

Shri Raj Kumar Singh Kukam Chandji

Vs

Commissioner of Income-Tax, Madhya Pradesh

Civil Appeals Nos. 326 and 327 of 1967

(J. C. Shah, K. S. Hegde. A. N. Grover JJ)

11.08.1970

JUDGMENT

HEGDE, J. -

1. The question of law arising for decision in these appeals by certificate under Section 66-A(2) of the Indian Income-tax Act, 1922 (to be hereinafter to as the Act) is :

"Whether on the facts and in the circumstances of the case, the managing director's remuneration received by Sri Rajkumar Singh was assessable in his individual hands and not in the hands of the assessee Hindu Undivided Family ?"

2. This question was referred by the Income-tax Appellate Tribunal, Bombay Bench 'A' to the High Court of Judicature at Bombay on an application made under Section 66(1) of the Act by the Commissioner of Income-tax, Madhya Pradesh. The High Court has answered that question in favour of the Revenue. As against that decision this appeal has been brought.

3. The assessee in this case is a Hindu Undivided Family and the concurred assessment year is 1954-55, the relevant accounting period being the year ending Diwali 1953, i.e., November 6, 1953. Previously a Hindu Undivided Family was carrying on business under the name and style of Sarupchand Hukamchand. That family was carrying on several business one of which was the management of certain mills. That family disrupted on March 30, 1950. The assessee is the branch of that family. On March 31, 1950, a company under the name and style of a Sarupchand Hukamchand Private Ltd., was incorporated. The capital of the company consisted of Rs. 5 crores divided into 20,000 preference shares of Rs. 1,000/- each and 3,000 ordinary shares of Rs. 1,000/- each. The company itself was incorporated for the purpose of acquisition from M/s. Sarupchand for the purpose of acquisitions from M/s. Sarupchand Hukamchand, certain managing agencies, business, factories and properties and for that purpose to enter into an agreement with the said firm and to carry on business as managing agents of Rajkumar Mills Ltd., the Hukamchand Mills Ltd. and the Hira Mills Ltd., and the other business mentioned more particularly in the Memorandum of Association of the company. The first directors of the company were :

- (1) Sir Hukamchand Saroopchandji.
- (2) Rajkumarsingh Hukamchandji.
- (3) Lady Kanchanbai Hukamchandji.

(4) Mrs. Premkumaridevi Rajkumarisinghji.

(5) Raja Bahadursingh Rajkumarsinghji.

(6) Rustomji Cowasji Jall.

4. The qualification prescribed for a director under Article 53 was the holding of at least 10 shares in the company whether preference of ordinary or partly preference or partly ordinary. Article 55 provided that the Directors may from time to time appoint one or more of their body to the office of Managing Director or manager on such terms and at such remuneration as may be determined by the Directors. In pursuance of the powers conferred on them under Article 55, the Directors by their resolution, dated March 31, 1950 appointed for the purpose of management of the business of the company Sir Hukamchand Rajbahadur, Rajkumar and Rajbahadur as managing Directors of the company on a remuneration of Rs. 5,000/- per month for each of them for their services. Under Article 63, the Directors were given certain powers for the management of the company. They were subject to the control of the Board of Directors. The three branches of Sir Seth Hukamchand, Lady Kanchanbai and Sri Rajkumarsingh, were allotted 5,000 shares of the face value of Rs. 1,000/- each. The assessee's branch represented by its Karta got 5,000 shares. Rajkumar acquitted 30 further shares in the name of his wife, Premkumari and 10 shares in the name of Rajbahadur. The consideration for all these subsequent acquisitions was found admittedly from the Hindu Undivided Family funds. All the 5,030 shares were treated in the books and the balance-sheet of the assessee family as its property. The dividends in respect of these shares were also credited to the account of the family. Sir Hukamchand died and after his death the other two continued to be the managing directors. For the years 1951-52, 1952-53 and 1953-54, the receipt of this Rs. 5,000/- per month received as remuneration was treated as the income of Rajkumar as an individual and assessed on that basis. Similarly the remuneration received by Sir Hukamchand and Rajbahadur have been and continued to be assessed as their individual income. In making the assessment of the assessee in the year 1954-55, the Income-tax Officer referred to this item in the following words :

"It was claimed that the income from managing directors remuneration and from directors fees is assessable in his hands in individual capacity, as was done in the early assessments also."

5. For that reason he did not assess the sum of Rs. 60,000/- and the sitting fee of Rs. 1,420/- received by Rajkumar in the account year relevant to the assessment year 1954-55 in the hands of the Hindu Undivided Family but they were assessed in the hands of Rajkumar as individual. On January 10, 1961, the Commissioner of Income-tax, in exercise of his powers under Section 33 (b) issued a notice to the assessee to show cause why the assessment of the assessee for the assessment 1954-55 should not be revised by treating the sum of Rs. 60,000/- plus Rs. 1,420/- as the income of the assessee Hindu Undivided Family of which Rajkumar was the Karta. The assessee opposed that notice. He claimed the amount in question as his individual income. The commissioner did not accept the contention of the assessee and purporting to rely on the decision of this Court in Commissioner of Income-tax, West Bengal v. Kalu Babu Lal Chand, held that that income was of the assessee. He taxed the assessee accordingly. Aggrieved by that decision, the assessee took up the matter in appeal to the Income-tax Appellate Tribunal. Before the tribunal, learned Counsel for the assessee conceded that the sitting fee of Rs. 1,420/- may be treated as the income of the assessee. Hence the dispute centred round the sum of Rs. 60,000/- received by Rajkumar as salary. The tribunal upheld the contention of the assessee. The tribunal after tracing the history of the Private Ltd., Co. of which Rajkumar was a Director and the manner in which the earlier assessments were

made observed :

"From the facts set out above it is clear that this is not a part and parcel of the same transaction or the same scheme of arrangement. Whatever may be said of the bigger Hindu Undivided Family, it was sheer accident of circumstances that the smaller Hindu Undivided Family came to hold these shares. Both Rajkumar and Rajbahadur belong to the same branch and both of them are Managing Directors. The Managing Directors were appointed by a resolution of the Board of Directors at any time. The appointment of Managing director was not conditioned upon either Rajkumar or Rajbahadur acquiring these shares. On the disruption of the larger Hindu Undivided Family the smaller Hindu Undivided Family got for its share certain shares. Whatever may be said of the directors' fees, that having been now conceded an income of the Hindu Undivided family, the same cannot be said of the managing Director's remuneration. The managing Director holds office by virtue of the resolution of the Board of Directors. He may not be a servant of the Company but still he receives his salary for his personal service. The contribution of the share capital may at best be considered as acquiring the qualification of a Directors, it is not all people who hold shares that could automatically aspire to be Managing Directors. There is no evidence to show that Rajkumar and Rajbahadur were appointed Managing Directors on behalf of the family or that the income was earned by utilising the joint family property or there was detriment to the family property. There is no material in this case to hold that the acquisition of the business or flotation of the company and the appointment of the Managing Directors were inseparably linked together. As already noticed right up to the accounting year relevant to the present assessment year the income was treated as income of Rajkumar in his individual capacity. It is true no doubt that there is no question of res judicata but this fact has certainly to be taken into consideration. This income has been assessed under Section 7 it has been earned by Rajkumar for his services. It has accrued in his hands. It is open to him to give it over to the family and the mere fact that it was included in the family's account or the balance-sheet cannot in any event affect the question at issue Rajkumar was not appointed as Managing Director or Rajkumar to the family property. The Managing Directorship was an employment of personal responsibility and ability and the mere fact that certain qualification shares and other shares were property of the Hindu Undivided Family was not the sole or even the main reason for his appointment to the responsible post of Managing Director. We are clearly of the opinion therefore that the remuneration received by Rajkumar was assessable only in his hands as an individual and cannot be considered as and clubbed with the income of the Hindu Undivided family."

6. The High court of Madhya Pradesh did not agree with the conclusion reached by the Income-tax Appellate Tribunal. It felt that in view of the decision of this Court in Commissioner of Income-tax, West Bengal v. Kalu Babu Lal Chand, (supra), the answer to the question referred to it should be in favour of the Revenue.

7. The question of law arising for decision in this case has been the subject-matter of numerous decisions of this Court and of various High Courts. But yet the law cannot be said to have been settled beyond controversy. The two opposing view points to which we shall refer presently try to seek sustenance from one or the other decision of this Court. As far back as 1921 in Gokul chand v. Hukam chand Nath Mal, (48 IA 162) the judicial Committee ruled "that there could be no valid

distinction between the direct use of the joint family funds the use which qualified the members to make the gains on his efforts". In making this observation, the judicial Committee appears to have been guided by certain ancient Hindu Law texts. That view of the law became a serious impediment to the progress of the Hindu society. It is well known that the decision in Gokul Chand's case (supra) gave rise to great deal of public dissatisfaction and the central legislature was constrained to step in and enact the Hindu Gains of Learning Act, 1930 (39 of 1930) which nullified the effect that decision. Then came the decision of this Court in Commissioner of Income-tax v. Kalu Babu Lal Chand (supra). On the facts of that case, this Court held that the remuneration earned by Rohatgi as the Managing Director of a firm was the income of his Hindu Undivided Family. The facts of that case were somewhat peculiar. They were set out at p. 130 of the report. It would be best to quote that passage which reads :

"Here was the Hindu Undivided Family of which B. K. Rohatgi was the Karta. It became interested in the concern then carried on by Milkhi Ram and others under the name of India Electric Works. The Karta was one of the promoters to take-over the India Electric Works as a going concern. In anticipation of the incorporation of that family the Karta of the family took over the concern, carried it on and supplied the finance at all stages out of the joint family funds and the finding is that he never contributed anything out of his separate property, if he had any. Article of Association of the company provided for the appointment as Managing Director of the very person who, as the karta of the finally, had promoted the company. The acquisition of the business, the flotation of the Company and appointment of the managing director appear to us to be inseparably linked together. The joint family assets were used for acquiring the concern and for financing it and in lieu of all that detriment to the joint family properties the joint family got not only the shares standing in the names of two members of the family but also, as part and parcel of the same scheme, the Managing Directorship of the company when incorporated. It is also significant that right up to the accounting year relevant to the assessment year 1943-44, the income was treated as the income of the Hindu Undivided Family. It is true that there is no question of res judicata but the fact that the remuneration was credited to the family is certainly a fact to be taken into consideration."

8. The next came the decision of this Court in Mathura Prasad v. Commissioner of Income-tax. (60 ITR 428) The facts found in that case are more or less similar to those found in Kalu Babu Lal Chand's case (supra). Those facts are : Mathura Prasad, the manager of his Hindu Undivided Family had entered into a partnership as representing his family of which he was the Karta for the benefit of the family. There was also no dispute that in the firm of Badri Prasad Jagan Prasad, the assets of the assessee family were invested. The Tribunal found that Mathura Prasad, the manager, became a partner in the firm with the help of joint family funds and as partner he was entrusted with the management of the Agarwal Iron Works. On the basis of those facts, it was held that the allowance received by Mathura Prasad was therefore directly related to the investment of the family funds in the partnership business. In the course of the judgment, it was observed :

"It was suggested that Mathura Prasad earned the allowance sought to be brought to tax because of the special aptitude he possessed for managing the Agarwal Iron Works, and the allowance claimed by him was not earned by the use of the joint family funds. But no such contention was raised before the High Court. We have been taken through the petition filed in the High Court under Section 66(2) of the Act, and there is no averment to the effect that Mathura Prasad had any special

aptitude for management of the Agarwal Iron Works, and what was agreed to be paid to him was as remuneration for performing services because of such aptitude."

9. Then we come to the decision of this Court in Piyare Lal Adishwar Lal v. Commissioner of Income-tax. (40 ITR 17) Therein one Sheel Chandra, who was the Karta of his Hindu Undivided Family consisting of himself and his younger brother, furnished as security his family properties for being appointed the treasurer of a bank. He would not have been appointed treasurer of the bank but for the security given. In that case also, it was contended on behalf of the Commissioner of Income-tax that the salary earned by Sheel Chandra was a family income and is liable to be taxed as such. That contention was negated by this Court. From that decision it follows that it is not any and every kind of aid received from family funds which taints an income as family income. Before an income earned by the exertions of a co-parcener can be considered as family income, a direct and substantial nexus between the income in dispute and the family funds should be established.

10. On October 27, 1967, this Court rendered three different decisions namely, V. D. Dhanwatey v. Commissioner of Income-tax, M. P., (68 ITR 365) M. D. Dhanwatey v. Commissioner of Income-tax, M. P. (68 ITR 385) and SRM. CT. PL. Palaniappa Chettiar v. Commissioner of Income-tax Madras. The facts in V. D. Dhanwatey's case are : V. D. Dhanwatey as the Karta of his Hindu Undivided Family was a partner of a firm. His contribution to the capital of the firm belonged to the family. Interest was payable on the capital contributed by each partner. Under clause (7) of the deed of partnership, the general management and supervision of the partnership business was to be in the hands of V. D. Dhanwatey. Under clause (16), he was to be paid monthly remuneration at gross earning of the partnership business. The question was whether the salary received by V. D. Dhanwatey was assessable in the hands of his Hindu Undivided Family. On the above facts, the High Court held that the remuneration paid to V. D. Dhanwatey was only an increased share in the profits of the firm paid to V. D. Dhanwatey as representing his Hindu Undivided Family and hence the said amount was taxable in the hands of his undivided family. By a majority decision this Court agreed with the view taken by the High Court. This Court held that the remuneration paid by the firm to V. D. Dhanwatey directly related to the investments in the partnership business from the assets of the family and that there was real and sufficient connection between the investments from the joint family funds and the remuneration paid to him. On that basis this Court ruled that the salary paid to V. D. Dhanwatey was assessable as the income of his Hindu Undivided family.

11. The facts found in M. D. Dhanwatey's case (supra) were that M. D. Dhanwatey, as the Karta of his Hindu Undivided Family was a partner in the firm. His share in the capital of the firm was entirely contributed by the family, clause (5) of the deed of partnership provided for payment of interest to the partners on their share contribution. Under Clause (8), he was to be the manager in-charge of the works and under clause (16) he was to be paid a monthly remuneration. The question was whether the salary received by him could be included in the total income of his Hindu Undivided Family. The Court held that the salary received by him could be included in the total income of his Hindu Undivided Family.

12. In Palaniappa Chettiar's case (supra) the facts found are as follows :

"In 1934, the Karta of a Hindu Undivided Family acquired 90 out of 300 shares in a transport company with the funds of the family. There were initially four shareholders including the Karta and two of them were directors. On the death of one of them in 1941, the Karta became a director of the company. On the death of another, who was managing the business of the company, he became the Managing

Director of the company in 1942. At the relevant period he was entitled to a salary and a commission on the net profits of the company. The Managing Director had control over the financial and administrative affair of the company and the only qualification under its articles of association was the qualification of a director, viz., the holding of not less than 25 shares in his own right. The question was whether the Managing Director's remuneration and commission and sitting fees received by the Karta were assessable as the income of the family. This Court held that the shares were acquired by the family not with the object that the Karta should become the Managing Director but in the ordinary course of investment and there was no real connection the investment of joint family funds in the purchase of the shares and the appointment of the Karta as Managing Director of the company. The remuneration of the Managing Director was not earned by any detriment to the joint family assets. Hence the amount received by the karta as Managing Director's remuneration commission and sitting fees were not assessable as the income of the Hindu Undivided Family."

13. The next case decided by this Court was Commissioner of Income-tax Mysore v. Gurunath Dhakappa. (72 ITR 192) Therein the Karta of a Hindu Undivided Family was a partner in a registered firm, representing his family. He was appointed manager of the firm on a remuneration of Rs. 500/- per month. For the assessment year 1960-61, he received a sum of Rs. 14,737/- from the firm including a sum of Rs. 6,000/- as his salary for managing the firm's directly related to the assets of the family utilised in the firm. On the basis of those facts, this Court held that the sum of Rs. 6,000/- could not be treated as the income of the Hindu Undivided Family. In the course of the judgment this Court observed :

"In the absence of a finding that the income which was received by Dhakappa was directly related to any assets of the family utilised in the partnership the income cannot be treated as the income of the Hindu Undivided Family."

14. Then we come to the decisions of this Court in P. N. Krishna Iyer v. Commr. Of Income-tax, Kerala. (73 ITR 539) Therein Krishna Iyer, the Karta of his Hindu Undivided Family received salary, commission and sitting fees as governing director of a private company which carried on transport business. The shares which qualified the Karta to become a member of the company were purchased with the aid of joint family and were made available to the company in consideration of a mere promise to pay the amount for which the assets were valued. Dividends from shares of the value of Rs. 4,88,000 allotted to the Karta by the company in consideration of valuable services rendered by him were also treated as belonging to the family. The Tribunal held that the income from salary, commission and sitting fees earned by the Karta was his separate income. The High Court, on a reference, held that the income was assessable in the hands of the family. On appeal this Court held that the question whether the income was the income of the Hindu Undivided Family or of the individual was a mixed question of law and fact and the final conclusion drawn by the tribunal from the primary evidentiary facts was open to challenge on the plea that the relevant principle has been misapplied by the tribunal. On the facts of the case, this Court affirming the decision of the High Court held that the income was primarily earned by utilising the joint family assets or funds and the mere fact that in the process of gaining the advantage an element of person service or skill or labour was involved did not alter the character of the income. Therein this Court further observed that in cases of this class the character of the receipt had to be determined by reference to its source, its relation to the assets of the family of which the recipient was a member and the primary object with which the benefit received was disbursed.

15. Lastly we come to the decision of this Court in Commissioner of Income-tax, Mysore v. D. C. Shah. (73 ITR 692) Therein the respondent, a Hindu Undivided Family was the partner in two firms through its Karta D. C. Shah. The Karta was paid by the two firms remuneration as a managing partner. He was found to be a man of rich experience in the line of business which the two firms were carrying on. Clause (8) of the partnership deed of the first firm provided that Shah who has been managing the business of the firm shall continue to act as managing partner for conducting the said business free from any interference of the other partners with power to manage, direct, appoint and/or remove any one of the employees and/or do all other things including the right to draw cheques, to make, deliver and accept documents either legal or commercial in respect of the partnership business. Clause (9) provided that Shah shall continue to be the managing partner for his life-time or his retirement whichever is earlier. In the deed of the second firm clause (14) provided for appointment of another partner, K, as the managing partner and gave the managing partner powers similar to those in the deed of the other firm. Clause (15) provided for Shah's appointment after K's retirement and Shah was appointed after his retirement. No other partner was paid any salary in this firm. On these facts this Court held that there was no real or sufficient connection between the investment of the joint family funds and the remuneration paid to Shah and that remuneration was not earned on account of any detriment to the joint family assets and the remuneration received by Shah as the managing partner of the two firms was not assessable as the income of his Hindu Undivided Family.

16. At first sight there appears to be conflict between the two lines of decisions namely Kalu Babu's case, Mathura Prasad's case; two Dhanwatey's case and Krishna Iyer's case on one Palaniappa Chettiar's case, Dakappa's case and D. C. Shah's case on the other. The line that demarcates these two lines of decisions is not very distinct but on a closer examination that line can be located. In order to find out whether a given income is that of the person to whom it was purported to have been given or that of his family, several tests have been given or that of his family, several tests have been enumerated in the aforementioned decisions but none of them excepting Kalu Babu's case makes reference to the observations of Lord Sumner in Gokal Chand's case that "in considering whether gains are partible, there is no valid distinction between the direct use of joint family funds and a use which qualifies the member to make the gains by his own efforts". We think that that principle is no more valid. The other tests enumerated are :

- (1) whether the income received by a co-parcener of a Hindu Undivided Family as remuneration had any real connection with the investment of the joint family funds;
- (2) whether the income received was directly related to any utilization of family assets;
- (3) whether the family had suffered any detriment in the process of realization of the income, and
- (4) whether the income was received with the aid and assistance of the family funds.

17. In our opinion from these subsidiary principles, the broader principle that emerges is whether the remuneration received by the coparcener in substance though not in form was but one of the modes of return made to the family because of the investment of the family funds in the business or whether it was a compensation made for the services rendered by the individual coparcener. If it is the former, it is an income of the Hindu Undivided Family but if it is the latter then it is the income of the individual coparcener. If the income was essentially earned as a result of the funds invested

the fact that a coparcener has rendered some service would not change the character of the receipt. But if on the other hand it is essentially a remuneration for the services rendered by a coparcener, the circumstances that his services were available because of the reason that he was a member of the family which had invested funds in that business or that he had obtained the qualification shares from out of the family funds would not make the receipt, the income of the Hindu Undivided Family. Applying the tests enumerated above to the facts found by the tribunal in the present case, there is hardly any room to doubt that the income in question was the individual income of Rajkumar. He did not become the Managing Director of the firm for the mere reasons that his family had purchased considerable shares in the firm. He was elected as a Managing Director by the board of directors. The tribunal has found that he received his salary for his personal services. There is no material to hold that he was elected Managing Director on behalf of the family. In the past the salary received by him was assessed as his individual income. The same was the case as regards the salary received by the other Managing Directors. The tribunal has found that he was not appointed as Managing Director as a result of any outlay or expenditure of or detriment to the family property. It has further found that the Managing Directorship was an employment of personal responsibility and ability. In these circumstances we agree with the conclusions reached by the tribunal that the income in question cannot be treated as the income of the assessee. For these reasons we are unable to agree with the High Court that the income in question can be held to be the income of the assessee.

18. Hence this appeal is allowed and in the place of the answer given by the High Court to the question referred to it, we answer that question as follows :

"On the facts and in the circumstances of the case the Managing Director's remuneration received by Raj Kumar Singh was assessable as his individual income and not as the income of his Hindu Undivided Family."

19. The department shall pay the costs of the appellant both in this Court and in the High Court. Hearing fee one set.

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