

Commissioner of Income Tax v. Dilbagh Rai (B. S. Dhillon, J.)

the compromise between the decree-holder and the judgment-debtor, the surety stood discharged.

(7) Faced with this difficulty, the learned counsel for the respondent sought to argue that no revision petition was maintainable against the order of the executing Court. According to him, if two views can be taken of the same matter and the first Appellate Court on erroneous view of law decided the matter one way, that cannot be said to be an error of jurisdiction. I am not convinced with this contention of the learned counsel. In the present case, in my view, the Court has acted in exercise of its jurisdiction illegally and in such situation this Court can interfere with its order under section 115 of the Code. It provides that if a subordinate Court acted in the exercise of its jurisdiction illegally, the High Court may make such order as it thinks fit. In cases of this type this Court can always go into the matter and upset the judgment of the Courts below.

(8) For the reasons recorded above, I accept the revision petition, set aside the order of the Court below and discharge the surety. No order as to costs.

H. S. B.

Before B. S. Dhillon and S. S. Dewan, JJ.

COMMISSIONER OF INCOME TAX—Applicant.

versus

DILBAGH RAI—Respondent.

Income Tax Reference No. 54 and 55 of 1974.

October 5, 1978.

Income Tax Act (XLIII of 1961)—Section 147—Individual assessee becoming a partner in a firm without investing any capital—Such assessee by declaration throwing his share in the firm the common hoch porch of the Hindu Undivided Family—Hindu Undivided Family having no nucleus on the date of declaration—Share of a partner—Whether property—Share income from the firm—Whether to be assessed in the hands of the Hindu Undivided Family.

Held, that a co-parcener in a Joint Hindu Family has a right to throw his self acquired property in the common hotch potch by making a declaration and it is not necessary that the Hindu Undivided Family must hold some property before any such declaration can be made by the co-parcener. In other words, it is not necessary that the Hindu Undivided Family must hold property to enable a co-parcener to impress his personal property with the character of the Joint Hindu Family. (Para 5).

Held, that the share of a partner in a firm is his wealth and merely because a partner has not made investment in the form of capital would not change the nature of the assets of the partner who has definite share in the partnership of the firm. It is wholly immaterial whether his share is because of investment of capital or otherwise. Share of a partner in the firm is his asset or property and its nature will not change in either case. That being so, the partner can by a valid declaration throw his share in the firm in the common hotch potch of the Hindu Undivided Family and the share income of the firm will then become the income of the Hindu Undivided Family and has to be assessed as such in its hands. (Para 8).

Reference under section 256 (1) of the Income Tax Act, 1961 made by the Income-tax Appellate Tribunal (Amritsar Bench) for the opinion of this Honble High Court on the following question of law arising out of its order dated 29th August, 1973 passed in R.A. Nos. 29 & 30 (ASR) 1973-74 in ITA No. 1671 & 1672/70-71.

Assessment years : 1965-66 and 1966-67.

“Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal, has rightly deleted the additions of Rs. 41,341 and Rs. 9,780 from the income of the assessee for the assessment years 1965-66 and 1966-67.”

D. N. Awasthy, Advocate with B. K. Jhingan, Advocate, for the appellant.

S. S. Mahajan, Advocate with R. K. Gupta, Advocate, for the Respondent.

JUDGMENT

B. S. Dhillon, J.

(1) This common judgment will dispose of Income-tax References Nos. 54 and 55 of 1974. The said references have been made at the instance of the Commissioner of Income-tax, Patiala, by the Income-tax Appellate Tribunal, Amritsar.