

PRIVY COUNCIL

Commissioner of Income-tax, Bombay Presidency and Aden

Vs.

A.P. SwamyGomedalli

Privy Council Appeal No. 78 of 1936
(Lord Macmillan, J. Sir ShadiLal and Sir George Rankin JJ.)

30.04.1937

JUDGMENT

LORD MACMILLAN J.

1. Since the order pronounced by the High Court in the present case on 28th March 1935, this Board has had occasion to consider the interpretation of the words "Hindu undivided family" as employed in Section 55, Income-tax Act, in the case of *KalyanjiVithaldas v. Commissioner of Income-tax, Bengal*, in which the judgment of their Lordships was delivered on 30th November. In that case the meaning of those words in the section in question, where they are used in connexion with liability to super-tax, was very fully examined in the judgment which Sir George Rankin prepared on behalf of the Board, and a conclusion was reached contrary to the view which the High Court has adopted in the present case. Mr. DeGruyther has sought to show that the principle of that decision does not apply to the facts of the case now before the Board. Their Lordships have listened attentively to Mr. DeGruyther's observations; but they are not satisfied that the facts of the present case differ in any material respect from the facts which were before the Board in the previous case in 1936, and the decision in that case must accordingly rule the pre-sent appeal. Their Lordships will therefore humbly advise His Majesty that the appeal should be allowed, and the order of 28th March 1935, be reversed; that it should be found in answer to the first question as follows :

"That in the circumstances of the case the income received by right of survivorship by the sole surviving male member of a Hindu undivided family can be taxed in the hands of such male member as his own individual income for the purposes of assessment to super-tax under section 55, Income-tax Act,

1922"; and that the answer to the second question should be in the affirmative.

The appellant will have his costs here and below.

Appeal allowed.

Cases Referred.

1936 (AIR 1937 PC 36=166 IC 445=64 IA 28=ILR (1937) 1 Cal 653 (PC))