SC 50

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Bench: J.C. Shah, K.S. Hegde

JUDGMENT

J.C. Shah J.

1. The assessee is a Hindu undivided family. Prem Nath, the manager of the family, was admitted as representing the family to a partnership styled " M/s. K.C. Raj & Company ". Under the terms of the partnership Prem Nath was entitled to an " allowance of Rs. 700 per month " for " rendering service " to the partnership. In proceedings for assessment of income-tax of the Hindu undivided family, the Income-tax Officer rejected the contention that the remuneration paid to Prem Nath was the individual income of Prem Nath. The order was confirmed in appeal by the Appellate Assistant Commissioner and, in second appeal, by the Income-tax Appellate Tribunal.

2. The Tribunal submitted the following question to the High Court of Punjab at Delhi for opinion :

Whether the remuneration received by Prem Nath, karta of the assessee-Hindu undivided family, for services rendered to the firm of M/s. K.C. Raj & Co. and the sub-partnership of M/s. Kishan Lal in which he is a partner representing the interests of the assessee-Hindu undivided family was rightly included in the total income of the assessee-Hindu undivided family ?

3. The High Court answered the question in the affirmative. With special leave, the assessee has appealed to this Court.

4. Prem Nath was "a working partner " and he was allowed a salary at the rate of Rs. 700 per month. There is no evidence on the record that the remuneration agreed to be paid was not for services rendered to the partnership. It is true that, in the partnership, Prem Nath represented his undivided family. The share in the profits of the partnership may on that account be regarded as the income of the Hindu undivided family. We are, however, only concerned with the remuneration paid to Prem Nath as " working partner " in the business of the firm.

5. Whether remuneration received by a member of a Hindu undivided family who has joined a partnership as representing the family, and in which the assets of the family have been invested (sic) has been considered in several recent decisions.

6. In Commissioner of Income-tax v. Gurunath V. Dhakappa , the karta of a Hindu undivided family was admitted to a registered firm as representing his family. The karta was appointed manager of the firm on a remuneration of Rs. 500 per month. There was no finding by the Tribunal that the salary was paid to the manager because the assets of the family were utilised by the firm. This Court held that the remuneration received by the karta was not the income of the Hindu undivided family. In reaching that conclusion this Court relied upon the judgment in V.D. Dhanwatey v. Commissioner of Income-tax . Wherein it was observed that remuneration paid to a member of a Hindu undivided family, who represents the family in a partnership, will be treated as the income of the family if it is directly related to the investment in the partnership business with the assets of the Hindu undivided family. If there is " real and sufficient" connection between the joint family funds and the remuneration paid by the partnership to the manager of the joint Hindu undivided family, who is a partner, the remuneration is taxable as the income of the Hindu undivided family.

7. In Commissioner of Income-tax v. D.C. Shah , a Hindu undivided family was a partner in two firms through its manager. The manager received remuneration from the firm. This Court held that, in the absence of any real and sufficient connection between the investment of the joint family funds and the remuneration paid to the manager, the remuneration was not earned on account of any detriment to the joint family assets and the remuneration received by the manager as the managing partner of the two firms was not assessable as the income of the Hindu undivided family.

8. This Court in Raj Kumar Singh Hukam Chandji v. Commissioner of Income-tax C.As. Nos. 326 & 327 of 1967 decided on 11-8-70-Since , after a review of the decisions, observed :

...the broader principle that emerges is whether the remuneration received by the coparcener in substance though not in form was but one of the modes of return made to the family because of the investment of the family funds in the business or whether it was a compensation made for the services rendered by the individual coparcener. If it is the former, it is an income of the Hindu undivided family, but if it is the latter then it is the income of the individual coparcener. If the income was essentially earned as a result of the funds invested the fact that a coparcener had rendered some service would not change the character of the receipt. But if on the other hand it is essentially a remuneration for the services rendered by a coparcener, the circumstance that his services were availed of because of the reason that he was a member of the family which had invested funds in that business or that he had obtained the qualification shares from out of the family funds would not make the receipt, the income of the Hindu undivided family.

9. Applying these principles, there can be no doubt that the income received by Prem Nath was remuneration for services rendered by him and there was no real and sufficient connection between the investment of the joint family assets and the remuneration paid to him.

10. The answer to the question referred must be in the negative.

11. The appeals are allowed. The will be entitled to its costs in this Court and the High Court. One hearing fee.