Roshan Di Hatti vs Commissionr Of Income-Tax, New Delhi. on 29 March, 1967

Equivalent citations: [1968]68ITR177(SC), AIRONLINE 1967 SC 39

JUDGMENT

SHAH J. - The assessee is a Hindu undivided family. Till June, 1947, the assessee was carrying on business in jewellery at Lahore. The assessee started a jewellery shop at Delhi in the name and style of "Roshan Di Hatti". On March 31, 1948, a credit entry of Rs. 3,33,414 was made in the books of account of the assessee as capital of the business - Rs. 2,92,340 being the value of gold ornaments, gold bullion and precious stones, and Rs. 41,074 being cash.

It appears that the assessee was never assessed to income-tax till 1956, either at Lahore or at Delhi. Pursuant to information received by him, the Income-tax Officer-cum-Wealth-tax Officer, Circle-II, New Delhi, commenced proceedings for assessment for the year 1948-49, and subsequent years and called upon the assessee to explain the nature and source of the capital introduced into the business. The assessee submitted that the assets entered as capital in the books of account were brought at the time of migration of the assessee from Lahore. The Income-tax Officer held that the assessee had only brought assets of the value of Rs. 20,000 on migration from Lahore to Delhi and on that footing treated the balance of the capital introduced into the business on March, 31, 1946, as income from undisclosed sources. In appeal to the Appellate Assistant Commissioner, the assessee, relying upon information conveyed to the Income-tax Officer on September 10, 1959, that "partition had taken place of the assessees family business on 31st, March, 1958, and since 1st day of April, 1958, the business named and styled as Messrs. Roshan-Di-Hatti is a partnership consisting of Roshan Lal, Baldev Krishan and Om Prakash", contended that there being at the date of the order of assessment no Hindu undivided family in existence, the order of assessment was unauthorised. The Appellate Assistant Commissioner rejected that contention, because in his view there was no evidence to prove disruption of the joint status of the family, and also because the partition set up was partial. The Appellate Assistant Commissioner, however, estimated the assets brought by the assessee from Lahore at Rs. 1,00,000 and modified the order of assessment and directed assessment of Rs. 2,33,414 as income from undisclosed source. The Income-tax Appellate Tribunal confirmed the order of the Appellate Assistant Commissioner without deciding whether there was disruption of the joint status of the assessee-family as claimed by the assessee. The Tribunal observed that there was no formal application for an order under section 25A during the previous year, but only a claim for partial partition was made long after the previous year and in the circumstances the question of partition under section 25A could not be agitated at all before the Tribunal. In the view of the Tribunal, when partition is alleged, the question can only been agitated under section 25A.

The Income-tax Appellate Tribunal, at the instance of the assessee, referred the following question to the High Court of Punjab under section 66(1) :

"Whether in all the facts and circumstances aforesaid, the assessment was validly

made on the assessee Hindu undivided family ?"

The assessee had also applied under section 66(2) to the High Court for an order that the Tribunal be directed to state a case on four other questions, which, it was claimed, arose out of the order of the Tribunal. At the hearing before the High Court the assessee pressed the application in respect of the following question alone :

> "Whether the facts on the record and circumstances of the case justify the conclusion that out of the capital of Rs. 3,33,414 consisting of gold ornaments, gold rawa, precious stones and cash, a sum of Rs. 2,33,414 represented the income of the assessee from some undisclosed sources and whether there was any material for coming to this conclusion ?"

The High Court answered the question referred in the affirmative and declined to call for a statement under section 66(2) on the other question.

The High Court was called upon to deal with the question whether after partition of the family an order of assessment could be may by the Income-tax Officer. The High Court was also called upon to determine whether the question set out in the application under section 66(2) of arose out of the order of the Tribunal. In dealing with the question referred, the High Court observed that the allegation of partition could not be accepted, since the Hindu undivided family had in fact filed a return of its income in its own name even for the assessment year 1959-60, and that in the absence of an order under section 25A (1) of the Act, assessment on the Hindu undivided family was proper. In so holding, the High Court relied upon the judgment in Kalwa Devadattam v. Union of India. The High Court also rejected the notice of motion for an order calling for a statement of the case on the question set out earlier.

In our judgment, the question raised by the assessee was clearly a question of law which the Tribunal was bound to submit to the High Court, and when the Tribunal declined to do so, a statement of the case should have been ordered by the High Court. It was the contention of the assessee that there was no material on which the conclusion of the Tribunal could be founded. Whether the conclusion of the Tribunal on a question of the fact is based on any material is, in our judgment, a question of law. The High Court, it appears, in dealing with the application for calling for a statement of the case attempted to collate the facts from the findings of the Income-tax Officer, the Appellate Assistant Commissioner and the Tribunal and ultimately came to the conclusion that the application was not maintainable. In our view, the High Court was in error in so proceeding. Counsel for the Commissioner has fairly conceded that a question of law arose out of the order of the Tribunal. The question submitted to the High Court for reference was, however, not in proper form. In our view the following question does arise out of the order of the Tribunal :

> "Whether there was material for coming to the conclusion that Rs. 2,33,414 out of the capital of Rs. 3,33,414 credited in the books of account of the assessee on March 31, 1948, represented income from undisclosed sources ?"

Turning next to the question referred by the Tribunal, it may be recalled that the Appellate Assistant Commissioner held on a review of the evidence that the Hindu undivided family was in existence at the date when he passed the order. He disbelieved the case of the assessee that there was disruption of the joint family status as claimed by the assessee. The Tribunal recorded no conclusion on that part of the case and disposed of the contention raised by the assessee observing that unless an application under section 25A of the Income-tax Act was made and granted, the question whether there was disruption of the family cannot it view of section 25A (3) be agitated.

Counsel for the assessee contended that the provisions of sub-section (3) of the section 25A apply only to those cases where a Hindu family had been "hitherto assessed as undivided; if it had been so assessed, it would continue to be assessed in the status of a Hindu undivided family, unless an order under sub-section (1) of section 25A was recorded. Counsel says that the assessee-family had never been assessed previously, and on that account sub-section (3) has no application, and that since the legislature has prescribed no procedure for assessing a Hindu undivided family not previously assessed, of which the joint status is dissolved before an order of assessment is made by the Income-tax Officer, no assessment can be made of the income of such a dissolved family.

As we have already observed, the Tribunal recorded no finding on the question whether there had in fact been partition of the joint family and on that account the joint family had ceased to exist. The learned judges of the High Court were apparently of the view that the word "assessed" in section 25A (1) and (3) means "actually assessed"; it does not include a case in which the return has been filed and a proceeding for assessment is pending, and therefore, the contention raised on behalf of the assessment was substantial. But the High Court held, after referring to the judgment in Kalwa Devadattams case that assessment by an Income-tax Officer of a Hindu undivided family may be made in that status, notwithstanding disruption of the joint status before the order of assessment, if no order under section 25A (1) is passed. In our view, the decision of this court in Kalwa Devadattams case has no application here. The court in that case was not called upon to interpret the expression "hitherto assessed as undivided" in sub-sections (1) and (3) of section 25A, and did not lay down that a family not previously assessed to tax may be assessed after partition in the status of a Hindu undivided family, until an order section 25A (1) is passed by the Income-tax Officer.

We are of the opinion that the statement of the case by the Tribunal is incomplete in that the Tribunals has not set out its conclusion on a material issue of fact. We are also of the opinion that the question referred by the Tribunal should be reframed as follows :

> "Whether in the circumstances of the case, the assessment was validly made on the assessee in the status of a Hindu undivided family ?"

The judgment of the High Court is set aside and the case is remanded to the High Court. The High Court will call for a supplementary statement of the case under section 66(4) of the Income-tax Act, 1922, on the question referred to by the Tribunal which has been reframed by us. The High Court will also call upon the Tribunal to submit a statement of the case under section 66(2) of the Act on the question which we have set out, as arising out of the order of the Tribunal. The High Court will proceed to hear and dispose of the reference after the supplementary statement of the case on the

question referred and the statement of the case under section 66(2) of the Act on the other question are received. Costs in this appeal will be the costs in the reference before the High Court.

Appeals allowed. Case remanded.