Chandrakant Manilal Shah and Another

Vs

Commissioner of Income-Tax, Bombay-II

Civil Appeal No. 1187 (NT) of 1976

(S. Ranganathan, N. D. Ojha, V. Ramaswami-II JJ)

24.10.1991

JUDGMENT

OJHA J. –

This appeal by special leave has been preferred against the judgment dated July 22, 1975 of the Bombay High Court in Income-tax Ref. No. 95 of 1965 made under section 66(1) of the Indian Income Tax Act, 1922. The assessment year under reference is 1961-62.

Chandrakant Manilal Shah was the karta of a Hindu Undivided family (HUF) and the family was carrying on business in cloth. Naresh Chandrakant, one of the sons of Chandrakant Manilal Shah, joined the business on a monthly salary of Rs. 100 since about April 1959. It was asserted that with effect from November 1, 1959 the business had been converted into a partnership between Chandrakant Manilal Shah as karta of HUF and Naresh Chandrakant. The deed of partnership executed in this behalf on November 12, 1959 indicating that Naresh Chandrakant had been admitted as a working partner with effect from November 1, 1959 having 35 per cent share in the profits and losses of the firm and the remaining 65 per cent share was held by Chandrakant Manilal as the karta of the HUF. An application was made for registration of the firm which was dismissed by the Income Tax Officer on the ground that there was no valid partnership. The view taken by the Income Tax Officer was upheld in appeal by the Appellate Assistant Commissioner. On further appeal, the Income Tax Appellate Tribunal also came to the same conclusion that there was no valid partnership and the business consequently must be taken to continue in the hands of the joint family. However, at the instance of the assessee the following question was referred by the Tribunal to the High Court for its opinion :

> "Whether, on the facts and in the circumstances of the case, there was a valid partnership under Annexure 'A' between Shri Chandrakant, as the karta of the HUF and Shri Naresh, a member of the family ?

3. The High Court by the judgment under appeal answered the aforesaid question in the negative, in favour of the Revenue and against the assessee. In doing so, it relied an earlier decision of that court in Shah Prabhudas Gulabchand v. CIT ((1970) 77 ITR 870 (Bom)). It is against this judgment that the assessee has come up in appeal to this court.

4. It has been urged by learned counsel for the appellants that the mere fact that Naresh Chandrakant had neither separated from the HUF nor brought in any cash asset as his capital contribution to the partnership but was contributing only his skill and labour, could not in law detract from a valid partnership being created. Learned counsel for the respondent, on the other hand, contended the

view taken in this behalf by the Tribunal and the High Court was correct and was not only supported by the decision relied on by the High Court referred to the above but also by another decision of the Gujarat High Court in Pitamberdas Bhikhabhai and Co v. CIT ((1964) 53 ITR 341 (Guj)).

5. Having heard learned counsel for the parties, we are inclined to agree with the submission made by learned counsel for the appellants. In our view, this contention derives full support from the view of the Judicial Committee of the Privy Counsel in Lachhman Das v. CIT ((1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277). There the question which fell for consideration was :

> "Whether, in the circumstances of this case, there could be a valid partnership between Lachhman Das as representing a Hindu undivided family on the one hand and Daulat Ram, a member of that undivided Hindu family in his individual capacity, on the other ?"

6. In other words, the question was the same as the one arising in the present case but for the difference in the factual background that, whereas in the case before the Judicial Committee the member has brought in his separate capital, the member in the present case claims only to be a working partner. Does this difference in facts make a difference in principle ? That is the question.

7. In Lachhman Das ((1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277) it had been urged before the High Court for the assessee that, when the karta of a HUF could enter into a partnership with a stranger as held by the Privy Counsel in P. K. P. S. Pichappa Chettiar v. Chockalingam Pillai (AIR 1934 PC 192 : 150 IC 802 : 1934 ALJ 895), there was no reason why a coparcener also could not enter into such a partnership by making contributions in his individual capacity from his separate funds. This plea was repelled by the High Court on the ground that a coparcener could not be regarded as a stranger so long as he continued his connection with his undivided family in his capacity as a coparcener. While reversing the judgment of the High Court, it was held by the Privy Counsel (ITR pp. 40-41)

> "After careful consideration, their Lordships cannot accept this view and on general principles they cannot find any sound reason to distinguish the case of a stranger from that of a coparcener who puts into the partnership what is admittedly his separate property held in his individual capacity and unconnected with the family funds. Whatever the view of a Hindu joint family and its property might have been at the early stages of its development, their Lordship think that it is now firmly established that an individual coparcener, while remaining joint, can possess, enjoy and utilise, in any way he likes, property which was his individual property, not acquired with the aid of or with any detriment to the joint family property. It follows from this that to be able to utilise this property at his will, he must be accorded the freedom to enter into contractual relations with others, including his family, so long as it represent in such transactions by a definite personality like its manager. In such a case he retains his share and interests in the property of the family, while he simultaneously enjoys the benefit of his separate property and the fruits of its investment. To be able to do this, it is not necessary for him to separate himself from his family. This must be dependent on other considerations, and the result of a separate act envoicing a clear intention to break away from the family. The error of the Income Tax Officer lay in his view that, before such a contractual relationship can validly come into existence, the 'natural family relationship must be brought to an end.' This erroneous view appears to have coloured his and the subsequent

decisions of the income tax authorities.

In this view of the Hindu law, it is clear that if a stranger can enter into partnership, with reference to his own property, with a joint Hindu family through its karta, there is no sound reason in their Lordships' view to withhold such opportunity from a coparcener in respect of his separate and individual property."

8. The aforesaid view of the Privy Counsel was approved by this court in Firm Bhagat Ram Mohanlal v. Commissioner of Excess Profits Tax, Nagpur ((1956(29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143) but on the facts of that case it was held that the partnership set up in that case was not valid.

9. The above principle has been applied by several High Courts to uphold the validity of a partnership between the karta of a HUF and an individual member of the family where the latter is taken in as a working partner. In I. P. Munavalli v. CIT ((1969) 74 ITR 529 (Mys)) it was held by the Mysore High Court, after referring to the decision of this court of the Privy Counsel in the case of Lachhman Das ((1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277) and of this Court in the case of Firm Bhagat Ram ((1956) 29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143) : (ITR p. 533)

"So it is clear that the Supreme Court did not dissent from the opinion expressed by the Privy Counsel that "in respect of their separate or divided property" the coparceners of a Hindu joint family, even though they had not become divided from one another and there had been no partition of the family properties, could become partners of a firm of which the joint Hindu family represented by its karta is itself a partner.

If a partner by putting into the partnership by way of his capital his separate property or the property he obtained at a partition on division and thus can become a partner with the family represented by its karta, it is difficult to understand how such a partnership cannot come into being and why a coparcener who continues to remain a member of the coparcenary cannot become a working partner of a firm of which he and the family represented by its karta are the partners. In Lachhman Das case ((1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277) the coparcener place at the disposal of the firm as his capital his separate property, and in the case of a working partner he contributes his skill or labour or both as the case may be. If the partnership is permissible in one case, it would be difficult to assign any reason for reaching the conclusion that it is not permissible in the other."

10. In Ramchand Nawalrai v. CIT ((1981) 130 ITR 826 : 1981 Tax LR 448 : 1981 MPLJ 39), it was held by the Madhya Pradesh High Court as hereunder (pp. 832-34)

"It will be clear from the facts of the case of Firm Bhagat Ram Mohanlal ((1956) 29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143) that the question whether a coparcener can enter into a valid partnership with the karta of his family by contributing merely skill and labour did not arise for decision. The only question in the case was whether the individual members of a HUF can, without contributing anything, become members of a partnership constituted between the karta and strangers. This question had necessarily to be answered in the negative on the settled view that when a karta enters into a partnership with strangers it is the karta alone who becomes the partner.

> The observations of the Supreme Court that (ITR p. 526) : "[I]f members of a coparcenary are to be regarded as having become partners in a firm with strangers, they would become under the partnership law partners inter se, and it would cut at the very root of the notion of a joint undivided family to hold that with reference to coparcenary properties the members can at the same time be both coparceners and partners', as contained in the passage quoted above, must be limited to the facts on which Firm Bhagat Ram Mohanlal case ((1956) 29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143) was decided. The Supreme Court in the same passage referred to the decision of the Privy Counsel in Lachhman Das case ((1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277) and did not disapprove of it. If a coparcener by contributing his separate property can enter into a valid partnership with the karta of his family, as held by the Privy Counsel in Lachhman Das case ((1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277) there seems no valid reason why a coparcener cannot, by contributing merely his skill and labour, enter into a partnership with karta. If the former does not cut at the root of the notion of the joint Hindu family, the latter also does not. Even in the case of the former, the partnership property will consist of the contribution made by the karta from the coparcenary property and the contribution made by the coparcener of his individual property. Both taken together would become partnership property in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership (Addanki Narayanappa v. Bhaskara Krishnappa (AIR 1966 SC 1300, 1304 : (1966) 3 SCR 400 : (1966) 2 MLJ (SC) 60)). If in such a situation the coparcener entering into the partnership can be a partner in relation to coparcenary property contributed for the partnership business, there can be no difficulty in holding that the same result would follow when the coparcener entering into a partnership only contributes his skill and labour. In the former case, as stated by the Privy Counsel in Lachhman Das case ((1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277), the coparcener entering into the partnership, retains his share and interest in the family property while simultaneously enjoying the benefit of his separate property and fruits of its investment. In the same way, it can be said that in the latter case the coparcener retains his share and interest in the property of the family while simultaneously enjoying the benefits of his skill and labour which he contributes as consideration for formation of the partnership and for sharing profits.

Learned standing counsel for the Department further submitted that as the profits earned by a partnership in which the contribution of capital is only of joint family funds from the side of the karta would enure to the benefit of the entire joint family being earned with the help of the joint family funds, a coparcener who only contributes his skill and labour for becoming a partner cannot claim any share in the profits as his separate property and therefore, there cannot be any valid partnership. Learned counsel in this connection relied upon the case of V. D. Dhanwatey v. CIT ((1968) 68 ITR 365 : AIR 1968 SC 683 : (1968) 2 SCR 62). Dhanwatey case has to be read along with the case of CIT v. D. C. Shah ((1969) 73 ITR 692 (SC)). In Dhanwatey case ((1968) 68 ITR 365 : AIR 1968 SC 683 : (1968) 2 SCR 62) the karta of a HUF who entered into a partnership was paid a salary from the partnership and it was held that the salary income was the income of the HUF. The basis of the decision was that the salary was paid because of the investments of the assets of the family in the partnership business and there was a real and sufficient connection between the investments from the joint family funds and the remuneration paid to the karta. In Shah case ((1969) 73 ITR 692 (SC)) also the karta entered into a partnership and was paid remuneration. But as the remuneration was paid for the specific acts of management done by the karta resting on his personal

qualification and not because he represented the HUF, it was held that the remuneration was his individual income. Applying the same principle, if a coparcener becomes a working partner in a partnership with the karta and gets a share in profits in consideration of the skill and labour contributed by him, his share in the profits would be his separate property for the profits coming to his share would be directly related to his skill and labour and not to investments of the joint family funds in the business. The question, however, whether a coparcener entering into a partnership with the karta does really contribute any labour of skill for the management of the partnership business in which he is given a share in profits is a question of fact which will have to be determined in the light of the circumstances of each case. In case, it is found that there is no real contribution of skill or labour by the coparcener for sharing the profits, the partnership will be held to unreal and fictitious but that is an entirely different thing from saying that there cannot at all be a valid partnership between the karta and a coparcener when the latter only contributes his skill and labour and is merely a working partner. In our opinion, In our opinion, the argument that as the capital investment in the partnership is only of the funds of the undivided family, there cannot be any partnership, cannot be accepted.

The conclusion reached by us is fully supported by the decision of the Mysore High Court in I. P. Munavalli v. CIT ((1969) 74 ITR 529 (Mys)) with which we respectfully agree. The Bombay, High Court in Shah Prabhudas Gulabchand v. CIT ((1970) 77 ITR 870 (Bom)) took a contrary view. With great respect and for the reasons given above, we are unable to agree with it."

11. In CIT v. Gupta Brothers ((1981) 131 ITR 492 : 1980 Tax LR 1491 (All)), the Allahabad High Court took the same view when it said (ITR p. 496)

> "The observations of the Privy Counsel that a partnership can be formed with a junior member by the karta qua his separate property is by way of illustration of a particular eventuality when the separate property constitutes consideration for the induction of a junior member into the partnership. It cannot be read as being exhaustive of cases where consideration may take forms. Now, as labour and skill would also be consideration as contemplated by the Contract Act, a valid partnership had come into existence, which ought to have been registered."

12. Learned counsel for the respondent has laid considerable emphasis on two points. Firstly, it was urged that Hindu law does not recognise any contract among the coparceners inter se except in two cases, namely, where there is a partial partition and where a coparcener has separate property and brings in such separate property as capital towards consideration for becoming a partner. While elaborating the first point, it has been urged that if, even in a case where there is neither partial partition nor any separate property brought in by the coparcener as consideration for the partnership it is held that a valid partnership can still come into existence, it would create an anomalous inasmuch as such coparcener would be having an interest in the coparcenary property both as a coparcener and as a partner. Reliance in this behalf has been placed on the following observations made in the case of Firm Bhagat Ram Mohanlal ((1956) 29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143) : (ITR p. 526)

> "If members of a coparcenary are to be regarded as having become partners in a firm with strangers, they would also become under the partnership law partners inter se, and it would cut at the very root of the notion of a joint undivided family to hold that with reference to coparcenary properties the members can at the same time be both coparceners and partners."

13. The second point emphasised by learned counsel for the respondent is skill and labour cannot be treated as property.

14. It must be confessed that the observations made in the case of Bhagat Ram Mohanlal ((1956) 29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143) relied upon do appear to support the contention of the Revenue. In the case of Firm Bhagat Ram Mohanlal v. CEPT ((1956) 29 ITR 521 : AIR 1856 SC 374 : 1956 SCR 143) a partnership had been entered into in 1940 between Mohan Lal (M) and two outsiders (R & G), M admittedly representing a HUF consisting of himself and his two brothers Chotelal (C) and Bansilal (B). In 1944, the HUF god divided and, consequently, the firm was reconstituted with five partners, viz. the two outsiders (R & G), M, C and B. This according to the Revenue, had resulted in a "change in the persons carrying on the business" leading to certain consequences adverse to the assessee in the context of the Excess Profits Tax Act. The firm attempted to get over the difficulty in two ways :

> (a) It was contended that, even initially, in 1940, the firm must be considered as having been constituted with all the five persons, R, G, M, C and B, as partners; in other words when M entered into the partnership on behalf of the HUF, the consequence was that not only but this two undivided brothers B and C also become partners in the firm in their individual capacity; and
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> (b) It was suggested that when M entered into the partnership agreement in 1940, all the three coparceners M, C and B, could be regarded as having entered into the contract as kartas of (i.e. representing) the HUF.

15. Both these contentions were negatived. So far as the first contention was concerned, the Court observed that it could be disposed of as being an afterthought opposed to the factual findings in the case. However, the Court proceeded to observe that it was difficult to visualise a situation, which the appellants contended for, of a HUF entering into a partnership with strangers through its karta and the junior members of the family also becoming its partners in there personal capacity. After referring to Lachhman Das ((1948) 16 ITR 35 : AIR 1949 PC 8 : 74 IA 277) and Sunder Singh Majithia v. CIT ((1942) 10 ITR 457 : AIR 1942 PC 57 : (1942) 2 MLJ 761) where divided members of a family were held competent to carry on the erstwhile joint family business in partnership, the Court pointed out : (ITR p. 526)

> "But in the present case, the basis of the partnership agreement of 1940 is that the family was joint and that Mohanlal was its karta and that he entered into the partnership as karta on behalf of the joint family. It is difficult to reconcile this position with that of Chotelal and Bansilal being also partners in the firm in their individual capacity, which can only be in respect of their separate or divided property."

16. This was followed by the observations on which Sri Manchanda, learned counsel for the Revenue has placed considerable reliance. Similarly, so far as Contention (b) was concerned, the Court observed that "even if such a contention could raised consistently with the principles of Hindu law", it was in teeth of the pleadings in the case and so could not allowed to be raised. These passages no doubt suggest that, in the Court's view, an undivided member of a HUF cannot be a partner along with the karta of the family, expect where he furnishes capital in the form of property belonging to him in his individual right or obtained by him on a partition of the family and that the Court left open the question whether more than one member of a HUF can represent the family in a

partnership with outsiders.

17. It will be apparent that this Court had rejected both the contentions of the assessee as being an afterthought or contrary to the factual findings in the case. This was sufficient to dispose of the case. However, the further expressions of opinion, coming from such an eminent Judge as Venkatarama Ayyar, J., are entitled to the greatest weight and respect. We, however, think that the scope of these observations, made in context of the special facts and circumstances of the case, has been magnified by the learned counsel for the Revenue. We may observe, at the outset, that this basic postulate that, under the Hindu law, there can no contract inter se between the undivided members of the family is basically incorrect. This Court has recognised the validity of such contract in various situations. For instance, an undivided member of a HUF (including its karta) can be employed by the HUF for looking after the family business and paid a remuneration therefor : vide, Jitmal Bhuramal v. CIT ((1964) 44 ITR 887(SC)) and Jugal Kishore Baldeo Sahai v. CIT ((1967) 63 ITR 238 : AIR 1967 SC 495 : (1967) 1 SCR 416). Again, on the second contention which was left open, subsequent decisions of this Court have held that it is open to more than one member of the HUF to represent the family in partnership with strangers. In CIT v. Sir Hukumchand Mannalal and Co. ((1970) 78 ITR 18) it was held by this court (SCC p. 354, para 5)

> "The Indian Contract Act imposes no disability upon members of a Hindu undivided family in the matter of entering into contract inter se or with a stranger. A member of a Hindu undivided family has the same liberty of contract as any other individual : it is restricted only in the manner and to the extent provided by the Indian Contract Act. Partnership is under section 4 of the Partnership Act the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all : if such a relation exists, it will not be invalid merely because two or more of the persons who have so agreed are members of a Hindu undivided family."

18. This position has also been recognised in Ratanchand Darbarilal v. CIT ((1985) 4 SCC 183 : 1985 SCC (Tax) 654 : (1985) 155 ITR 720). In that case, there were two firms, one at Katni and one at Satna, constituted by two members of an undivided family with others. The question posed however was whether the Satna firm could be treated as an independent unit of assessment. This court held that it was a question of fact on which the Tribunal's findings were conclusive. In this view, it left unanswered, as academic, the following questions on which the Commissioner had sought a reference (SCC p. 187, para 3)

> "whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in directing that the firm owning the Satna business should be registered in spite of the fact that the members of the two HUFs entered as partners inter se without their effecting in the first instance a severance of joint status by partitioning either partially or totally, the assets of the respective HUFs ?"

However, in the course of its judgment, the Court observed : (SCC p. 189, para 7)

> "The High Court obviously fell into an error in proceeding on the footing that without a partition or a partial partition some of the members belonging to the Hindu undivided family could not constitute themselves into a partnership firm. We do not think this view is correct in law. It is a well settled proposition applicable to Hindu law that members of the joint family or even coparceners can, without disturbing the

status of a joint family or the coparcenary, acquire separate property or run independent business for themselves."

19. Turning now to the specific observations on which reliance has been placed, we do not think that they should be read as permitting a partnership between the karta of a HUF and its individual member only when a brings in some capital but not otherwise. In the context in which they were made, it is seen that they were limited only to point out that there was no claim before the court, as in Lachhman Das ((1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277) or Majithia ((1942) 10 ITR 457 : AIR 1942 PC 57 : (1942) 2 MLJ 761) that the other member had bought in any separate or divided property as capital. On the contrary, the claim was that the coparceners of the HUF other than the karta, who was the eo nomine partner, should be regarded as partners, though they had not entered into any such agreement and had pleased neither capital nor services at the disposal of the firm. It was this claim that was held untenable. Much more significance cannot be read into these observations for, if construed too strictly and in the manner suggested, they will militate against the possibility of a valid partnership being formed in two classes of cases about which there can be no doubt. The first is where an undivided member seeks to become a partner by furnishing capital which has been held permissible in Lachhman Das ((1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 227) and approved in Firm Bhagat Ram Mohanlal ((1956) 29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143) itself. The other is the case of a partnership firm in which more than one partner represents a HUF, the validity of which has been upheld in the cases referred to earlier. The observations cannot, therefore, be read as precluding altogether a claim by an undivided member of a HUF that he has in fact agreed to become a partner along with the karta for genuine and valid reasons. In our view, the Allahabad, ((1981) 131 ITR 492 : 1980 Tax LR 1491 (All) Madhya Pradesh ((1981) 130 ITR 826 : 1981 Tax LR 448 : 1981 MPLJ 39) and Mysore ((1969) 74 ITR 529 (Mys)) decisions rightly held that the observations in Firm Bhagat Ram Mohanlal ((1956) 29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143) do not militate against the formation of a valid partnership in such cases.

20.This takes us on to the second point made by Sri Manchanda, that, though an undivided member can, by contributing separate capital, enter into a partnership with the karta qua the family business, he cannot do so by offering as his contribution to the firm not material capital but only his labour and skill. With regard to this submission made by learned counsel for the respondent that skill and labour cannot be equated with property, it may not be out of place to refer to some earlier history. As has been stated in Mulla's Hindu Law, before the commencement of the Hindu Gains of Learning Act, 1930 (hereinafter referred to as "the Act) it was settled law that income earned by a member of a joint family by the practice of a profession or occupation requiring special training was joint family property if such training was imparted at the expense of joint family property. This being so, if such a member of a joint family were to enter into a partnership with the karta of the family to carry on business, the fruits even of his skill and labour would have been property of the joint family and the very purpose of entering into a partnership namely having a share of his own in the profits of the business would have been defeated. In this state of law if an agreement was reached between such member of the joint family and the karta that out of the profits of the business a defined share will be payable to and be the separate property of such member, the agreement would have been illegal. Indeed, such a member would have been getting a separate share in the profits of the business without making any contribution of his own.

21. However, an almost complete transformation in the legal position was brought about by the Act. Sections 2 and 3 of the Act which are relevant in this behalf read as hereunder :

"2. Definitions. - In this Act, unless there is anything repugnant in the subject or

context, -

(a) 'acquirer' means a member of a Hindu undivided family who acquires gains of learning;

(b) 'gains of learning' means all acquisitions of property made substantially by means of learning, whether such acquisitions be made before or after the commencement of this Act and whether such acquisitions be the ordinary or the extraordinary result of such learning; and

(c) 'learning' means education, whether elementary, technical, scientific, special or general, and training of every kind which is usually intended to enable a person to pursue any trade, industry, profession or avocation in life.

3. Gains of learning not to be held, not to be separate property of acquirer merely for certain reasons. - Notwithstanding any custom, rule or interpretation of the Hindu law, no gains of learning shall be held not to be the exclusive and separate property of the acquirer merely by reason of -

(a) his learning having been, in whole or in part, imparted to him by any member, living or deceased, of his family, or with the aid of the joint funds of his family, or with the aid of the funds of any member thereof, or

(b) himself or his family having, while he was acquiring his learning, been maintained or supported, wholly or in part, by the joint funds of his family, or by the funds of any member thereof."

22. As seen above, the definition of the term "learning" is very wide and almost encompasses within its sweep every acquired capacity which enables the acquirer of the capacity "to pursue any trade, industry, profession or avocation in life." The dictionary meaning of "skill", inter alia, is : "the familiar knowledge of any science, art, or handicraft, as shown by dexterity in execution or performance; technical ability" and the meaning of "labour" inter alia, is : "physical or mental exertion, particularly for some useful or desired end." Whether or not skill and labour would squarely fall within the traditional jurisprudential connotation of property, e.g. jura in re propria, jura in re aliena, corporeal and incorporeal, etc. may be a moot point but it cannot be denied that skill and labour involve as well as generate mental and physical capacity. This capacity is in its very nature an individual achievement and normally varies from individual to individual. It is by utilisation of this capacity that an object or goal in achieved by the person possessing the capacity. Achievement of an object or goal is a benefit. This benefit accrues in favour of the individual possessing and utilising the capacity. Such individual may, for consideration, utilise the capacity possessed by him even for the benefit of some other individual. The nature of consideration will depend on the nature of the contract between the two individuals. As is well known, the aim of business is earning of profit. When an individual contributes cash asset to become a partner in a partnership firm in consideration of a share in the profits of the firm, such contribution helps and at any rate is calculated to help the achievement of the purpose of the firm namely to earn profit. The same purpose is, undoubtedly, achieved also when an individual in place of cash asset contributes his skill and labour in consideration of a share in the profits of the firm. Just like a cash asset, the mental and physical capacity generated by the skill and labour of an individual is possessed by or is a possession of such individual. Indeed, skill and labour are by themselves possessions. "Any possession" is one of the dictionary meanings of the word 'property'. In its wider connotation,

therefore, the mental and physical capacity generated by skill and labour of an individual and indeed the skill and labour by themselves would be the property of the individual possessing them. They are certainly assets of that individual and there seems to be no reason why they cannot be contributed as a consideration for earning profit in the business of a partnership firm. They certainly are not the properties of the HUF but are the separate properties of the individual concerned.

23. To hold to the country, we may observe, would also be incompatible with the practical, economic and social realities of present day living. We no longer live in an age when every member of a HUF considered it his duty to place his personal skill and labour at the services of the family with no quid pro quo except the right to share ultimately, on a partition, in its general property. Today, where an undivided member of a family is qualified in technical fields - may be at the expense of the family - he is free to employ his technical expertise elsewhere and the earnings will be his absolute property; he will, therefore, not agree to utilise them in the family business, unless the latter is agreeable to remunerate him therefor immediately in the form of a salary or share of profits. Suppose a family is running a business in the manufacture of cloth and one of its members becomes a textile expert, there is nothing wrong in the family remunerating him by a share of profits for his expert services over and above his general share in the family properties. Likewise, a HUF may start running a diagnostic laboratory or a nursing home banking on the services of its undivided members who may have qualified as nurses or doctors and promising them a share of profits of the "business" by way of remuneration. This will, of course, have to be the subject matter of an agreement between them but, where there is such an agreement, it cannot be characterised as invalid. It is certainly illogical to hold that an undivided member of the family can qualify for a share of profits in the family business by offering moneys - either his own or those derived by way of partition from the family - but not when he offers to be a working partner contributing labour and services or much more valuable expertise, skill and knowledge for making the family business more prosperous.

24. For the reasons discussed above, we have reached the conclusion that the decisions referred to above which support the contentions of learned counsel for the appellants lay down the correct legal position. The two decisions relied on by learned counsel for the respondent in the cases of Pitamberdas Bhikhabhai and Co. ((1964) 53 ITR 341 (Guj)) and Shah Prabhudas Gulabchand ((1970) 77 ITR 870 (Bom)) of the Gujarat and Bombay High Courts, respectively turned on their particular facts and, if read as laying down a contrary rule, do not lay down good law. In this view of the matter, it cannot be said that when a coparcener enters into a partnership with the karta of a HUF and contributes only his skill and labour, no contribution of any separate asset belonging to such partner is made to meet the requirement of a valid partnership. Reverting to the facts of the instant case it is noteworthy that it is not the case of the Revenue that the partnership between Chandrakant Manilal Shah as karta of HUF and Naresh Chandrakant was fictitious or invalid on any other ground. Consequently, the judgment of the High Court cannot be sustained.

25. In view of the foregoing discussion, this appeal succeeds and is allowed. The judgment of the High Court is set aside and the question referred to the High Court is answered in the affirmative, in favour of the assessee and against the Revenue. In the circumstances of the case, however, there shall be no order as to costs.

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