

PRIVY COUNCIL

Kalyanji Vithaldas

Vs.

Commissioner of Income-tax, Bengal

Privy Council Appeals Nos. 24-29 of 1936
(Lord Alness, Sir ShadiLal and Sir George Rankin JJ.)

30.11.1936

JUDGMENT

SIR GEORGE RANKIN J.

1. These six appeals concern the assessment to super-tax for the year 1931-32 of six of the seven partners of a firm known at MooljiSicka and Co. This firm was for the year in question registered under section 26-A, Income-tax Act, the instrument of partnership being a Gujarati deed dated 11th September 1930. Its business was that of dealers in Indian tobacco and cigarettes. The assessment to income-tax of the registered firm has been made in due course, and the present controversy is whether six of the partners should each be assessed to super-tax upon his share of the profits as an individual, or whether these six shares should each be assessed as income of a Hindu undivided family. The rates of super-tax imposed by the relevant Finance Act are less in the case of a Hindu undivided family than in the case of an individual. The problem has to be answered by applying to the facts of each case the language of Section 55 of the Act:

In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any individual, Hindu undivided family, company, unregistered firm or other association of individuals, not being a registered firm, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Indian Legislature:

Provided that, where the profits and gains of an unregistered firm have been assessed to super-tax, super-tax shall not be payable by an individual having a

share in the firm in respect of the amount of such profits and gains which is proportionate to his share.

2. The two questions finally referred in each case by the Commissioner for the opinion of the High Court at Calcutta are as follows:

(1) Whether the family of the assesses, as it now stands, is a Hindu undivided family within the meaning of the Income-tax Act ?

(2) If the first question be answered in the affirmative, whether in the circumstances recorded in this case the income in question should be treated as income of that family and assessed as such ?

The High Court (Lort-Williams and Jack, JJ.) have in each case answered the first question in the negative and held that the second question did not arise. The parties are governed by the Mitakshara and their pedigrees and families may be exhibited as under:

The history of the firm according to the Commissioner is that in or about 1912 the business was begun by Moolji and Purshottam (brothers who had separated) and Kalyanji (who is not related to either), and that in no case were ancestral funds employed for the purpose. That in 1919 Moolji made gifts of capital to each of his sons by his first wife, viz., Kanji and Sewdas. That at least since 1919 Moolji, Kanji and Sewdas have been separate from each other. That in 1919 on the terms of a Gujarati deed dated 1st May, Kanji (son of Moolji) and Chaturbhuj (brother of Kalyanji) were taken into the partnership. That in 1930 Sewdas and Kalyanji's brother Champsi were taken into the firm on the terms of the deed of 11th September 1930 already mentioned. That the interest of Kanji and of Sewdas was a gift from their father Moolji, and that of Chaturbhuj a gift from his brother Kalyanji. That in no case has it been proved that the individual partner has thrown his interest in the firm or his receipts therefrom into the common stock, i. e., treated it as joint family property. Their Lordships are of opinion that the High Court was right in proceeding upon these findings of fact by the Commissioner.

3. From these facts it clearly appears, so far as Moolji, Purshottam and Kalyanji are concerned, that they are each members of a Hindu undivided family. Each has a son or sons from whom, so far as the evidence goes, he is not divided. But the income from the firm is clearly the separate and self-acquired property of the partner, and as it has not been thrown into the common stock, it cannot be regarded as income of the family. It is the income of an individual and assessable to super-tax as such under Section 55

of the Act. In these three cases, therefore, the High Court should have answered the first question in the affirmative and the second question in the negative. The interest of Chaturbhuj in the firm was obtained from his brother Kalyanji. It is self-acquired and not ancestral property ;Chaturbhuj has no son, but even if he had, the son would have taken by birth no interest in the income now in question. The High Court might well have answered the second question in the negative and said of the first question that it did not arise. In none of the four cases abovementioned, -viz., those of Moolji, Purshottam, Kalyanji and Chaturbhuj-does the fact that the man has a wife and daughter (or more than one) affect the result. The existence of a son does not make his father's self-acquired property family property or joint property. That the existence of a wife or daughter does so is untenable.

4. There remain the cases of Kanji and Sewdas. Neither has a son, but, in the case of each, his interest in the firm was obtained by gift from his father Moolji. Without deciding the question which was left open in *Lal Ram Singh v. Deputy Commissioner of Partab*, their Lordships, for the purposes of the present case, will assume that their interest was ancestral property, so that, if either had had a son, the son would have taken an interest therein by birth. But, no son having been born, no such interest has arisen to qualify or diminish the interest given by Moolji to Kanji and to Sewdas. Does then the existence of a wife, or of a wife and daughter, make it income of a Hindu undivided family rather than income of the individual partner ? Their Lordships think not. A man's wife and daughter are entitled to be maintained by him out of his separate property as well as out of property in which he has a coparcenary interest, but the mere existence of a wife or daughter does not make ancestral property joint. "Interest" is a word of wide and vague significance, and no doubt it might be used of a wife's or daughter's right to be maintained, which right accrues in the daughter's case on birth ; but if the father's obligations are increased, his ownership is not divested, divided or impaired by marriage or the birth of a daughter. This is equally true of ancestral property belonging to himself alone as of self-acquired property. The cases of Kanji and of Sewdas can be disposed of by answering the second question in the negative.

5. The High Court approached the cases by considering first whether the assessee's family was a Hindu undivided family, and in the end left unanswered the question whether the income under assessment was the income of that family. This is due no doubt to the way in which the Commissioner had stated the questions. But, after all, if the relevant Hindu law had been that the income belonged not to the assessee himself

but to the assesses, his wife and daughter jointly, it is difficult to see how that association of individuals could have been refused the description "Hindu joint family." The phrase "Hindu undivided family" is used in the statute with reference not to one school only of Hindu law but to all schools ; and their Lordships think it a mistake in method to begin by pasting over the wider phrase of Act the words "Hindu co-parcenary"-all the more that it is not possible to say on the face of the Act that no female can be a member. The Bombay High Court, on the other hand, in *Commissioner of Income-tax Bombay v. GomedaliLaxminarayana*, having held that the assessee, his wife and mother were a Hindu undivided family, arrived too readily at the conclusion that the income was the income of the family. The phrase which has to be considered and applied to the facts is, the total income of the previous year of any individual, Hindu undivided family, company, unregistered firm or other association of individuals not being a registered firm.

6. The words "income of" are simple words and are capable of wider or narrower meaning ; but for the present purpose the Courts are concerned with them as they appear in an Income-tax Act ; and under Section 3 or Section 55 income is not to be attributed to any one of the five classes of persons mentioned by any loose or extended interpretation of the words but only where the application of the words is warranted by their ordinary legal meaning. The relevant meaning in the present cases is the ordinary meaning in Hindu law according to the Benares school. In an extra-legal sense, and even for some purposes of legal theory, ancestral property may perhaps be described, and usefully described as family property; but it does not follow that in the eye of the Hindu law it belongs, save in certain circumstances, to the family as distinct from the individual. By reason of its origin a man's property may be liable to be divested wholly or in part on the happening of a particular event, or may be answerable for particular obligations, or may pass at his death in a particular way ; but if, in spite of all such facts, his personal law regards him as the owner, the property as his property and the income therefrom as his income, it is chargeable to income-tax as his, i. e., as the income of an individual. In their Lordships' view it would not be in consonance with ordinary notions or with a correct interpretation of the law of the Mitakshara to hold that property which a man has obtained from his father belongs to a Hindu undivided family by reason of his having a wife and daughters. The result is that in the cases of Moolji, Purshottam and Kalyanji the first question stated by the Commissioner should be answered Yes, and the second No. In the other cases the second question should be answered No and the first question need not be answered.

7. Upon the reported decisions cited during argument their Lordships will only observe that the decision in *Vedathanni v. Commissioner of Income-tax*, does not cover the present question which arises under Section 55 of the Act, and that they take no exception to the result arrived at in *Raja BhuneshPratapNarain Singh v. Commissioner of Income-tax*, (1932) 6 ITC 175 though they do not agree that a Hindu joint family necessarily consists of male members only. Their Lordships will not here deal with the case of an impartible estate held by the senior of several male members of a family as to which there have been conflicting decisions in India : cf. *Raja Shiva Prasad Singh v. Secy. of State*, *Krishen Kishore v. Commissioner of Income-tax*, They will humbly advise His Majesty that the appeals should be dismissed with costs.

Appeals dismissed.

Cases Referred.

AIR 1923 PC 160=76 IC 922=50 IA 265=45 All 596=26 OC 257 (PC)

AIR 1935 Bombay 412 = 159 IC 424=59 Bom 618=37 Bom LR 692

AIR 1932 Madras 733=140 JC 17=56 Mad 1 =63 MLJ 542 (SB)

AIR 1924 Patna 679=82 IC 653=4 Pat 73=5 PLT 497=1 ITC 384 at p. 388-89,

AIR 1933 Lahore 284=141 IC 415=14 Lah 255=34 PLR 560.