

Estate Of The Late A.M.K.M. Karuppan ... vs Commissioner Of Income-Tax, Madras on 22 August, 1968

Equivalent citations: [1969]72ITR403(SC), AIRONLINE 1968 SC 6

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

JUDGMENT

Shah, J.

1. Karuppan Chettiar, his son, Muthukaruppan, and his grandsons formed a Hindu undivided family which was assessed to income-tax as a Hindu undivided family till the assessment year 1948-49. In the course of assessment proceedings for 1949-50 it was claimed on behalf of the Hindu undivided family that the properties and the several businesses of the family had been partitioned between Karuppan Chettiar on the one hand and Muthukaruppan and his sons forming a separate Hindu undivided family on the other. For the assessment years 1950-51, 1951-52 and 1952-53 Karuppan Chettiar, pursuant to the notices under Section 22(2) issued to the Hindu undivided family, submitted returns in his individual capacity in respect of the income from several sources that fell to his share at the partition. The Income-tax Officer rejected the claim of Karuppan Chettiar that there had been a partition of the Hindu undivided family and proceeded to assess the Hindu undivided family for the three years in question treating returns filed by Karuppan Chettiar as returns filed by the family. In appeal to the Appellate Assistant Commissioner the orders passed by the Income-tax Officer were set aside. Holding that there had been a complete partition of the family estate between Karuppan Chettiar, on the one hand, and his son, Muthukaruppan, representing a smaller Hindu undivided family of himself and his minor sons, on the other, the Appellate Assistant Commissioner by order dated December 18, 1954, recorded the partition under Section 25A of the Income-tax Act and cancelled the assessments of the family for the three years in question. The Appellate Assistant Commissioner observed in his order :

"As such the present assessment requires to be annulled and the income considered in this assessment required to be considered in the hands of the separate coparceners."

2. After the order was passed, Karuppan Chettiar in his individual capacity filed returns for the assessment years 1950-51, 1951-52 and 1952-53 for the first two years on February 3, 1955, and for the third year on June 30, 1956.

3. Being of the opinion that he was entitled to give effect to the order of the Appellate Assistant Commissioner recording partition of the Hindu undivided family of Karuppan Chettiar and his

descendants and cancelling the orders of assessment of the family, the Income-tax Officer issued notices on March 2, 1957, under Section 34 of the Income-tax Act to Karuppan Chettiar for assessment of his income as a separated member for the assessment years 1950-51, 1951-52 and 1952-53. In compliance with the notices Karuppan Chettiar submitted returns of his income for the three years in question under protest. The Income-tax Officer ignored the protest and assessed the income of Karuppan Chettiar by his order dated March 31, 1957. The appeals filed by Karuppan Chettiar to the Appellate Assistant Commissioner and to the Income-tax Appellate Tribunal were unsuccessful. The Tribunal held that, since the Appellate Assistant Commissioner had made a direction under his original order to assess the divided members separately, the Income-tax Officer was invested with jurisdiction under the second proviso to Sub-section (3) of Section 34 of the Income-tax Act to make the impugned assessments without any limit as to time and that, independently of Section 34, the assessments could also be supported under Section 25A(2) and, in any event, the assessment for the year 1952-53 having been completed within four years' time-limit from the end of the order of assessment was valid.

4. The Tribunal, at the instance of the assessee, submitted the following question to the High Court of Madras under Section 66(1) of the Income-tax Act, 1922 :

"Whether the aforesaid assessments for 1950-51, 1951-52 and 1952-53 are valid ? "

5. The High Court recorded an answer in the affirmative. In the view of the High Court, the order passed by the Appellate Assistant Commissioner and the direction given by him lifted the bar of limitation prescribed by Section 34(3) for making the assessment.

6. We need not decide whether the observations made by the Appellate Assistant Commissioner in his order declining to assess the income of the Hindu undivided family operated to lift the bar of limitation qua the assessment of income of the separated members by the application of the principle of the judgments of this court in *Income-tax Officer v. Murlidhar Bhagwan Das*, [1964] 52 I.T.R. 335 and *N. KT. Sivalingam Chettiar v. Commissioner of Income-tax*, [1967] 66 I.T.R. 586 for, in our judgment, the orders passed by the income-tax authorities and confirmed by the Tribunal suffer from a fundamental infirmity. As we have already observed, Karuppan Chettiar submitted returns of his income in his individual capacity for the years 1950-51, 1951-52 and 1952-53 in response to the notice issued under Section 22(2). The Income-tax Officer purported to treat those returns made on behalf of the Hindu undivided family and to assess the Hindu undivided family in respect of that income. That order was set aside. The returns submitted by Karuppan Chettiar in his individual capacity were, therefore, never considered and no assessment was made of Karuppan Chettiar as an individual on those returns. Karuppan Chettiar submitted fresh returns in February, 1955, and June, 1956, before the notice under Section 34 was issued on March 2, 1957. The notice under Section 34 could not be issued against Karuppan Chettiar in his individual capacity unless the returns which had already been filed by him were disposed of.

7. It was held by this court in *Commissioner of Income-tax v. Ranchhoddas Karsondas*, that the return in answer to the general notice under Section 22(1) of the Income-tax Act can, under Section 22(3), be filed at any time before assessment and for this there is no limit of time. When in respect

of any year a return has been voluntarily submitted before assessment, the Income-tax Officer cannot ignore the return and the notice of reassessment and consequent assessment under Section 34 ignoring the return are invalid. Karuppan Chettiar in respect of his individual income had never been assessed to tax before he filed the returns and, unless the returns filed by him were disposed of, no notice under Section 34 was competent. On that ground the notice under Section 34 issued by the Income-tax Officer was liable to be dismissed as incompetent and no assessments could be made in pursuance thereof.

8. We are unable to agree with the High Court that the question whether a notice under Section 34 issued by the Income-tax Officer on March 2, 1957; was incompetent did not arise out of the order of the Tribunal. It is clear from the statement of the case (vide paragraph 7) that Karuppan Chettiar had submitted before the Appellate Assistant Commissioner that " Section 34(1)(a) was inapplicable since the returns made under Section 22(3) had not been disposed of ". Before the Tribunal also that contention was raised (vide paragraph 9 of the statement of case). The question was raised before the Tribunal. Even if it was not expressly dealt with by the Tribunal, it still arose out of the order of the Tribunal : Commissioner of Income-tax v. Scindia Steam Navigation Co. Ltd.,

9. The appeals are allowed. The answer recorded by the High Court is discharged and is substituted by the answer that the assessments made by the Income-tax Officer pursuant to the notice under Section 34 of the Income-tax Act, 1922, were invalid. The appellants will be entitled to their costs in this court and in the High Court. One hearing fee.