

Family Partition of Hindu Undivided Family

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Family partition of Hindu Undivided Family which is as per amended provisions of Hindu Succession Act, 1989 is recognised u/s 171 of I-T Act - Revenue cannot deny recognition : ITAT.

CHENNAI, JULY 01, 2007 : BRIEFLY stated facts of the case are that the Assessee is a Hindu Undivided Family consisting of Shri P.C. Ramakrishna, his wife and his two daughters. There was an oral total partition of H.U.F. on 16.9.1994 between Sri P.C. Ramakrishna, his wife and two daughters. Under this oral partition, the two daughters were allotted Rs.12,50,000/- each and these amounts were adjusted against a sum of Rs. 12,50,000/- advanced to each of them earlier as loan by H.U.F. In the said partition, all other properties of H.U.F. were allotted to Sri P.C. Ramakrishna. This oral partition took place on 16.9.1994 which was subsequently confirmed by a Deed of Declaration confirming the partition.

This partition was filed before the AO under sec. 171 of the Act seeking recognition of the partition as provided under the Act. The petition was proceeded by the AO who vide his order dated 17.3.1998 held that partition is a sham one and the mere contrivance to divest the family funds to reduce the incidence of tax and accordingly he declined to grant recognition to the partition in exercise of his powers u/s. 171 of the Act.

Aggrieved, the Assessee preferred an appeal before the C.I.T.(Appeals). The C.I.T.(Appeals) held that the provisions of sec.171 of the Act cannot confer any right to a partition which is not available to any person under the Hindu Law; that according under the Hindu Law, there should be a partition between two or more coparceners and therefore, it cannot be a partition where the H.U.F. consists of only one coparcener. Finally, he held that even after introduction of amendment in Tamil Nadu in 1989, the daughters cannot claim partition in the joint family property of the HUF and accordingly, he confirmed the action of the AO. Aggrieved, the assessee moved Tribunal in second appeal.

The Tribunal summarized its detailed observations as follows :-

- Considering the provisions of Hindu Succession Act, 1956 as amended by Hindu Succession (A.P.Amendment) Act, 1986, introduction of sec.29A which was confirmed by the Hon'ble Apex Court in the case of S. Sai Reddy ([1991] 3 SCC 647) and also the amendment of Hindu Succession 1956 by the Hindu Succession (T.N.Amendment) Act 1989, which are the provisions similar to the Hindu Succession (A.P.Amendment) Act, we are of the considered opinion that the difference between daughter and son of the Mitakshara Hindu Family is removed and the daughter is conferred the coparcenary rights in the joint family property by birth in the same manner and to the same extent as the son.

- Daughter is entitled to claim partition and her share in the joint family property i.e. H.U.F. property, is without dispute. In the present case, Sri P.C. Ramakrishna, H.U.F. apart from P.C. Ramakrishna, Karta, two daughters along with his wife are the members of H.U.F. After the amendment of Hindu Succession (T.N.Amendment) Act, 1989 vide clause (i) and (ii), the daughter in H.U.F. shall by birth become a coparcener in her own right in the same manners as the son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship and shall be subject to liabilities and disabilities in respect thereto as the son. She is entitled to partition of a Joint Hindu Family coparcenary property and in such partition, Hindu Family coparcenary property shall be so divided to a daughter so as to allot the same share as is allottable to a son.
- The amendment brought out w.e.f. 25th March, 1989 has removed the distinction as regards to a son or a daughter in respect thereto coparcenary property of Joint Hindu family as governed by Mitakshara law and daughters are clearly treated as coparceners. In the present case, there are two daughters to the Karta. Hence, there are three coparceners in the Joint Hindu Family and the daughters have been allotted a sum of Rs. 12,50,000/- each.
- Hence, we find no infirmity in the partition of the Joint Hindu Family which is in accordance with the Hindu Succession (T.N.Amendment) Act, 1989. In view of this, we hold that the partition is as per the amended provisions of Hindu Succession (T.N.Amendment) Act, 1989. Hence, there is no reason to refuse Registration to family partition of Joint Hindu Family property.
- Accordingly, the partition of H.U.F. is recognized under sec.171 of the Act and the AO is directed to pass a consequential order recognizing the partition of the H.U.F.

And the final word : The assessee's appeal was allowed.

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