Gowli Buddanna

Vs

Commissioner of Income-Tax, Mysore, Bangalore

Civil Appeal No. 328 of 1965

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

10.01.1966

JUDGMENT

SHAH, J. -

One Buddappa, his wife, his two unmarried daughters and his adopted son Buddanna were members of a Hindu undivided family. Buddappa died on July 9, 1952. In respect of the business dealings of the family, Buddappa was assessed during his life-time in the status of a manager of the Hindu undivided family. For the assessment year 1951-52 the Additional Income-tax Officer, Raichur, assessed Buddanna in respect of the income of the previous year which ended on November 8, 1950 as a Hindu undivided family under the title "Sri. Gowli Buddappa (deceased) represented by his legal successor Sri. Gowli Buddanna, Oil Mills Owner, Raichur." The order of assessment was confirmed in appeal by the Appellate Assistant Commissioner, subject to the variation that the assessment was made under the title "Buddanna - a Hindu undivided family." The Income-tax Appellate Tribunal confirmed the order of the Appellate Assistant Commissioner.

The Tribunal then referred the following questions of law to the High Court of Mysore for opinion under s. 66(1) of the Indian Income-tax Act :

> "(i) Whether the sole male surviving coparcener of the Hindu joint family, his widowed mother and sisters constitute a Hindu undivided family within the meaning of the Income-tax Act ?
>
> (ii) Whether the assessment of the income in the hands of the Hindu undivided family was correct ?
>
> (iii) Whether the Appellate Assistant Commissioner was entitled to correct the status ?"

The High Court recorded answers in the affirmative on all the questions. With certificate granted by the High Court under s. 66-A of the Indian Income-tax Act, Buddanna has appealed to this Court.

Before the Appellate Assistant Commissioner it was contended by Buddanna that he could in law have only been assessed as an individual and that the Income-tax Officer was precluded by virtue of the proviso to s. 26(2) to pass the order for assessment for the year 1951-52 against him. The Appellate Assistant Commissioner and the Appellate Tribunal rejected that contention.

Buddappa was a resident of and carried on business at Raichur which before January 26, 1950,

formed part of the territory of H.E.H. the Nizam. The joint family of Buddappa and Buddanna was governed by the Mitakshara School of Hindu law, and there was at the material time no legislation in force in the territory by which on the death of a male member in a joint Hindu family interest in the family estate devolved upon his widow. Such a widow had therefore only a right to receive maintenance from the estate.

Counsel for the appellant urged that the expression "Hindu undivided family" used in s. 3 of the Income-tax Act means a Hindu coparcenary and when on the death of one out of two coparceners the entire property devolves upon a single coparcener, assessment cannot be made on the surviving coparcener in the status of a Hindu undivided family. Alternatively, it was contended that even if the entity Hindu undivided family in the charging section of the Income-tax Act is intended to mean a Hindu joint family, there must be at least two male members in the family, and where there are not two such members the sole surviving male member of the family, even if there be widows entitled to maintenance out of the estate, may be assessed in the status of an individual, and not of a Hindu undivided family, unless the widows of deceased male members are entitled to the benefit of the Hindu Women's Rights to Property Act, 1937, or the Hindu Succession Act, 1956.

The first contention is plainly unsustainable. Under s. 3 of the Income-tax Act not a Hindu coparcenary but a Hindu undivided family is one of the assessable entities. A Hindu joint family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. A Hindu coparcenary is a much narrower body than the joint family : it includes only those persons who acquire by birth an interest in the joint or coparcenary property, these being the sons, grandsons and great-grandsons of the holder of the joint property for the time being. Therefore there may be a joint Hindu family consisting of a single male member and widows of deceased coparceners. In Kalyanji Vithaldas & Other v. Commissioner of Income-tax, Bengal (5 I.T.R. 90 = L.R. 64 I.A. 28), delivering the judgment of the Judicial Committee, Sir George Rankin observed :

> "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 the Act the words "Hindu coparcenary", all the more that it is not possible to say on the face of the Act that no female can be a member."

The plea that there must be at least two male members to form a Hindu undivided family as a taxable entity also has no force. The expression "Hindu undivided family" in the Income-tax Act is used in the sense in which a Hindu joint family is understood under the personal law of Hindus. Under the Hindu system of law a joint family may consist of a single male member and widows of deceased male members, and apparently the Income-tax Act does not indicate that a Hindu undivided family as an assessable entity must consist of at least two male members.

Counsel for the appellant said that there are certain intrinsic indications in the annual Finance Acts which support the contention that the income received or arising from property in the hands of a sole surviving male member in a joint Hindu family, even if there be females having a right to maintenance out of that property, is taxable as income of an individual, and not of the family. He relied by way of illustration upon the Finance Act, 1951, which in the First Schedule sets out the rates of income-tax payable by individuals, Hindu undivided family, unregistered firm and other association of persons. The relevant part of the First A Schedule prescribing rates of tax is as follows :

"Provided that -

(i) no income-tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income, does not exceed the limit specified below;

#. . . . . .##

The limit referred to in the above proviso shall be -

(i) Rs. 7,200 in the case of every Hindu undivided family which satisfies as at the end of the previous year either of the following conditions, namely :

(a) that it has at least two members entitled to claim partition who are not less than 18 years of age; or

(b) that it has at least two members entitled to claim partition neither of whom is a lineal descendant of the other and both of whom are not lineally descended from any other living member of the family; and

(ii) Rs. 3,600 in every other case."

But the Schedule sets out the limits of exempted income : it does not state or imply that a Hindu undivided family must consist of at least two members entitled to claim partition. The text of the clause furnishes a clear indication to the contrary.

Reliance was also placed upon the form of "Return" prescribed under the Rules, which by s. 59 of the Income-tax Act, 1922 have effect as if enacted in the Act. Part IIIA of the Form prescribes certain particulars to be incorporated in the case of a Hindu undivided family, viz. names of members of the family at the end of the previous year who were entitled to claim partition, relationship, age at the end of the previous year and remarks, but thereby it is not intended that a Hindu undivided family as an assessable entity does not exist so long as there are not at least two or more members entitled to claim partition. The information is required to be given in Part IIIA of the Form merely to enable the Income-tax Officer to consider which of the two parts of the proviso in the First Schedule to the relevant Finance Act prescribing the limit of exemption in respect of the Hindu undivided family applies.

Sub-section (1) of s. 25-A on which reliance was placed also does not imply that a Hindu undivided family must consist of more male members than one. The sub-section only prescribes the procedure whereby the members of a family which has hither to been assessed in the status of a Hindu undivided family may obtain an order that they may, because of partition of the joint status, be assessed as separated members. The-clause is purely procedural : it does not enact either expressly or by implication that a Hindu undivided family assessed as a unit must consist of at least two male members who are capable of demanding a partition.

Counsel for the appellant placed strong reliance upon certain observations of the Judicial Committee in the judgment in Kalyanji Vithaldas's case (5 I.T.R. 90 = L.R. 64 I.A. 28.) in which they disapproved of the view expressed by the Bombay High Court in Commissioner of Income-tax, Bombay v. Gomedalli Laksminarayan (3 I.T.R. 123.). In the case decided by the Bombay High Court a joint family consisted of a father and a son and their respective wives. The father died, and

in the year of assessment the joint family consisted of the son, his mother and his wife. In dealing with the question referred by the Commissioner of Income-tax whether the income received by the son should be regarded as his individual income or as the income of a Hindu undivided family for the purpose of assessment to super-tax under the Indian Income-tax Act, the Bombay High Court held that the expression "Hindu undivided family" as used in the Income-tax Act includes families consisting of a sole surviving male member and female members entitled to maintenance, and the income of the assessee should therefore be treated as the income of a Hindu undivided family. In Kalyanji Vithaldas's case (5 I.T.R. 90 = L.R. 64 I.A. 28.) which dealt with a group of appeals from the judgment of the Calcutta High Court in In re Moolji Sicka & Others (3 I.T.R. 123.) the Judicial Committee observed :

"The High Court (of Calcutta) 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 assessee, 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 Bombay High Court, on the other hand, in Laxminarayan's case 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 Judicial Committee further observed :

> "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 . . . . . 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 him 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 facts of the cases which were decided by the Judicial Committee need to be scrutinized carefully. Before the Judicial Committee there were six appeals by six partners of the firm Moolji Sicka : they were Moolji, Purshottam, Kalyanji, Chaturbhuj, Kanji and Sewdas. Moolji, Purshottam and Kalyanji had each a son or sons from whom he was not divided. But the income of the firm, which had to be assessed to super-tax was the separate income of each of these partners. Chaturbhuj had a wife and daughter but no son, and the income was his separate property. Kanji and Sewdas, sons of Moolji, were married men, but neither had a son : they received by gift from Moolji their respective interests in the firm, and for the purpose of the case it was assumed that the interest of each was ancestral property in which if he had a son the son would have taken an interest by birth.

But no son having been born, the interest of Kanji and Sewdas in the property was not diminished or qualified. The Judicial Committee held that the wife and the daughters of a Hindu had right to maintenance out of his the separate property as well as out of his coparcenary interest, but the mere existence of a wife or daughter did not make ancestral property in his hands joint. They observed :

> "'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 Judicial Committee accordingly held that in none of the six appeals before them could the income falling to the shares of the partners of a registered firm be treated as income of a Hindu undivided family and assessed on that footing. In the view of the Judicial Committee, income received by four out of the six partners was their separate income : in the case of the remaining two partners the income was from sources which were ancestral. But merely because the source was held by a member who had received it from his father and was on that account ancestral, the income could not be deemed for purposes of assessment to be income of a Hindu undivided family, even though Kanji had a wife and a daughter, and Sewdas had a wife who had rights to be maintained under the Hindu law.

In Gomedalli Lakshminarayan's case (3 I.T.R. 367.) the property was ancestral in the hands of the father, and the son had acquired by birth an interest therein. There was a subsisting Hindu undivided family during the life-time of the father and that family did not come to an end on his death. On these facts the High Court of Bombay held that the income received from the property was liable to super-tax in the hands of the son who was the surviving made member of the Hindu undivided family in the year of assessment. This distinction in the facts in the case then under discussion and the facts in Gomedalli Lakshminarayan's case (3 I.T.R. 367.) was not adverted to and the Board observed in Kalyanji Vithaldas's case (5 I.T.R. 90 = L.R. 64 I.A. 28.) that the Bombay High Court "arrived too readily at the conclusion that the income was the income of the family." When Gomedalli Lakshminarayan's case (3 I.T.R. 367.) was carried in appeal to the Judicial Committee, the Board regarded themselves as bound by the interpretation of the words "Hindu undivided family" employed in the Indian Income-tax Act in the case of Kalyanji Vithaldas (5 I.T.R. 90 = L.R. 64 I.A. 28.) and observed that since the facts of the case were not in any material respect different from the facts in the earlier case, the answer to the question referred should be that "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 purpose of assessment to super-tax under s. 55 of the Indian Income-tax Act, 1922." : Commissioner of Income-tax v. A. P. Swamy Gomedalli (5 I.T.R. 416.).

It may however be recalled that in Kalyanji Vithaldas's case (5 I.T.R. 90 = L.R. 64 I.A. 28.) income assessed to tax belonged separately to four out of six partners : of the remaining two it was from an ancestral source but the fact that each such partner had a wife or daughter did not make that income from an ancestral source income of the undivided family of the partner, his wife and daughter. In Gomedalli Lakshminarayan's case (3 I.T.R. 367.) the property from which income accrued belonged to a Hindu undivided family and the effect of the death of the father who was a manager was merely to invest the rights of a manager upon the son. The income from the property was and continued to remain the income of the undivided family. This distinction which had a vital bearing on the issue falling to be determined was not given effect to by the Judicial Committee in A. P. Swamy

Gomedalli's case (5 I.T.R. 416.).

A recent judgment of the Judicial Committee in a case arising from Ceylon Attorney-General of Ceylon v. A. R. Arunachalam Chettiar and Others (L.R. (1957) A.C. 540 : 34 I.T.R. Suppl. 42.) is in point. One Arunachalam - a Nattukottai Chettiar - and his son constituted a joint family governed by the Mitakshara School of Hindu law. The father and the son were domiciled in India and had trading and other interests in India, Ceylon and Far Eastern Countries (Vide Attorney-General v. A. R. Arunachalam Chettiar (No. 1) - (L.R. (1957) A.C. 513). The undivided son died in 1934 and Arunachalam became the sole surviving coparcener in a Hindu undivided family to which a number of female members belonged. Arunachalam died in 1938 shortly after the Estate Duty Ordinance No. 1 of 1938 came into operation in Ceylon. By s. 73 of the Ordinance it was provided that property passing on the death of a member of a Hindu undivided family was exempt from payment of estate duty. At all material times, the female members of the family had the right of maintenance and other rights which belonged to them as such members. The widows in the family including the widow of the predeceased son had also the power to introduce coparceners in the family by adoption, and that power was exercised after the death of Arunachalam. On a claim to estate duty in respect of Arunachalam estate in Ceylon, it was held that Arunachalam was at his death a member of a Hindu undivided family, the same undivided family of which his son, when alive was a member, and of which the continuity was preserved after Arunachalam's death by adoptions by the widows of the family. The Judicial Committee observed at p. 543 :

> "..... though it may be correct to speak of him (the sole surviving coparcener) as the "owner", yet it is still correct to describe that which he owns as the joint family property. For his ownership is such that upon the adoption of a son it assumes a different quality : it is such too that female members of the family (whose members may increase) have a right to maintenance out of it and in some circumstances to a charge for maintenance upon it. And these are incidents which arise, notwithstanding his so-called ownership, just because the property has been and has not ceased to be joint family property . . . . it would not appear reasonable to impart to the legislature the intention to discriminate, so long as the family itself subsists, between property in the hands of a single coparcener and that in the hands of two or more coparceners."

Dealing with the question whether a single coparcener can alienate the property in a manner not open to one of several coparceners, they observed that it was,

> "an irrelevant consideration. Let it be assumed that his power of alienation is unassailable : that means no more than that he has in the circumstances the power to alienate joint family property. That is what it is until he alienates it, and, if he does not alienate it, that is what it remains. The fatal flaw in the argument of the appellant appeared to be that, having labelled the surviving coparcener "owner", he then attributed to his ownership such a congeries of rights that the property could no longer be called "joint family property." The family, a body fluctuating in numbers and comprised of male and female members, may equally well be said to be owners of the property, but owners whose ownership is qualified by the powers of the coparceners. There is in fact nothing to be gained by the use of the word "owner" in this connexion. It is only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it can be determined whether the family property can properly be described as "joint property" of the undivided family."

Property of a joint family therefore does not cease to belong to the family merely because the family is represented by a single coparcener who possesses rights which an owner of property may possess. In the case in hand the property which yielded the income originally belonged to a Hindu undivided family. On the death of Buddappa the family which included a widow and females born in the family was represented by Buddanna alone but the property still continued to belong to that undivided family and income received therefrom was taxable as income of the income of the Hindu undivided family.

The High Court was therefore right in recording their answers referred for opinion.

We may observe that in this case we express no opinion on the question whether a Hindu undivided family may for the purpose of the Indian Income-tax Act be treated as a taxable entity when it consists of a single member - male or female.

The appeal is dismissed with costs.

Appeal dismissed.

</html