Commissioner of Income Tax Vs Ratanlal

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: July 3, 1981

Acts Referred: Hindu Succession Act, 1956 â€" Section 8

Citation: (1982) 138 ITR 680

Hon'ble Judges: K.N. Shukla, J; K.K. Dube, J

Bench: Division Bench

Advocate: Bagadia, for the Appellant; Ko-chatta, for the Respondent

Judgement

Shukla, J.
This is a reference u/s 256(1) of the I.T. Act, 1961, by the Income Tax Appellate Tribunal, Indore Bench, stating the case and

referring the following question for decision ;

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the sum of Rs. 34,355 being the credit

balance of the assessee''s deceased father did not constitute the assessee''s separate and individual property and consequently in directing the ITO

to accept the partition ?

2. Facts as stated by the Tribunal are as under Assessee, Ratanlal, and his father, Nathulal, constituted an HUF. On November 12, 1966, there

was a partition of the joint family by which Nathulal and assessee, Ratanlal, separated and they constituted a partnership firm. The capital received

on partition was invested by both of them in a firm in the name of M/s. Onkarji Nathuji. On November 15, 1972, Nathulal expired. The capital

standing to his credit on the date of his death amounting to Rs. 34,355 was transferred to the account of the assessee, Ratanlal. The closing

balance on November 15, 1972, as per the capital account of Shri Ratanlal stood at Rs. 41,129 which sum included the capital standing to the

credit of late Nathulal. This amount of Rs. 41,129 was divided among Shri Ratanlal, his wife and his sons and the assessee sought partial partition

in respect of this capital u/s 171 of the I.T. Act.

3. The ITO rejected the claim on the ground that Nathulal''s separate property devolved on his son, Ratanlal, under the provisions of Section 8 of

the Hindu Succession Act, 1956, in his individual capacity and not as a karta of his joint family. He, therefore, held that the sum of Rs. 34,355 did

not constitute an asset of the HUF of Ratanlal and his sons and, therefore, a division of this amount among Ratanlal, his wife and his sons was not

permissible.

4. Learned AAC dismissed the appeal against the order passed by the ITO u/s 171 of the I.T. Act, rejecting the assessee"s claim for partial

partition.

5. In second appeal, the Income Tax Appellate Tribunal, Indore, reversed the orders of the ITO and the AAC and held that property inherited by

a male Hindu from his paternal ancestor is ancestral in his hands. Accordingly, the Tribunal directed the ITO to recognise the partition as claimed.

6. The question whether a devolution of the property of a Hindu dying intestate will be governed by the Hindu law as it stood before the coming

into force of the Hindu Succession Act, 1956, or there is a change in the law as a result of Section 8 of the Succession Act has been elaborately

considered by us in M.C.C. No. 131 of 1979, Shrivallabhdas Modani v. CIT, decided today: (see p.673 supra). We have held in that case that

the property of a Hindu dying intestate after the coming into force of the Hindu Succession Act will devolve on his heirs in accordance with Section

8 of the Act and the successors will inherit the property in their individual capacity and not as representing their own HUF. Following that decision

we answer the question in the negative and in favour of the department. Our answer is that on the facts and in the circumstances of the case, the

Appellate Tribunal was not right in holding that the sum of Rs. 34,355, being the credit balance of the assessee"s deceased father, did not

constitute the assessee"s separate and individual property and consequently in directing the ITO to accept the partition. There will be no order as

to costs.