Supreme Court of India
Brij Mohan vs Commissioner Of Income-Tax, New ... on 19 February, 1993
Equivalent citations: AIR 1993 SC 2602, 1993 201 ITR 831 SC, 1993 Supp (3) SCC 518 A
Author: B P Reddy
Bench: B J Reddy, N Venkatachala
ORDER B. P. Jeevan Reddy, J.

1.This appeal is preferred by the assessee against the judgment of the Delhi High Court in an Income-tax Reference made at his instance. The question referred to the High Court reads:

Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the salary received by Shri Brij Mohan was to the extent of Rs. 12,000/- assessable in the hands of the assessee family?

2. The question was answered in the affirmative, i.e., in favour of the Revenue and against the assessee by the High Court.

3. Two brothers, Parmanand and Sadanand, constituted a partnership some time prior to 1947. Sadanand died on 28-6-1947. On his death his widow Smt. Raj Kumari was inducted as a partner in place of her husband. This new partnership was evidenced by a deed of partnership dt. 6-11-1947. Sadanand had left behind two sons:Brij Mohan and Man Mohan, who were minors on the date of his death. On 28-6-1948, the firm was re-constituted by admitting a working partner, Ram Lubhaya. He was given -/2/- share and the remaining -/14/- share was equally divided between Parmanand and the widow of Sadanand. The share of Sadanand was in turn sub-divided among his wife and two minor sons, each enjoying a share of -/2/4. Parmanand was provided a working allowance of Rs. 700/- per month and Brij Mohan, who was 16 years of age at that time was provided an allowance of Rs. 250/- per month. In the year 1952, a fresh deed of partnership was executed admitting Brij Mohan as a full-fledged partner. The profit share ratio, however, remained the same. So far as the allowances paid were concerned, while the allowance paid to Parmanand remained at Rupees 700/- per month, the allowance paid to Brij Mohan was raised from Rs. 250/-per month to Rs. 300/- per month with effect from November, 1952.

4. On 1-11-1955, there was yet another change in the partnership, occasioned by Man Mohan attaining majority. On this occasion, Parmanand (who had no sons) retired from partnership. The fourteen annas share was exclusively divided between the widow and the two sons of Sadanand, in the ratio of -/4/- (wife), -/6/- (Brij Mohan) and -/4/ - (Man Mohan). Brij Mohan's allowance was raised to Rs. 400/- per month and Man Mohan was given an allowance of Rs. 250/ - per month.

5. On 7-9-1957, Ram Lubhaya, the working partner went out of the partnership firm. The partnership now consisted of widow and the two sons of Sadanand, their shares being 25%, 44% and 31% respectively. The allowance payable to Brij Mohan and Man Mohan remained at Rs. 400/- and Rs. 250/- per month respectively.

6. On 1-4-1965, the allowances payable to Brij Mohan and Man Mohan were raised from Rs. 400/.- and Rupees 250/- per month to Rs. 1400/- and Rs. 1200/- per month respectively.

7. Till the assessment year 1966-67, Brij Mohan was filing his return of income as an individual disclosing therein both the share income from the partnership and the allowance received by him from the partnership. A son was born to him on 14-11-1966. Evidently, he thought that the birth of son gives rise to a Hindu Undivided Family. Be that as it may, for the assessment years 1967-68 and 1968-69, he filed returns in the status of Hindu Undivided Family (HUF in short) disclosing therein both the partnership share income and the allowance received by him. However, in the return filed for the assessment year 1969-70, he took a different stand which has given rise to the present controversy. In this return he claimed that the allowance of Rs. 1400/- per month paid to him by the partnership represents his individual income and should be assessed as such .and should not be clubbed with the partner ship share income belonging to the HUF. The Income-tax Officer rejected the same. Both the Appellate Assistant Commissioner and the Tribunal affirmed the same.

8. The basic facts found by the Tribunal are the following: (1) The income returned by the partnership firm for the assessment year 1964-65 was Rs. 51,488/- and the income assessed Rs. 68,622/-. The income returned each year thereafter has been going up with the result that by the year 1969-70, the income returned was 1,29,921/- and the income assessed Rs. 1,61,100/-. (2) There is nothing to show that the quality and quantity of the services rendered by Brij Mohan to the firm substantially increased subsequent to 1965; the progress of the firm's business remained steady. On the above basis, the Tribunal concluded that there is no material to hold that any increase in the salary of Brij Mohan was necessary or justified. Accordingly, the Tribunal apportioned the allowance of Rupees 1400/- per month into two components; Rs. 400/- per month was treated as allowance to be treated as individual income of Brij Mohan and the balance of Rs. 1,000/-was added to the income of HUF. It was this finding of the Tribunal that the assessee questioned by way of reference. The question referred, it may be mentioned, calls in question the correctness of the conclusion arrived at by the Tribunal. The High Court answered the reference against the assessee mainly on the basis that on the facts found by the Tribunal, there was no justification for increase in allowance/salary of Brij Mohan. The sudden jump, it observed, was not warranted by the requirements of business. The correctness of the view taken by the High Court is questioned in this appeal.

9. Two broad facts need be noticed in this case. The assessed income of the partnership has gone up from Rupees 68,622/- in the assessment year 1964-65 to Rs. 1,61,100/- in the year 1969-70. May be this is on account of inflation, but there is certainly an increase in the turnover and in the income of the partnership firm. The second and more relevant circumstance is that even when there was a working partner, the allowance of Rs. 400/-per month to Brij Mohan was thought to be justified and was treated as his allowance/ salary. Ram Lubhaya, the working partner left on 7-9-1957. Thereafter, the entire partnership business was being managed by. Brij Mohan and by his younger brother. The question that arises is whether in the said circumstances if the partners take a business decision that the allowance payable to them should be raised from Rs. 400/- to Rs. 1400/-per month in the case of Brij Mohan, was it not a benefit business decision and whether the increase in the allowance was really a front for diverting the income from the HUF represented by Brij Mohan?

We do not think that the Tribunal was justified in holding that the salary/allowance of Brij Mohan should be frozen at Rs. 400/ -per month throughout and that the balance amount of allowance should be added to the income of the HUF. Since the turnover and income of the firm has increased, a corresponding increase in the allowance may be a little more or less, cannot be described as an unreasonable decision or a decision actuated by motives other than business interest. It was not a decision taken to the detriment of the investment or interest of the HUF represented by Brij Mohan. We are of the opinion that the view taken by the High Court appears to be rather too narrow

10. We may say that principles in this behalf are well-settled by the decision of this Court in Raj Kumar Singh Hukum Chandji v. Commr. of Income-tax, M.P. . Such a question is always a mixed question of law and fact. The test 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 H.U.F. but if it is the latter, then it is the income of the individual coparcener". Applying the said test, it must be held that the sum of Rs. 1400 / - p.m. allowance to, Brij Mohan was for the services rendered by him and that no part of it can reasonably said to be related to the investment of the family.

11. In the above circumstances, the appeal is allowed and the question referred shall be answered in the negative, i.e., infamous of the assessee and against the Revenue. No costs.