
(1985) 46 CTR 302 : (1985) 156 ITR 658 : (1985) 23 TAXMAN 288

Patna High Court

Case No: Tax Case No"s. 108 to 115 of 1976

Commissioner of
Income Tax

APPELLANT

Vs

Chandradip Narain
Bararia, Dwarika Nath
Bararia, Tarak Nath
Bararia and Ram Dulari
Devi and Others

RESPONDENT

Date of Decision: March 14, 1984

Citation: (1985) 46 CTR 302 : (1985) 156 ITR 658 : (1985) 23 TAXMAN 288

Hon'ble Judges: S.S. Sandhawalia, C.J; H.L. Agrawal, J

Bench: Division Bench

Advocate: B.P. Rajgarhia, S.K. Sharan and Samarendra Pratap Singh, for the Appellant; K.N. Jain, G.C. Bharuka and Navaniti Prasad Singh, for the Respondent

Judgement

Hari Lal Agrawal, J.

The hearing of these cases was awaiting the disposal of Tax Case No. 3 of 1975 ([Commissioner of Income Tax Vs. Atma Ram Budhia](#),) which was referred to a Full Bench, because the question referred in these cases and in the earlier. case are almost similar, namely, as to whether, on the facts and in the circumstances of the case, the salary received by a member of a Hindu undivided family from a firm in which he was working as a partner, could be assessed in his personal assessment or was includible in the total income for the assessment of his Hindu undivided family ?

2. The relevant facts are as follows : The assessees in these cases are Chandradip Narain Bararia, Dwarika N"ath Bararia, Tarak Nath Bararia and Ram Dulari Devi and others, and the assessment years are 1971-72 and 1972-73. These assessees are partners in a firm, M/s. Lucky Biscuit Co. The firm paid a salary of Rs. 9,600 to each of the partners.

3. The Income Tax Officer included the salary along with share income from the firm in the hands of the Hindu undivided family on the ground that it was so included in the earlier year and that in the firm's assessment, the salary had been added back.

4. The business in the name of M/s. Lucky Biscuit Co. was a Hindu undivided family business up to the assessment year 1960-61. On April 8, 1959, there was a partial partition when the capital invested in the said business was partitioned amongst the various members and the business was thereafter carried in partnership under an instrument of partnership dated July 4, 1959, by the assesseees and the widow of Raghunandan Prasad, namely, Smt. Shyam Pyari Devi. Subsequently, on November 4, 1964, an agreement was entered into amongst all the partners, whereby a provision for payment of interest on the capital invested in the firm and also for payment of salary to the partners (excepting the widow) was incorporated from a retrospective date.

5. However, up to the assessment year 1969-70, the salaries so received from the firm by the four partners were included by each of them in their returns and were assessed in the hands of their smaller Hindu undivided families. The assesseees, however, in the assessment year 1970-71, raised an objection that the salary income was their individual income and, therefore, not includible in the assessment of their Hindu undivided families.

6. As said earlier, the Income Tax Officer rejected their claim, but on appeal, the Appellate Assistant Commissioner allowed "the assesseees" claim. The departmental appeal before the Tribunal, also failed. The Tribunal by a consolidated order disposed of all the eight appeals on a finding that "the salaries have been paid under an agreement which is not questioned by the assesseees or by the other partners of the firm and the interests of the Hindu undivided families remained intact and are not adversely affected".

7. On the application of the Revenue, the Tribunal has referred the following question of law for the determination by this court :

"Whether, on the facts and in the circumstances of this case, the Tribunal was justified in law in holding that the salary could not be assessed in the hands of the Hindu undivided family of: the working partners ?"

8. We have heard learned counsel for the parties at some length and from the facts stated above, it is clear that the facts and circumstances of the present cases are almost identical and similar to those of [Commissioner of Income Tax Vs. Atma Ram Budhia](#), --decided by the Full Bench on January 10, 1984), where on a review of a large number of cases of the Supreme Court, the principle laid down was that where there was no real and sufficient connection between the investment of the joint family funds in acquiring the shares and the payment of the remuneration to the karta the remuneration paid to him was not earned by any detriment to the joint family assets and the amounts received by him were not assessable as the income of the Hindu undivided family.

9. The Tribunal, has also referred to some of those cases and has held that there was nothing an the record to indicate that the salaries paid to the partners, namely the assesseees were in any way detrimental to the share income of the family from the firm. In other words, the Department has singularly failed to establish that the salary paid to the partners was in disguise in lieu of the profit payable to the smaller Hindu undivided families" represented by the partners.

10. In that view of the matter; the Tribunal has taken a right view in the matter. I would accordingly answer the question in favour of the assessee that the salary income received by the partners could not be assessed in the hands of their Hindu undivided families. In the circumstances, how ever, I shall make no order as to costs.

S.S. Sandhawalia, C.J.

11. I agree.