

*** THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+ I.T.T.A.Nos.3, 26, 29 & 30 of 2004

%Date: 19.11.2014

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#Mr.P.Shankaraiah Yadav (HUF), Karta Sri P.Srinivas Yadav,
Hyderabad.

...Appellant.

and

\$ The Income Tax Officer, Hyderabad.

...Respondent.

! Counsel for appellant: Sri Pushyam Kiran

^ Counsel for Respondent : Sri S.R.Ashok

< GIST:

> HEAD NOTE:

? Cases referred

[1] (1976) 3 SCC 119

² (1997) 140 CTR (Mad) 24

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COMMON JUDGMENT: (Per the Hon'ble Sri Justice L.Narasimha Reddy)

This batch of appeals raises questions of some general importance and interest. All of them arise out of a common order dated 30.06.2003 passed by the Hyderabad Bench of the Income Tax Appellate Tribunal (for short 'the Tribunal'), in I.T.A.Nos.1326 of 1997 and batch. Hence, they are disposed of through a common judgment.

The appellant is an assessee under the Income Tax Act, 1961 (for short 'the Act') in its capacity as Hindu Undivided Family (HUF). For the assessment year 1991-92, returns were submitted claiming certain deductions. A document, dated 09.03.1990, named as "Family Arrangement" was enclosed. The said arrangement provided for allotment of a sum of Rs.1,25,000/-, each, of the six minor daughters of Karta of HUF and that amount was in the form of Fixed Deposit Receipts (FDRs). In the context of the deduction of the interest that accrued on the FDRs, the Assessing Officer examined the document from the point of view of Section 171 of the Act. He came to the conclusion that the document does not amount to partial partition and though it is a family arrangement, it does not have the effect of taking away the corresponding wealth from the purview of HUF, and accordingly, treated the same, as the income of the HUF. Similar question arose for subsequent assessment years, and identical view was taken.

Feeling aggrieved by the orders of assessment, the appellant approached the Commissioner of Income Tax (Appeals). The appeals were allowed by the Commissioner, through order, dated 09.05.1997. The Revenue filed I.T.A.Nos.1326 to 1328 of 1997 and

113, 114 and 116 of 2001, before the Tribunal. The appeals were allowed through a common order and the order passed by the Commissioner was set aside. Hence, these appeals under Section 260A of the Act, by the assessee.

Sri Pushyam Kiran, learned counsel for the appellant, submits that the Assessing Officer himself came to the conclusion that the document cannot be treated as partial family partition, and even while treating it as a family settlement, did not recognise the arrangement made thereunder. He contends that once the daughters of the Karta of HUF were settled a sum of Rs.1,25,000/-, each, and the same was believed by the Assessing Officer, there is no way, the corresponding amount could have been assessed to the HUF. He has placed reliance upon the judgment of the Supreme Court in **Kale v. Deputy Director of Consolidation**^[1] and that of Madras High Court in **Commissioner of Income Tax v. S.M.M. Muthappa Chettiar**^[2].

Sri S.R.Ashok, learned Senior Counsel for the respondent, on the other hand, submits that though the arrangement under the family settlement does not amount to partial partition, the wealth covered by it, continues to be that of the HUF and that the Assessing Officer as well as the Tribunal have taken correct view of the matter. He contends that the judgment of the Madras High Court in **S.M.M. Muthappa Chettiar**'s case (2 supra) was on a totally different set of facts and in the instant case, the amount covered by FDRs, albeit, in the name of the minor daughters of the Karta, continue to be that of the HUF. He submits that the Tribunal has discussed the matter from correct perspective and that the common order does not warrant any interference.

That the appellant is a HUF, is beyond any pale of doubt.

The returns filed by it year after year in that capacity were being received and processed. In the returns filed for the assessment year 1991-92, the factum of a family arrangement having been made, allotting a sum of Rs.1,25,000/- in favour of each of the minor daughters of the Karta, was mentioned. The amount so allotted was reduced to the form of FDRs, and those FDRs, in turn, were earning interest. While for the year in which the allotment was made, the question was, as to whether the amount covered by FDRs ceased to be the wealth of HUF, for the subsequent years, the question was as to whether the interest that has accrued on the FDRs, deserves to be assessed to HUF.

The Assessing Officer did undertake detailed discussion, in this behalf. He first dealt with the question, as to whether the consequences provided for under Section 171 of the Act, ensue in this case. At one stage, he entertained a doubt as to whether the arrangement can be treated as a partial partition, based upon clause – IV thereof, which is to the effect that six daughters in whose favour the arrangement was made, shall cease to have any share in the joint family property. However, he gave up the analysis in that direction, rightly, in fact, taking note of the fact that no member of the joint family has come forward with the plea under sub-section (3) of Section 171 of the Act. As is well-known, Section 171 of the Act deals with the assessment of a HUF, after the partition is affected. The presumption as to the continued existence of undivided family, flows from sub-section (1) and the burden to prove any plea to the contrary is based upon the one, who claims partition. The provision reads:

“171. Assessment after partition of a Hindu undivided family:- (1) 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 in so far as a finding of partition has been given under this section in respect of the Hindu undivided family.

(2) Where, at the time of making an assessment under section 143 or section 144, it is claimed by or on behalf of any member of a Hindu family assessed as undivided that a partition, whether total or partial, has taken place among the members of such family, the Assessing Officer shall make an inquiry therein after giving notice of the inquiry to all the members of the family.

(3) On the completion of the inquiry, the Assessing Officer shall record a finding as to whether there has been a total or partial partition of the joint family property, and, if there has been such a partition, the date on which it has taken place.

(remaining part of the section is omitted, since it is not necessary for the purpose of this case)”

From a perusal of sub-section (2) of Section 171 of the Act, it becomes clear that it is only when a member of the joint family comes forward with the plea as to partition, and the same is found to be true, in the course of enquiry, that an inference as to HUF, can be drawn. The Assessing Officer took note of the fact that none of the members of the appellant-HUF came forward with the plea, and therefore, the occasion to deal with the question as to whether the document brought about any partition, does not arise. However, on the one hand the family settlement was disbelieved, and on the other hand, it was taken on its face value. In the process, the amount in question was assessed to HUF on the ground that the Karta of HUF was authorised to hold and manage the funds so allocated to the minor daughters. In the appeal, the Commissioner took note of the judgment of the Madras High Court in **S.M.M.Muthappa Chettiar’s** case (2 supra) and reversed the finding of the Assessing Officer. The Tribunal, however, took a different view viz., (a) the arrangement deserves to be treated as a partial partition of the family, which, in turn, is not recognised under the Act; and (b) even if it is a family arrangement, it does not have the effect

of taking the assets from the purview of HUF.

Two principal questions arise for consideration. The first is as to the legal character of a family arrangement and the second is as to whether any amount or property covered by family arrangement can still continue to be the wealth of HUF.

As regards first aspect, it needs to be noted that the family arrangement is a typical legal phenomena that does not fit into those which are specifically recognised under law. The transfer of immovable or movable property, as the case may be, does take place under the arrangement, but it is substantially different from the one that is contemplated under the Transfer of Property Act or the Sale of Goods Act. No formal registered document is executed and the nature of consideration is not amenable to any legal analysis. The purport of the family arrangements was explained by the Supreme Court in **Kale's** case (1 supra), in such a way that is difficult to put it in any different words. The relevant portion reads:

“Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise Kerr on Fraud at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:

The principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family

arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend.”

A social dimension which virtually commands the admiration of many social scientists was given to the concept; as under:

“The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term “family” has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country. The courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement suffers from a legal lacuna or a formal defect the rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits....”

The contemporary social scientists or those who claim to be so have to reconsider their approach towards the expressions like “egalitarian society” or “social justice”, if they happen to understand the message contained in the famous judgment. Unfortunately those two expressions have been pressed into service in the past few decades to connote not so noble and congenial ideas but only disruptive and divisive ideas.

Obviously because the sacred and legal character attributed by the Hon'ble Supreme Court, to the family settlement was not brought to its notice, the Tribunal observed:

“If it is not a partition and just a family arrangement, we do not see how the assets and income therefrom do not continue to belong to the HUF. The arrangement appears to be a devise to divert income.”

It runs contrary to the law laid down by the Hon'ble Supreme Court way back in 1976 and honoured with great respect throughout. We, therefore, are of the view that the family arrangement, wherever it exists and is proved, is a *sui generis* i.e. a class by itself, with full legal enforceability, *de hors* the fact that it is not dealt with under any specific provision of an enactment. The settlement deserves to be given full effect and the legal consequences flowing therefrom cannot be ignored, on the ground that they do not fit into any specific provision of law.

The second question is mostly in the taxation regime. The HUF is a compendious expression and it takes in its fold several persons, who are members of the family. It is wider in its purport than a joint family. In the ordinary course of things, once an assessee which incidentally may be a HUF, parts with a portion of its wealth towards another and the same is found to be true, that part of the wealth cannot be treated as continuing to be with the assessee.

The mere fact that the transfer or settlement of such portion was in favour of one of the members of the HUF, does not make much of difference. On being parted in favour of other persons, in a manner recognised under law, the corresponding amount ceases to be part of the wealth of the assessee.

Before the Madras High Court, similar question but with some more complications has arisen for consideration in **S.M.M.Muthappa Chettiar's** case (2 supra). Not only the provisions of the Income Tax Act, but also of the Gift Tax Act and Wealth Tax Act, became relevant. At least, in the instant case, the disposition in favour of six minor children is in the form of FDRs. In the case before the Madras High Court, it was in the form of book adjustment. Dealing with the question as to whether the property so conferred upon the minor children would continue to be that part of the wealth of the HUF, the Madras High Court summed up the discussion as under:

“The above referred to sums in all the above said questions pertaining to different assessment years, are sums which are standing to the credit of all minor daughters, all put together, including any accretion thereto. Obviously, they cannot be treated as the net wealth of the assessee-family, those sums having already come to be owned by the said daughters pursuant to the above transfers with consideration made by the karta of the family in favour of the said daughters, as found by the Tribunal in the gift-tax case.”

Though the predominant discussion was with reference to the provisions of the Gift Tax Act and Wealth Tax Act, the same legal consequences flow as regards regime under the Income Tax Act also.

The net result is that once the HUF has settled a sum of Rs.1,25,000/-, each, in favour of six minor daughters of the Karta, the corresponding amount ceased to be the wealth or the assets of the

HUF. The same cannot be treated as part of the wealth of the HUF even thereafter. The returns filed by the HUF is not the avenue to examine the question as to how the amount so settled must be treated in the hands of the person on whom it was settled.

Two other reasons assigned by the Tribunal are: (a) the insertion of Section 29A of the Hindu Succession Act in the context of State of Andhra Pradesh, makes the arrangement not binding and (b) clause - IV of the Deed of Settlement, is not legally correct. Both the aspects are totally out side the jurisdiction of the adjudication or determination under the Act.

In the result, the appeals are allowed and the order passed by the Tribunal is set aside. As a result, the common order passed by the Commissioner dated 09.05.1997, shall stand revived. There shall be no order as to costs.

The miscellaneous petitions filed in these appeals shall also stand disposed of.

L.NARASIMHA REDDY, J.

CHALLA KODANDA RAM, J.

Date:19.11.2014
L.R. Copy to be marked.
GJ

[\[1\]](#) (1976) 3 SCC 119

[\[2\]](#) (1997) 140 CTR (Mad) 24