COMMISSIONER OF INCOME-TAX, ASSAM

v.

NANDLAL AGGARWAL & ANR.

November 17, 1965

[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

Indian Income-tax Act (11 *of* 1922), *s.* 40—*Two guardians appointed for two minors—Hindu undivided family or individual, assessment.*

The two respondents were appointed guardians of the two minor sons after the death of their father and mother, by an order of the Civil Court. Prior to his death the income of the father's business was assessed as an individual. The guardians filed a return on behalf of the minors in the status of a joint Hindu family. The Income-tax Officer assessed the guardians under s. 23(3) read with s. 41 of the Income-tax Act. Later the Court allowed the guardians to keep and submit separate accounts thereafter for each of the minors. The Appellate Assistant Commissioner, on appeal against the assessment, directed their separate individual assessments, which was set aside by the Tribunal. On reference, the High Court held against the Revenue. In this Court, the Revenue contended that under s. 40 of the Act the guardians were liable to pay tax as it would be leviable from minors if of full age, and if the minors had been of full age they would be assessed as Hindu undivided family.

HELD : Section 40 of the Act applied to this case, and consequently the guardians ought to be assessed, treating the minors as constituting a Hindu undivided family. [616 H]

On the death of the father, the minor sons constituted a joint Hindu family and the business was joint family property. Till some positive action was taken to effect a partition of the property, it would remain joint family property. The order appointing the two guardians could not be read as having effected partition of the property. Apart from the fact that the Court under the Guardianship Act has no jurisdiction to partition property belonging to a joint Hindu family, there are no words in the order of the Court appointing the guardians to warrant such a finding. [616 E]

The court's order allowing the guardians to keep and submit separate accounts came into existence after the assessment year and after the Income-tax Officer had passed his order. Therefore it could not have any effect on the position prevailing in the relevant accounting year in dispute. [616 D]

Srifudin Alimohammad v. *Commissioner of Income-tax,* 25 I.T.R. 237, referred to.

Commissioner of Income-tax v. *Balvantrai Jethalal Vaidya,* 34 I.T.R. 187, approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 820 of 1964.

Appeal from the order dated July 4, 1961 of the Assam High Court in Income-tax Reference No. 1 of 1961.

A *S. V. Gupte, Solicitor-General, N. D. Karkhanis, B. R. G. K. Achar* and *R. N. Sachthey,* for the appellant.

A. V. Viswanatha Sastri and *D. N. Mukherjee,* for the respondents.

B The Judgment of the Court was delivered by

Sikri, J. This appeal in pursuance of a certificate granted under s. 66A(2) of the Indian Income Tax Act, 1922, hereinafter referred to as the Act, is directed against the judgment of the High Court of Assam in a reference made to it under s. 66(2) of the Act. The question referred to by the Appellate Tribunal was C "whether in the circumstances of the case the Tribunal was justified in assessing the income of the minors in the hands of the guardians as the income of a Hindu undivided family."

The relevant facts out of which the reference arose are as follows: Shri Kishanlal Agarwalla died intestate in December D 1950, leaving his widow and two minors, Basanta and Ashok. Prior to his death he was being assessed as an individual on the income arising from the business carried on in the name of Shri Krishan Rice Mills, Tezpur. He was governed by Mitakshra School of Hindu Law. The widow also died in 1952. On the death of the widow an application was made by Shri Nandlal E Agarwalla to the Court of the District Judge, Gauhati, for being appointed as a guardian of the person and the properties of the two minors, Basanta and Ashok. The District Judge, by his order dated June 1, 1953, appointed him temporarily the guardian of the person and properties of Basanta and Ashok, till the disposal of the application, and transferred the file to the Subordinate F Judge, L.A.D., Nowgong. On December 15, 1953, the Sub-Judge appointed Shri Dwarka Prasad Agarwalla and Shri Nandlal Agarwalla guardians of the person and properties (as per the schedule in the application) of Basanta and Ashok. The guardians were directed to render accounts half yearly in the months of March and September each year, *i.e.* by the 31st March and 30th Sep- G tember, each year until the minors attained majority.

It is not necessary to mention what happened in the assessment years 1951-52, 1952-53 and 1953-54 because nothing turns on that. For the assessment year 1954-55, which is the subject-matter of this reference, a return was filed in the status of a Joint H Hindu Family by the two guardians.

It appears that on March 25, 1958, the Sub-Judge, Nowgong, passed the following order :

"Account upto 30th September, 1957 filed. The guardians file petition seaking permission for showing the accounts of the two minors separately.

Heard learned lawyer. The guardians are hereby allowed to keep and submit separate accounts henceforward for each of the minors together with accounts of profits and loss and separate expenses of each minor."

It seems to have been assumed that this order was also operative during the accounting year 1953-54, but it is clear that this order has no application to this accounting year.

The Income Tax Officer, by his order dated October 19, 1957, assessed the guardians under s. 23(3) read with s. 41 of the Act. The guardians filed an appeal before the Appellate Assistant Commissioner contending that the assessment was bad in law. The Appellate Assistant Commissioner by his order dated May 16, 1956, set aside the assessment and directed the Income Tax Officer to reassess after obtaining two separate returns from the appellants and to frame two separate individual assessments. He came to the conclusion that "the very fact that separate guardians for the two minors were appointed by the Court with directions to separately account for their accounts and the expenses clearly establishes that they cannot also form an H.U.F." By the time this order was passed, the Sub-Judge, Nowgong, had passed the order dated March 25, 1958, and it is clear that the Appellate Assistant Commissioner relied on it. He further held that "the two minors should be taxed through the Guardians in their individual share of profits at the rate applicable to the individual incomes. For that purpose the total income should be computed as it has now been done. Two separate assessments should be made in the names of two minors at the hands of the guardians in the status of individual. I may note here that even the deceased father was assessed in the status of an individual and not in any way as an H.U.F."

The Income Tax Officer filed an appeal before the Income Tax Appellate Tribunal and the Tribunal set aside the order of the Appellate Assistant Commissioner and restored the order of the Income Tax Officer with the modification that the status of the assessee must be described as H.U.F. The Appellate Tribunal held that the status of the two minors is only that of H.U.F., as it existed before the curatorship proceedings, and must continue to be so till at least such time that the elder minor attains majority.

A The guardians put in an application dated December 8, 1958, before the Appellate Tribunal under s. 35 complaining that the contention of the guardians that under the Hindu Law, by which the minors are governed, their shares are specific and determinate and they can only be assessed under s. 41 in the manner and to the extent the assessment can be made on each of the two minor B children individually on whose behalf such income was receivable by the guardians had not been adverted to. The Appellate Tribunal, however, replied that the contention referred to in the application had been omitted to be dealt with in the order of the Tribunal as it became academic in the light of the Tribunal's decision that the assessee was a H.U.F. The Tribunal refused to state C a case under s. 66(1) of the Act, but on being directed to do so by the Assam High Court, it drew up a statement of the case and referred the question set out above. The High Court answered the question in the negative. The High Court held that the guardians "received the shares of these minors in the profit of the D business as their income. By the order of the Court, separate accounts in the name of the two minors were opened in which the receipts and expenses relating to each of the minors were separately adjusted. The guardians were thus only liable to pay tax on the amount which they received on behalf of these two minors separately. It cannot be said that they were appointed guardians E of any joint family as such, so that their beneficiary was the joint family as such and thus they were liable to pay tax on the total income received by them on behalf of the Hindu undivided family, their ward. The beneficiaries were the two minors separately. The two minors are the wards of the guardians. The guardians will, in our opinion, be liable to pay tax on the separate income of F each of the minors."

The learned Solicitor-General who appears on behalf of the Revenue contends that under s. 40 the guardians were liable to pay tax in like manner and to the same amount as it would be leviable upon and recoverable from the minors if of full age. He says G that if the minors had been of full age, they would have been assessed as a H.U.F. Mr. Sastri, the learned counsel for the respondents, contends that the minors would not have been assessed as a H.U.F. but would have been assessed individually on their separate incomes. He says that under s. 7 of the Guardians and Wards Act, no guardian could have been appointed in res- H pect of the undivided interest of a minor and, therefore, the Court must have proceeded on the basis that the properties had been divided among the minors. He further points to the order dated

March 25, 1958, which shows that the interest of the minors was separate. A

It is not necessary to decide the question whether under the Guardianship Act a guardian could have been appointed in respect of the undivided interest of the minors. There is authority for the proposition that when all the co-parceners are minors, a guardian can be appointed for the whole number. (see *Bindaji Lusuman Triputikar* v. *Mathurabai*) (1), and *Mayne's Hindu Law* (para 230, page 285). The point whether the appointment of guardians was valid or not has not been raised before the Income Tax authorities and we must proceed on the basis that the appointment was valid. Both the Revenue and the respondents have acted on this assumption. The only question which can be raised is the effect of the orders dated June 1, 1953, December 15, 1953 and March 25, 1958, on which Mr. Sastri strongly relies to establish that the minors had individual incomes. As we have already stated, the order dated March 25, 1958, came into existence after the assessment year and after the Income Tax Officer had passed his order. It cannot, therefore, have any effect on the position prevailing in the accounting year 1953-54. B C D

We have already mentioned that Shri Kishanlal was governed by the Mitakshra School of Hindu Law and it appears to us that on his death his widow, and two minor sons, Basanta and Ashok, constituted a joint Hindu family and the business was joint family property. Till some positive action was taken to have a partition of the property, it would remain joint family property. We cannot read the order dated December 15, 1953, of the Sub-Judge, Nowgong, as having effected partition of the property. Apart from the fact that the Court under the Guardianship Act has no jurisdiction to partition property belonging to a joint Hindu family there are no words in the order to warrant such a finding. E F

Reference was made to *Saifudin Alimohamed* v. *Commissioner of Income Tax*(2) and *Commissioner of Income Tax* v. *Balwantrai Jethalal Vaidya*(3). We agree with the view expressed by Chagla, C.J., in the latter case in which he explained certain observations made in the former case. If a guardian carries on business on behalf of minors and receives income on their behalf, s. 40 of the Act must be applied. G

In our opinion s. 40 plainly applies to the facts of this case and consequently the guardians have to be assessed, treating the H

(1) I. L. R. 30 Bombay 152. (2) 25 I. T. R. 237.

(3) 34 I. T. R .187.

A minors as constituting a H.U.F. In the result the appeal is accepted and the question referred to the High Court is answered in the affirmative. The appellant will have his costs here and in the High Court.

Appeal allowed.