



IN THE HIGH COURT OF DELHI

ITR No.371/79

Date of Decision:31.7.2001

The Commissioner of Income- Tax, Delhi-III
New Delhi

..... Petitioner

Through: Mr. Sanjeev Khanna with
Mr. Ajay Jha, Advocates.

VERSUS

H.S. Singhal and Sons
New Delhi

..... Respondent

Through: None.

CORAM:

THE HON'BLE MR. JUSTICE ARIJIT PASAYAT, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE D.K. JAIN

1. Whether reporters of local papers may be allowed to see the judgment? *yes*
2. To be referred to the Reporter or not? *yes.*

Arijit Pasayat, C.J.(Oral)

At the instance of Revenue, following question has been referred for opinion of this Court by the Income-tax Appellate Tribunal, Delhi Bench 'B'(for short the Tribunal) under Section 256(1) of the Income-tax Act, 1961(in short the Act):

"Whether on the facts and in the circumstances of the case, the Tribunal is legally correct in holding that no income from the portion of the house property used by the firm is assessable in the hands of the partner to whom the property belonged?"

Dispute relates to assessment year 1974-75.

2. Factual position which is almost undisputed is as follows:



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Assessee is a Hindu Undivided Family (in short 'the HUF') which owned a house property which was partly used by a firm in which the assessee family itself was a partner. It was claimed by the assessee that income from the property should not be assessed in its hands as it was used by the firm, and the business was carried on by the firm which also included the assessee itself. This plea was not accepted by the Assessing Officer as well as by the first appellate authority. On further appeal, Tribunal came to hold that the Department was not justified in assessing the notional income of the part of the property used by the firm for its business in which the assessee family was a partner. On being moved for reference, question as set out above, has been referred for opinion.

3. We have heard learned counsel for the Revenue. There is no appearance on behalf of assessee in spite of notice. Learned counsel for the Revenue submitted that in law, an HUF cannot be a partner and even if the family's nominee was a partner it cannot be held that the business carried on by the firm was in reality a business carried on by the partner. Reliance is placed on a decision of the Apex Court in Rashik Lal and Co. v. CIT, (1998) 229 ITR 458 to contend that an HUF cannot be a partner in a firm. Reference is also made to decisions in C.I.T. v. Shiv Mohan Lal, (1993) 202 ITR 60 (All.), Bhai Sunder Dass & Sons v. CIT, (1972)



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85 ITR 28, C.I.T. v. K.N.Guruswamy, (1984) 146 ITR 34(Kar.).

4. Pivotal provision is Section 22 of the Act, which at the relevant point of time read as follows:

"22. Income from house property:

The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property".

It is to be noted that several High Courts have taken a view different from the one expressed by Karnataka and Allahabad High Courts in the two cases noted above. They are C.I.T. v. Rasiklal Balabhai, (1979) 119 ITR 303(Guj.), C.I.T. v. K.M.Jagannathan, (1989) 180 ITR 191(Mad.) and C.I.T. v. Shri Champalal Jeevraj, (1995) 215 ITR, 289(Mad.). In Rashik Lal's case (supra), the Apex Court was dealing with Section 40(b) of the Act. An HUF being a fluctuating body of individuals cannot enter into a partnership with other individual partners. It cannot do indirectly what it cannot do directly. If the Karta or any other member of the HUF joins a partnership, he can do so only as an individual. His rights and obligations vis-a-vis other partners are determined by the Partnership Act in force and not by Hindu law. Whatever may be the relationship between an HUF and its nominee partners in a partnership, neither

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the HUF nor any member of such family can claim to be a partner or be connected with the partnership through a nominee. There can be no quarrel with this proposition, as projected by learned counsel for Revenue. But to hold that a partnership has any existence independent of its partners would be against the settled position in law. In Dulichand Laxminarayan v. CIT, (1956) 29 ITR 535 it was observed by the Apex Court that the general concept of a partnership finally established in law is that a firm is not an entity or person in law but is merely an association of individuals and a firm's name is only a collective name of those individuals who constitute the firm. In other words, a firm's name is merely an expression, only a compendious mode of designating the persons who had agreed to carry on the business in partnership. This position has been reiterated in C.I.T. V. R.M.Chidambaram Pillai, (1977) 106 ITR 292 and Narayanappa v. Bhaskara Krishnappa, AIR 1966 SC 1300. In Commr. of Income-tax v. Bagyalakshmi & Co., (1965) 55 ITR 660 it was held that a contract of partnership has no concern with the obligation of the partners to others in respect of their shares of profit in the partnership. It only regulates the rights and obligations of the partner. A partner may be the Karta of a joint HUF, he may be a trustee, he may enter into a sub-partnership with others, he may under an agreement, express or implied, be the representative of a group of persons, he may be a benamidar for another. In all such



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cases he occupies a dual position. Qua the partnership, he functions in his personal capacity, qua the third parties, in his representative capacity. An HUF is not a juristic person for all purposes and cannot enter into an agreement of partnership with either another HUF or individual. It is open to the Manager or Karta of a joint HUF as representing the family to agree to become a partner with another person. The partnership agreement in that case is between the Manager or the Karta and the other person and by the partnership agreement no member of the family except the said person acquires a right or interest in the partnership. Requirements of Section 22 of the Act are that (i) a person who is the owner of the property is carrying on business or profession and for the purpose of such business or profession carried on by him the property is used; (ii) the income of such business or profession is chargeable to tax. Section 22 is in essence an exception to the charging or taxing provision and provides for exemption in a case where the property is used for the purpose of business or profession and the owner of the property and the owner of the business or profession are the same persons. That being the situation, the Tribunal was justified in its conclusions. We are in agreement with the view expressed by the Gujarat and Madras High Courts and are unable to agree with the view expressed by the Karnataka and Allahabad High Courts. The answer to the question




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referred is in the affirmative, in favour of assessee
and against the Revenue.


CHIEF JUSTICE


D.K.JAIN, J

31st July, 2001
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