A THE ADDITIONAL COMMISSIONER OF INCOME TAX, LUCKNOW

v.

MAHARANI RAJ LAXMI DEVI

B FEBRUARY 11, 1997

[S.C. AGRAWAL AND K.S. PARIPOORNAN, JJ.]

Income Tax Act, 1961 : Section 171(1).

C *Income Tax—HUF—AYs. 1966-67 to 1970-71—Partition of HUF—Diminution of HUF assets—After death of the karta, HUF comprises of his widow and minor son—The said minor son inherited 1/6th of the share of the deceased in HUF property under S.6 of Hindu Succession Act—Held : Partition of HUF for the purpose of assessment governed by S.171 (1) of the Income Tax Act and not by Hindu Succession Act—In absence of* D *compliance with S.171(1) of the Income Tax Act, the 1/6th income of minor son could not be excluded in computing HUF's income—S.6 of Hindu Succession Act would govern rights of parties only and not the assessment—Hindu Law—Hindu Succession Act, 1956, S.6.*

E **The assessee was being assessed as an individual up to and including the Assessment Year 1964-65. The assessee adopted a minor as his son. After the said adoption the status of the assessee was taken as that of the Hindu Undivided Family (HUF). After the death of the assessee, the HUF comprised of his widow as the karta and the minor son. The said minor son inherited 1/6th of the share of the deceased in the HUF property under** F **Section 6 of the Hindu Succession Act, 1956. For the assessment years 1966-67 to 1970-71 the respondent-assessee filed returns after excluding the 1/6th share belonging to the minor son.**

The Income Tax Officer (ITO) held that the Income Tax Act was a separate, distinct and complete statute in itself and under the Act a change G **in HUF status could be effected only by claiming partition either partial or complete and that such partition could become operative if a claim of partition had been preferred and after examining the evidence produced, an order under Section 171 accepting the claim of partition had been accepted by the ITO, and that in the case of the assessee both the elements** H **were missing. The ITO, therefore, held that the assessee HUF continued**

to be as it was before. However, the Income Tax Appellate Tribunal reversed the said view and held that the case of the assessee was not of a partition as contemplated in Section 171 and, therefore, no claim was necessary and absence of an order under Section171 did not mean that the whole estate should be deemed to belong to the assessee HUF. The Tribunal further held that assuming that the assessee's case came under Section 171 the estate of the assessee HUF having been diminished in terms of Section 6 of the Hindu Succession Act, 1956 but with regard to which an order accepting the claim for partial partition had not been made, the income from such property could not be included in the computation of the income of the HUF. The High Court answered the reference in favour of the assessee and against the Revenue. Hence this appeal.

Allowing this appeal, this Court

HELD : 1. It is no doubt true that in *Kallomal Tapeswari Prasad and Smt. N.K. Sarada Thampatty* this Court was dealing with cases of partial partition by way of voluntary act of the parties which was directly covered by Section 171 of the Income Tax Act, 1961. But *R.B. Tunki Sah Baidyanath Pd.* was a case where a claim was made on the basis of statute, viz., the provisions of Section 14(1) of the Hindu Succession Act, 1956, and it was held that Section 171 of the Income Tax Act would govern the matter insofar as income tax law is concerned. For the same reason, though for the purpose of Hindu Undivided Family, Section 6 of the Hindu Succession Act would govern the rights of parties but insofar as income tax law is concerned the matter has to be governed by Section 171(1) of the Income Tax Act. Hence, the 1/6th income pertaining to the minor son could not be excluded in computing the Hindu Undivided Family's income. [1180-C-D]

Kalloomal Tapeswari Prasad (HUF) v. *CIT,* 1973 Tax law Reports 697; *ITO* v. *Smt. N.K. Sarada Thampatty,* (1991) 187 ITR 696 and *R.B. Tunki Sah Baidyanath Pd.* v. *CIT,* (1995) 212 ITR, relied on.

A. Kannan Chetty v. *CIT,* (1963) 50 ITR 601 (Mad.), held overruled by *Kallomal Tapeswari Prasad (HUF)* v. *CIT,* 1973 Tax Law Reports 697 and Smt. N.K. Sarada Thampatty (1991) 187 ITR 696.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1415-19 (NT)_ of 1979.

A From the Judgment and Order dated 22.4.78 of the Allahabad High Court in I.T.R. No. 372 of 1975.

P.A. Choudhary, B.S. Ahuja and B.K. Prasad for the Appellant.

Janendra Lal for the Respondent.

B

The Judgment of the Court was delivered by

These appeals, by special leave, arise out of a reference made by the Income Tax Appellate Tribunal, Allahabad Bench, (hereinafter referred to as 'the Tribunal') under Section 256(1) of the Income Tax Act, 1961 C (hereinafter referred to as 'the Act') whereby the following questions was referred for the opinion of the Allahabad High Court :-

> "Whether on the facts and in the circumstances of the case 1/6th income from the computation of income of the assessee - Hindu Undivided Family - could be excluded pertaining to the minor son D. as Maharaja?"

By the impugned judgment the High Court has answered the said question against the Revenue and in favour of the assessee. The High Court has placed reliance on its earlier decision in *M/s Kalloomal Tapeswari Prasad* v. *The Commissioner of Income tax,* 1973 Tax Law Reports 697. E Briefly stated the facts are as follows.

Maharaja P.P. Singh of Balrampur was being assessed as an individual up to and including the assessment year 1964-65. He had no issue of his own. On December 28, 1963, he adopted Maharaja Dharmendra F Pratap Singh, who was a minor, as his son. After the said adoption the status of Maharaja P.P. Singh was taken as that of the Hindu Undivided Family (for short 'HUF'). Maharaja P.P. Singh died on June 20, 1964. Thereafter his wife, Maharani Raj Laxmi Devi, became the karta of the HUF consisting of herself and the aforesaid minor son, Maharaja Dharmendra Pratap Singh. For the assessment year 1966-67 the assessee filed a G return declaring the total income of the HUF as Rs. 28935. Subsequently she filed another return showing the total income as Rs. 25,288. The difference between the original and revised returns was explained on the basis that the revised return had been filed by the HUF after excluding 1/6th share belonging to the minor son, Maharaja Dharmendra Pratap H Singh, as an individual because according to Section 6 of the Hindu

Succession Act, 1956, 1/3rd share of Late Maharaja P.P. Singh in the HUF property developed on his two heirs Maharaja Dharmendra Pratap Singh (minor son) and Maharani Raj Laxmi Devi (wife). The Income Tax Officer held that the Act is a separate, distinct and complete statute in itself and under the Act a change in the HUF status can be effected only by claiming partition either partial or complete and that such partition could become operative if a claim of partition has been preferred and after examining the evidence produced, an order under Section 171 accepting the claim of partition has been accepted by the Income Tax Officer, and that in the case of the assessee both the elements were missing. He, therefore, held that the assessee HUF continued to be as it was before. The said view was followed by the Income Tax Officer in the assessments for the subsequent assessment years 1967-68 to 1970-71. The said view of the Income Tax Officer was upheld in appeal by the Appellate Assistant Commissioner. On further appeal the Tribunal reversed the said view and held that the case of the assessee was not of a partition contemplated in Section 171 and, therefore, no claim was necessary and absence of an order under Section 171 does not mean that the whole estate should be deemed to belong to the assessee HUF. The Tribunal following the decision of the Allahabad High Court in the case of *M/s kalloomal Tapeswari Prasad* (supra), further held that assuming the assessee's case came under Section 171 the estate of the assessee HUF having been diminished in terms of Section 6 of the Hindu Succession Act, 1956 but with regard to which an order accepting the claim for partial partition has not been made, the income from such property could not be included in the computation of the income of the HUF. The Tribunal referred the question abovementioned to the High Court for its opinion and the said question was answered by the High Court in favour of the assessee and against the Revenue. The High Court has followed its decision in the case of *M/s Kalloomal Tapeswari Prasad* (supra). Hence this appeal.

Shri P.A. Choudhary, the learned senior counsel appearing for the Revenue, has argued that the High Court was in error in upholding the view of the tribunal that Section 171 of the Act was not applicable in the present case. Shri Choudhary has pointed out that the decision of the High Court in M/s kalloomal Tapeswari Prasad (supra) on which reliance has been placed by the High Court in the impugned judgment has been reversed by this Court in *Kalloomal Tapeswari Prasad (HUF)* v. *Commissioner of Income Tax, Kanpur,* (1982) 133 ITR 690, and the said decision

A has been followed in the later decisions in *The Income Tax Officer, Calicut* v. *Smt. N.K. Sarada Thampatty,* (1991) 187 ITR 696, and *R.B. Tunki Sah Baidyanath Pd.* v. *Commissioner of Income Tax, Bihar-I, Patna,* (1995) 212 ITR 632.

B Shri Janender Lal, the learned counsel for the assessee, has sought to distinguish the aforementioned decisions of this Court on the ground that in those cases partial partition was claimed to have been effected and they fell within the ambit of Section 171 of the Act. The submission is that in the present case there was inheritance of the share of late Maharaja P.P. Singh by his widow and minor son under Section 6 of the Hindu Succession C Act, 1956 and that in such a case where on account of inheritance by virtue of statute there is a diminution of the assets of the HUF Section 171 of the Act has no application.

In *Kalloomal Tapeswari Prasad (HUF)* v. *CIT,* (supra) there was a D partial partition in respect of 18 immovable properties which were divided amongst 10 members of the family. There was no actual division of the properties because it was felt that physical division of each of the 18 properties into 10 portions was not possible. The Income Tax Officer did not, however, accept that division of properties was not possible and, while considering the claim of the assessee under Section 171 of the Act, he did E not accept the case of the assessee that there was a partial partition for the purpose of Section 171 of the Act. The said view was affirmed by the Appellate Assistant Commissioner and the Tribunal. The Tribunal referred two questions for the opinion of the Allahabad High Court. The first question was whether the Tribunal was right in holding that the properties F in dispute were capable of division in definite portion amongst 10 coparceners as contemplated in Explanation (a)(i) to Section 171 of the Act. The second question was whether the Tribunal was justified in holding that the income from the properties in dispute which were accepted to have been partitioned under the Hindu Law but with regard to which an order accepting the claim of partial partition was not made was liable to be G included in the computation in the income of the assessee, a HUF. The High Court answered the first question in the affirmative and upheld the view of the Tribunal that it was possible to divide the properties in question physically into different lots so that each member could take his rightful share in them. The High Court, however, answered the second question in H favour of the assessee and held that the income accruing from 18 immov-

able properties after the partial partition was not liable to be included in the computation of the income of the HUF. This Court, while agreeing with the answer given by the High Court on the first question, did not agree with the view of the Allahabad High Court on the second question. On interpretation of the provisions of Section 171 of the Act this Court has held :-

> "Where there is no claim made that a partition - total or partial - had taken place or where it is made and disallowed a Hindu Undivided Family which is hitherto being assessed as such will have to be assessed as such notwithstanding the fact that a partition had in fact taken had place as per Hindu Law. A finding to the effect that partition had taken place has to be recorded under Section 171 by the Income Tax Officer.
>
> [p. 704]
>
> "We have already held that Section 171 of the Act applied to all partitions - total or partial - and that unless a finding is recorded under Section 171 that a partial partition has taken place the income from the properties should be included in the total income of the family by virtue of sub-section (1) of Section 171 of the Act."
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> [p. 901]

This Court has taken note of the decision of the Madras High Court in *A. Kannan Chetty* v. *Commissioner of Income Tax,* (1963) 50 ITR 601, wherein it was observed :

> "For instance, if the Karta of the family effects an alienation or even makes a gift, insofar as the taxing department is concerned, it is the income of the members of the Hindu Undivided Family that can be assessed and, if by reason of any alienation, whether it is binding on the members of the joint family or not, an item of property ceases to be in the hands of the joint family, it would not be open to the department to say that they would ignore such an alienation, notwithstanding that the possession of the properties and its income may pass to the hands of the stranger."

This Court did not agree with these observations and said :

A "As long as a finding is not recorded under Section 171 holding that a partial partition had taken place, the Hindu Undivided Family should be deemed for the purposes of the Act to be the owner of the property which is the subject matter of partition and also the recipient of the income from such property. The assessment should be made as such and the tax assessed can be recovered as provided in the Act."

B

The same view was reiterated in *ITO* v. *Smt. N.K. Sarada Thampatty,* (supra). It was a case where a preliminary decree for partition had been made out but the final decree had not been passed and no division of the C properties by metes and bounds had taken place.

In *R.B. Tunki Sah Baidyanath Pd.* v. *CIT, Bihar-I, Patna,* (supra) the Hindu Undivided Family consisted of Rai Bahadur Tunki Sah, the Karta, his wife Budhi Devi, son Baidyanath Prasad and daughter-in-law Godawari D Devi. Rai Bahadur Tunki Sah died in 1955 and on his death Baidyanath Prasad became the Karta of the Hindu Undivided Family. Budhi Devi, widow of Rai Bahadur Tunki Sah, was entitled to a limited interest in the property under the provisions of the Hindu Women's Right to Property Act, 1937. After the coming into force of the Hindu Succession Act, 1956, her limited interest turned into an absolute one and she acquired absolute E ownership rights under Section 14(1) of the said Act. Budhi Devi died in 1960 or thereabout and her share was inherited by her only son Baidyanath Prasad. Baidyanath Prasad and his wife Godawari Devi adopted Nand Kumar as their son sometime in 1961. On may 3, 1969, Baidyanath Prasad executed a registered gift deed in respect of his share in the property which F he had inherited from his mother to his adopted son Nand Kumar which gift was accepted by the Gift Tax Officer. During the assessment year 1970-71 and 1971-72 the Income Tax Officer, while assessing the Hindu Undivided Family and Nand Kumar, accepted the contention of the assessee that only 50 per cent of the income from the property and business was assessable in the hands of the Hindu Undivided Family and the balance in G the hands of the adopted son Nand Kumar. In the subsequent years 1972-73 to 1975- 76 the Income Tax Officer rejected the assessee's contention that the income was liable to be divided 50 : 50 between the Hindu Undivided Family and adopted son Nand Kumar and assessed the entire income as income of the Hindu Undivided Family. The said view of the H Income Tax Officer was upheld by the Appellate Assistant Commissioner

but the Tribunal held that only 50 per cent of the income should be assessed as income of the Hindu Undivided Family leaving the balance 50 per cent to be assessed as income of the adopted son Nand Kumar. The High Court, on reference, reversed the view taken by the Tribunal and upheld the view taken by the Appellate Assistant Commissioner. Before this Court the question for consideration was whether compliance with the provisions of Section 171 of the Act was necessary. This Court has laid down :

> "Sub-Section (1) of Section 171 in terms provides that a Hindu family hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be a Hindu Undivided Family, except where and insofar as a finding of a partition has been given under this section in respect of the Hindu Undivided Family. On a plain reading of this sub-section it becomes clear that a Hindu family which is assessed as undivided has for the purposes of the Act to be deemed to continue as such unless there is a evidence of partition and finding is recorded to that effect under the Act in respect of such family. The section creates a deeming fiction of continuing the HUF except where a finding of partition has been given in respect of the HUF concerned. Before this finding is recorded an inquiry has to be undertaken on the question whether there has been a total or partial partition of the joint family property and if there has been any such partition, the date on which it took place."

[p. 635]

> "In the instant case, admittedly, no inquiry was undertaken on the question whether there had been a total or partial partition of the joint family property and if yes the date on which it had taken place. That being so, in view of the language of Section 171(1), the HUF would be liable to be taxed as undivided notwithstanding the effect of Section 14(1) of the Hindu Succession Act."

Reliance has been placed by the Court on the decisions in *Kalloomal Tapeswari Prasad (HUF)* v. *CIT,* (supra) and *ITO* v. *Smt. N.K. Sarada Thampatty,* (supra). On behalf of the assessee it was urged that in view of the language of Section 14(1) of the Hindu Succession Act, 1956 the widow acquired an absolute right by statute and, therefore, if the view urged by

A the Revenue was accepted as correct, it would be setting the clock back to the position as existed prior to Hindu Succession Act, 1956, which could not be the intention of the Legislature. The said contention was rejected by the Court by referring to the decision of the Madras High Court in *A. Kannan Chetty* v. *CIT,* (supra) holding that an alienation by the karta of the family in favour of a stranger could not be ignored by the department and the observations of this Court in *Kalloomal Tapeswari Prasad (HUF)* v. *CIT,* (supra) disagreeing with the said view of the Madras High Court were reaffirmed.

B

It is no doubt true that in *Kalloomal Tapeswari* v. *CIT,* (supra) and *ITO* v. *Smt. N.K. Sarada Thampatty,* (supra) this Court was dealing with cases of partial partition by way of voluntary act of the parties which is directly covered by Section 171 of the Act. But *R.B. Tunki Sah Baidyanath Pd.* v. *CIT,* (supra) was a case where a claim was made on the basis of statute, viz., the provisions of Section 14(1) of the Hindu Succession Act, 1956, and it was held that Section 171 of the Act would govern the matter insofar as income tax law is concerned. For the same reason, it must be held that though for the purpose of Hindu Undivided Family, Section 6 of the Hindu Succession Act, 1956 would govern the rights of the parties but insofar as income tax law is concerned the matter has to be governed by Section 171(1) of the Act.

C

D

E

For the reasons aforementioned, the question referred to the High Court must, therefore, be answered in favour of the Revenue and against the assessee and it is so answered. The appeals are allowed accordingly. No order as to costs.

V.S.S. Appeals allowed.