

State of Orissa

Vs

Shyam Sundar Patnaik

Civil Appeals Nos. 382 to 384 of 1964

(K. Subha Rao, J. C. Shah, S. M. Sikri JJ)

27.10.1965

JUDGMENT

SHAH, J. –

These three appeals relate to proceedings for assessment of agricultural income-tax under the Orissa Agricultural Income-tax Act, 1947, for the years 1950-51, 1951-52 and 1952-53, and raise common questions.

The respondent represents a joint Hindu family consisting of four members, relationship between whom is explained by the following table :

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| # Jadimani Patnaik ----- | Biswambar Patnaik Bhagaban Patnaik ----- Binod Behari Puran Chandra Shyam Sundar Laxmidhar## |
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Before the relevant years of account Jadimani, Biswambar and Bhagaban had died and Binod Behari, Puran Chandra, Shyam Sundar and Laxmidhar were the surviving members of the family. The joint family owned agricultural lands, cows and buffaloes. The assessing officer determined the income of the respondent for 1950-51 at Rs. 11,949, for 1951-52 at Rs. 10,850 and for 1953-54 at Rs. 9,549. In these sums were included in each year Rs. 200 as income derived by sale of milk of cows and buffaloes maintained by the family. The order of assessment was confirmed by the Assistant Collector of Agricultural Income-tax. In appeals to the Agricultural Income-tax Tribunal, the amount of Rs. 200 in each year derived from sale of milk was excluded and the Tribunal gave to the respondent benefit of the rates prescribed in the Schedule to the Act.

At the instance of the State of Orissa, the following questions were referred to the High Court under s. 29(2) of the Act :

"(1) Whether in the facts and circumstances of the case the Tribunal is right in holding that income from milk derived from milch cows maintained by the opposite party is not agricultural income so as to be assessed to income-tax under the Agricultural Income-tax Act, 1947.

(2) Whether in the facts and circumstances of the case the Tribunal is right in holding that the Hindu undivided family represented by Sri Shyam Sundar Patnaik in the instant case, is a Hindu undivided family consisting of brothers only."

The High Court answered both the questions in the affirmative. The State of Orissa has preferred these appeals with special leave.

Before us the correctness of the answer recorded by the High Court on the first question is not challenged, because the question raised is concluded by the judgment of this Court in Commissioner of Income-tax, West Bengal, Calcutta v. Raja Benoy Kumar Sahas Roy ([1958] S.C.R. 101.).

The second question alone remains to be determined.

Section 2(1) of the Orissa Agricultural Income-tax Act, 1947 defines "agricultural income". Section 3 defines the incidence of tax on agricultural income. By s. 5 it was provided at the material time that agricultural income-tax shall be payable by every person whose total agricultural income of the previous year exceeds five thousand rupees. By s. 10 it is provided :

"(1) The total agricultural income of a Hindu undivided family shall be treated as the income of one individual and assessed as such :

"Provided that if a Hindu undivided family consists of brothers only as explained in the Schedule, the total agricultural income of the family shall be assessed at the rate specified in the Schedule.

(2)

Clause B of the Schedule prescribed the rates of agricultural income-tax in the case of every Hindu undivided family consisting of brothers only :

#(a) If the share of a brother is five thousand rupees } Three pies in the rupee. or
less(b) If the share of a brother } The average rate applicable exceeds five thousand }
to the share of such rupees. } brother if he were assessed } as an individual.##

The Explanation to the Schedule states that for the purpose of the Schedule "brother" includes the son and the son of a son of a brother and the widow of a brother, and the "share of a brother" means the portion of the total agricultural income of a Hindu undivided family which would have been allotted to a brother if a partition of the property of such family had been made on the last day of the previous year.

Binod Behari and Puran Chandra, sons of Biswambar, were brothers, and Shyam Sundar and Laxmidhar, sons of Bhagaban, were brothers. By the Explanation, the expression "brother" includes the son and the son of a son of a brother. The learned Solicitor-General for the State of Orissa submitted that the four members of the respondent could not be regarded as brothers within the meaning of the Schedule, Cl. B. The Solicitor General concedes that if in the year of assessment, Biswambar and Bhagaban were living and were sought to be taxed in an undivided Hindu family, they could obtain the benefit of a cl. B of the Schedule. Even if one of them had died before the year of account and the family consisted of the surviving brother and the sons of the deceased brother, the benefit of cl. B would, it is conceded, have been available. But, says the Solicitor-General, after the two brothers Biswambar and Bhagaban died, the family could not be regarded as consisting of brothers only. If, however, by the Explanation clause the expression "brother" has been given an artificial meaning as inclusive of the son and the son of a son of a brother, it would be difficult to regard the family as not consisting of brothers only. For the purpose of interpreting cl. B, we must incorporate the Explanation (i) in the expression "consisting of brothers only" and by so

doing the conclusion is inevitable that an undivided family consisting of sons of the deceased brothers, for the purpose of taxation under the Orissa Agricultural Income-tax Act would be regarded as one consisting of "brothers only".

The appeals, therefore, fail and are dismissed. There will be no order as to costs.

Appeals dismissed.

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