ANDHRA PRADESH HIGH COURT

Commissioner of Expenditure Tax

Vs

S.R.Y. Sivarama Prasad

(P Jagnmohan Reddy, C.J. and A Rao, J.)

19.11.1968

JUDGMENT

Jaganmohan Reddy, C.J.

1. The Income-tax Appellate Tribunal has referred the following question of law for our opinion under Sec. 64 (1) of the Expenditure Tax Act, 1957 (hereinafter called "the Act). viz."whether on the facts and in the circumstances of the case and on a proper construction of Section 4 (ii) and Sec. 19 of the Expenditure Tax Act 1957 (as applicable for the respective, assessment years) the amount spent on the foreign education of Sri Mallikarjuna Prasad was rightly excluded from the taxable expenditure of the family for the respective assessment years."

2. The assessee, Rajah of Challapalli, was assessed to expenditure tax for the year 1958-59 to 1961-62, for which the relevant accounting years were the financial years immediately proceeding those years. While so assessing him the Expenditure Tax Officer included sums of Rupees 15439, 18080, 14930 and 14750 respectively in the four accounting years in question, being expenses incurred by one of his sons, Sri Mallikarjuna Prasad, as expenditure of the assessee's family for the said years. The asessee contended that his son had his own sources of income and that though the money was defrayed in the first instance by the assessee, it was subsequently debited to the son's account, as such, the inclusion was not justified. It was found that the karta of the family, Sri Sivarama Prasad, the assessee, was the holder of the estate of Challapalli, an impartible estate within the meaning of the Madras impartible Estates Act, 1904, that the said estate vested in the Government of Madras under the Estates (Abolition and Conversion into Ryotwari) Act, 1948, as from 7-9-1949, and as a result of such vesting, the government of Madras was under a liability to deposit certain amounts of compensation with the Estates Abolition Tribunal, and these amounts were payable to such persons and in such manner as was prescribed under the Abolition Act and the rules made thereunder . It was averred by the assessee that by virtue of sub-sector (6) of Section 45 of the abolition Act, the amount was payable not to the family as such, but to certain persons described as sharers, maintenance holders and creditors under the said Act; and inasmuch as the Karta and his three sons were sharers who were entitled only to an aliquot share in the compensation amount deposited with the Tribunal after meeting the claims of the creditors and maintenance holders, the share of the compensations was the individual property of the son.
The Department, on the other hand, contended that the impartible estate was a property of the

joint family and that the compensation amount constituted joint family property also; as such, the fiction contained in Section 44 did not have the effect of converting this joint family property into the individual property of the various coparceners. The Tribunal found that the several adjustments were carried out in the books of the joint family styled "tenants-in-common account," and to this account was crafted the amounts received by sale of agricultural lands, implements, amounts derived by was of lease etc. To the same account were debited the several expenses commonly incurred, such as expenses o agricultural and the like as also expenses incurred for foreign education of Mallikarjuna Prasad. At the end of the year, the net credit, excluding foreign education expenses of Mallikarjuna Prasad, was divided into 4 equal shares and transferred to the individual accounts of the Karta and his three sons. The foreign education expenses were debited to the account of Mallikarjuna Prasad. It was also pointed lout that in the year ending 31-3-1959, when loans were advanced to Challapalli Sugars, in the individual names of the three sons, they were debited only to the share of the three sons and not to be father. So also in the year ended 31-3-1960, personal chitta balances were debited to the accounts of the individual members respectively and not all the members equally. The Expenditure Tax Officer rejected the claim of the assessee to exclude the foreign education expenses incurred by Mallikarjuna Prasad, who, in respect of the years 1960-61 and 1961-62, pointed out that under Section 4 (ii) read with Sec. 19 of the Act, the expenditure would be taxable in the hands of the family, even if met by the individual member out of the assets allotted to him at a partial partition.The Appellate Assistant Commissioner, in appeal, however, set aside the order of the Expenditure Tax Officer including these amounts, on the ground that Section 4 (ii) is inapplicable, and in that view, deleted the expenditure incurred on foreign education. The Appellate Tribunal confirmed the order of Appellate Assistant Commissioner.

3. Before us, the arguments which have been advanced by the learned advocate for the Department, Sri Anantha Babu, proceeded on similar lines as those addressed before the Appellate Assistant Commissioner and the Appellate Tribunal, Reliance, however, was placed on the provisos of Section 4 (I) of the Act part from action 4 (ii) which alone was considered by the I. T. Authorities. He also cited a decision of their Lordships of the Supreme Court in Commissioner of Expenditure Tax v. Darshan Surendra praekh, .

4. But before we refer to the relevant provisions of the Act, it is necessary to state the true nature of an impartibel zamindari and the rights of the holder of the estate as also of the other members of the joint family in the estate. it is unnecessary for our purpose to trace the historical development of this law as laid down in *Sartaj Kuari v. Deoraj Juari*[1] *Venkata Surya v. Court of Wards*[2], *(the first Pittapur case), Rama rao v. Rajah of Pittapur*[3], *(the second Pittapur case) Baijnath Prasad Singh v. Tej Bali Singh*[4], *or the classical judgment of SIR Dinshaw Mulla in Shibarprasad Singh v. Prayag Kumari Debi*[5], because that law has been set out succinctly by Satyanaraya Rao, J., delivering the judgment of a Bench of the Madras High Court consisting of himself and Subba Rao, J. (as he then was) in *Senthathikalai v. Varaguna Rama, . The learned Judge observed at* [6] thus: "The law relating to impartible estates had to undergo several vicissitudes and some of the observations of the Judicial Committee in the leading decisions on the point may seem to be irreconcilable. But it any now be taken that the following principles were settled by decisions. Impartiality is essentially a creature of custom. The junior members of a joint family in the case of ancient impartible joint family estate take no right in the property by birth and therefore have no right of partition having regard to the very nature of the estate that it is impartible. Secondly, the have

no right to interdict alienations by the heal of the family either for necessity or otherwise. This, of course, is subject to section 4 of the Madras impartible Estates Act in the case of impartible estates governed by the said Act. The right of junior members of the family for maintenance is governed by custom and is not based upon any joint right or interest in the property as co-owners.This is now made clear by the Privy Council *Commr. of Income-Tax, Punjab v. Krishna Kishore*[7], and *Krishna Yachendra v. Rejeswara Rao*[8], The income of the impartible estate is the individual income of the holder of the estate and is not the income of the joint family. To this extent the general law of Mitakshara applicable to joint family property has been modified by custom and an impartible estate, though it may be an ancestral joint family estate is clothed with the incidents of self-acquired and separate property to that extent. The only vestige of the incidents of joint family property which still sticks on to the joint family kimpartible estate is the right of survivorship which, of course, is not inconsistent with the custom of impartibility. Fro the purpose of devolution of the property. The property is assumed to be joint family property and the only right which a member of the joint family acquires by birth to take the property by survivorship, but he does not acquire any interest in the property itself."

5. From this statement of law, it is apparent that no member of the joint family has any right in praesenti in an impartible estate, except the holder thereof; the estate is considered to be joint family property only for the purpose of devolution but no member of the joint family acquires any right by birth. Almost every incident of a joint Hindu family I non-existent either in respect of commensality, acquisition of right by birth, right to partition or joint possession and enjoyment, except, as we have said, the right of survivorship in respect of devolution of property. This concept as established by the case-law recognised by the Estates Abolition Act in Section 45 (1) while making certain provisions relating to the compensation payable to the holders of an impartible zamindari and also those who have an interest in that case of an impartible estate which had to be regarded as the property of a joint Hindu family for the purpose of ascertaining the succession thereto immediately before the notified date, the provisions which followed that sub-section should apply. In this sub-sections, the Legislature by the use of the words "had to be regarded' implied that the recognition was by reason of the successive decisions to which we had referred to earlier which is only to the extent of treating the property as joint family property for the purpose of ascertaining the succession thereto immediately before the notified date. In sub-section (20 of Section 45, it is further provided that the Tribunal shall determine the aggregate compensation payable to all the persons mentioned in sub-clauses (a) and (b) thereof considered as a single group, of which sub-clause (a) consists of the principal landholder and his legitimate sons, grandsons and great-grandsons in the male line living or in the womb on the notified date, including sons, grand-sons and great-grandsons adopted before unnecessary to refer to the further provisions in relation to maintenance holders or creditors or the determination of the amount of compensation payable to the maintenance holders provided for in sub-sections (2) (b), (3), (4) or (5) of Section 45, except to set our sub-section (6) which deals with the manner in which the balance of the aggregate compensation is to be divided. It provides---

> "(6) The balance of the aggregate compensation shall be divided among the shares, as if they owned such balance as a joint Hindu family and a partition thereof had been effected among them on the notified date."

6. It is clear form a reading of sub-sections (1), (2) (a) and (6) that while the Legislature recognised the nature and the rights of the members of the joint family in an impartible estate

which vested in the Government under the Abolition Act, it intended to deal with compensation in a manner different to that which would have been death with under the law prior to the notification under the Abolition Act. A similar argument as that advanced by the learned advocate for the Department was sought to be urged before a Bench of the Madras High Court in *Subramania Iyer v. Kutti Raja* [9]namely, that the share that was given to the sons under S. 45 (6) was compensation of their chance of succession to the estate and not as a share in any joint family asset, and that, therefore, it could not be held that by reason of S. 45 (6) there had been a partition between the holder of the impartible estate and his sons, and that even if by reason of that provision there is partition, it is only a statutory partition without in any was affecting joint family or the rights in joint family property. This argument was repelled by Ramachandra Iyer, J., who after pointing out that the impartible estate is recognised as joint family property only for ascertaining who should succeed on the death of the holder, observed at p. 107: "Section 45 regulates the rights of various members of the family on the taking over of an impartible estate. Section 45 (6) creates a right to the compensation amount in the sharers, namely, the principal landholder, his legitimate sons, grandsons, etc. No other person barring the maintenance holders has any right to the compensation amount.In Ranga Rao v. State of Madras, , a brother of the holder of an impartibel estate taken over under the Act by the Government claimed the compensation amount as partibel property. The learned Judges negatived the claim. Section 45 (6) states that the compensation amount would be divisible between the sharers as if there is a partition on the notified date. Therefore, whatever might to the rights of the principal landholder or his sons in the impartibel estate before the date of the notification, the compensation amount is treated as (1) property owned by the sharers as if they constituted members of the joint Hindu family and (2) the share of each of the sharers determined as if there had been partition between them on the notified date. IN other words, two results follow from the statutory provision: (1) that the compensation amount is joint family property of the sharers and (2) that there had been a partition of that asset on the date of notification between them. Section 45 which enacts a fiction cannot, however, be extended so as to effect a division between the members of the family in regard to other properties, for neither the status of the family nor its other properties are within its operation.These observations are, with respect, in accord with the view we have taken, namely, that whatever might have been the position earlier, the sharers specified in Section 45 (2) (a) of the Abolition act have been given a right in the compensation as if that compensation is joint family property and that partition has taken place in respect of that property and each of the sharers is entitled to a specific share therein, to which they are entitled individually and absolutely. Apart form providing in sub-section (6) of Section 45 that the amount is to be divided among the sharers, Sec. 49 further reinforces that the share to which the sharer is entitled is an absolute interest, by providing where it is alleged that the interest of any person entitled to receive payment of any portion of the compensation has devolved on any other person or persons, whether by act of parties or by operation of law, the Tribunal shall determine whether there has been any devolution of the interest, and, if so, on whom it has devolved. If, as contended by the learned advocate for the Department, the compensation divided between the sharers under the provisions of Section 45 (6), still partakes of joint family character, the provision envisaging transfer of that compensation by the sharer who is entitled to it or the devolution of that share on his legal heirs would be inconsistent with that contention. On the other hand, that provision would only be consistent with an absolute interest in respect of his share of the compensation which he could, before receiving it, bequeath, made a gift or dispose it of in any way he liked, and where he did of do so, deal with it that share would devolve under law to his legal heirs and not vest in the other coparceners by survivorship. In the view we have

taken on this aspect of the matter, the share of the compensation is the separate property of the son Mallikarjuna Prasad, and he is entitled to spend from that amount the expenses towards his education, which cannot be said to have been incurred by the joint family.

7. The question which now remains to be considered is whether it is expenditure which the assessee joint family had to incur in discharge of any obligation which the family has towards the coparceners; if so, whether it is an expenditure incurred by the joint family from out of what is transferred directly or indirectly to the dependent by the assessee, so as to bring that expenditure to tax liability under Sec. 4 (ii), or an expenditure incurred by any person other than the assessee in respect of any obligation or personal requirement of the assessee, exceeding Rs. 5,000, so as to bring it under Section 4 (i). Section 4 (i) and (ii) read as follows:----

"S. 4 (i) ---- Unless otherwise provided in Section 5, the following amounts shall be included in computing the expenditure of an assessee liable to tax under this Act, namely,---

(i) any expenditure incurred, whether directly or indirectly by any person other than the assessee in respect of any obligation or personal requirement of the assessee or any of his dependants to the extent to which the amount of all such expenditure in the aggregate exceeds Rs. 5, 000 in any year;

(ii) Where the assessee is an individual, any expenditure incurred by an dependant of the assessee, and where the assesses is a Hindu undivided family, any expenditure incurred any dependant from or out of an income or property transferred directly or indirectly to the dependant by the assessee.

Explanation--For the removal of doubts it is hereby declared that nothing contained in this section shall be deemed to require the inclusion in the expenditure of the assessee of any expenditure incurred by an other person for or on behalf of the assesses by way of customary hospitality or which is of a trivial or inconsequential nature."

8. It is also pertinent to notice the definitions of certain terms used in the Act, namely, "assessee" and "dependant". Section 2 (c) defines "assessee" as "an individual or a Hindu undivided family by whom expenditure-tax or any other sum of money is payable under this Act, and includes every individual or Hindu undivided family against whom any proceeding under this Act has been taken fro the assessment of his expenditures;" "Dependant". under Section 2 (g) means "(i) where the assessee is an individual, his or her spouse or minor child, and includes any person wholly or mainly dependant on the assessee for support and maintenance; (ii) where the assessee is a Hindu undivided family, (a) every coparcener other than the Karta; and (b) any other member of the family who, under any law or order or decree of a Court, is entitled to maintenance from joint family property."

9. Applying the above definitions to the facts of his case, Mallikarjuna Prasad being the son of the holder of the impartibel zamindari, is entitled to maintenance by custom, though the said son has no right in the property as such. In (1941) 2 Mad LJ 972 = (AIR 1941 PC 120), the Privy Council had elaborately considered the several questions relating to the nature and incidents of an impartible zamindari, and while holding that the income of an impartibele state is not income of the in divided family but is the income of the holder, notwithstanding that he may have sons from whom he is not divided and the income which consists of interest can hence be assessed to income-tax as that of an "individual' under Ss. 8 and 12 of the Income-tax Act, 1922, observed at page 985 (of the L. L. J.): "Their Lordships will in the present case assume that the sons of the possess have a right to be maintained by him, that this right arises from the fact that he is the present holder of the impartible estate, and that the right is a right to be maintained out of the current income thereof in such sense that it could be enforced against the assessee in default by the Courts in India giving them a charge upon the property or a sufficient part of it. Even so, it is not true in fact or in law to say that the income from the estate is received by the assessee as the income of a joint Hindu family receivable by the karta, nor is it received by him on behalf of himself and his sons; but on his own account as the holder by single heir succession of the impartible estate. The presently existing right' of the sons is to be paid a suitable maintenance or to have it provided for them in the ordinary course of Hindu family life. The Hindu law is familiar not only with persons such as wives, unmarried daughters and minor children for whose maintenance a Hindu has a personal liability whether he may" have any property or none, but also with cases in which the liability arises by reason of inheritance of property and is a liability and to provide maintenance out of such property. It applies to persons whom the late owner was bound to maintain. The facts that the son's right to maintenance arises out of the father's possession of impartible estate and is a right to be maintained out of the estate do not make it a right of a unique or even exceptional character or involve the consequence at Hindu law that the income of the estate is not the father's income."

10. Inasmuch as the statement of the case assumes that the assessee Rajah of Ghallapali was assessed as the karta of a Hindu undivided family consisting of himself and his three sons, we are precluded from holding that in so far as the income of the impartible zamindari is concerned, it is not the income of the joint family and that the assessee should be assessed as an "individual." It may be that he has other properties apart form the income of the impartibel zamindari which are governed by the ordinary Hindu law of joint family; and since the impartibel zamindari had been notified and taken over by the government, there can be no question of any income from that estate which can be assessed in the hands of the Rajah as individual income. It may also be noticed that once the estate is notified and is vested in the government, the holder of the zamindari has no longer any obligation to maintain his sons, which right has been provided for to the sons under Section 45 (6) of the Abolition Act by giving them a share in the compensation as if the property was joint family property and the same was divided. Accordingly, the son cannot be considered to be a dependant within the meaning of Section 2 (g) (ii) (b) of the Act. But since in respect of the other properties held jointly with the father, to which the ordinary Hindu law applies, he is a coparcener and would be a dependant with in the meaning of Sec, 2 (g) (ii) (b).

11. The question now would be whether the provisions of Section 4 (i) or 4 (ii) of the Act applies to the case. In so far as Sec 4 (ii) is concerned, the expenditure that is incurred by a dependant

can only be included in computation the expenditure of the Hindu undivided family if that expenditure has been incurred out of income or property transferred directly or indirectly of the dependant by the assessee. The contention of Sri Anantha Babu that the provision of Section 45 (6) of the abolition Act should be deemed to a statutory transfer is, in our view, untenable, for the simple reason, as we have said earlier, that Section 45 (6) vests an absolute interest in the son in lieu of his right to maintenance and treats it as if it was allotted to him in a partition of the family property. Now it is a well established proposition that property allotted on partition, whether partially or otherwise, is not property which can be said to have been transferred directly or indirectly vide to observations of Sikri, J., in Commr. of Income Tax v. Keshavlal, . The fact that partition contemplated under S. 45 (6) of the Abolition CT does not effect a division of status and, therefore, there is no such division at all, ignores the nature of the impartible zamindari, namely that coprceners in an impartible zamindari have no interests in praesenti and they cannot ask for partition, and as such, no question of division of status vis--vis that property is concerned, can arise. We have already referred in this connection to the judgment of the Madras High Court in 1960-2 Mad LJ 102 supra. In our view, the provisions of Section 4 (ii) of the Act are not applicable to this case, and therefore, the liability does not arise under the provision.

12. The learned Advocate for the Department has however laid great stress on the applicability of Section 4 (i), the requirements of which, according to him, are fully satisfied. It is his contention that for the applicability of that provision, the expenditure must be incurred (i) by any person other than the assessee; (ii) that it must be incurred in respect of an obligation or personal requirement of the assessee or any of his dependants, and (iii) that such expenditure in the aggregate should exceed Rs. 50000. According to him, Mallikarjuna Prasad has incurred the expenditure for his foreign education on behalf of the assessee in respect of an obligation which the assessee has towards him as a dependant. It is no doubt true that in each of the three assessment years in question the aggregate amount exceeded Rs. 50000, as such the third requirement of S. 4 (i) is satisfied.

13. Now we have to consider whether the other two requirements of Section 4 (i) are fulfilled. In so far as the first requirement if concerned, even though a coparcener or other member of a Hindu undivided family is, for the purposes of assessment, of the family to expenditure-tax a person other than the assessee, nonetheless, the expenditure incurred out of the family estate by a person or other coparcener out of his separate property is liable to be included in the taxable expenditure of the family if, and only if, it is incurred in respect of an obligation of the family or for the personal requirement of the coparcener or other members of the family which, if not incurred, would have been incurred by the family. But, as observed by Shah J., in supra, "every item of expenditure incurred by a coparcner of other member of the Hindu undivided" family for his own purposes out of his separate property "is not expenditure in respect of an obligation of the Hindu undivided family; nor is it expenditure to meet the "personal requirements of the coparceners or other members" of the family. For an item to be included under Sec. 4 (i) "with the taxable expenditure of a Hindu undivided family," it must be incurred for the collective obligation of the "family. or for the separate personal requirements of the "coparceners or other members of the family in their capacity" as members of the family. The karta of a Hindu undivided family. The karta of a Hindu undivided family assessed to tax under the Expenditure-tax Act is by the express words of Section 2(g) (ii) (b) not a dependant; and when expenditure is incurred by a karta out of his separate estate for his own purposes, even though the family would have been liable to meet that expenditure if the expenditure were not incurred, the expenditure

will, prima facie not" be liable to be included in the taxable expenditure of "the family". In so far as the coparcener is concerned, it must be shown that it is an obligation that has to be incurred by the joint family which the dependant coparcener has incurred from out of his separate property, before such expenditure true could be included in the expenditure of the joint family. there being no such finding that the expenditure was incurred by Mallikarjuna prasad in respect of an obligation which the joint family has to incur, we cannot hold that the second requirement of Section 4 (i) is satisfied.It may be observed that the Expenditure Tax Officer, the Appellate Assistant Commissioner as well as the Appellate Tribunal have all considered the question of inclusion of the expenditure on foreign education only under Section 4 (ii) and not under Sec. 4 (i). Even the question referred for our opinion is under Sec, 4 (ii) and not under Section 4 (i). As such, they have not ascertained, nor placed on record the necessary facts nor have they given a finding as to whether the foreign education of Mallikarjuna Pradsad was an obligation on the assessee, whether there is an obligation of the joint family to give foreign education to Mallikarjuna Prasad, would involve the consideration, of several questions viz. Has the assessee any obligation to educate his son Mallikarjuna Prasad, would involve the consideration, of several questions viz. Has the assessee any obligation to educate his son Mallikarjuna Prasad in a foreign country and incur such heavy expenditure? What is the practice in the joint family in respect of the sons, i.e., whether each of the sons have been afforded this opportunity of giving higher education abroad? What is the education Mallikarjuna Prasad has already had, whether he was a minor or major at the time of sending him abroad for foreign education, and whether education in India would not have been sufficient to discharge that obligation? Is it for technical course that Mallikarjuna Prasad was sent abroad, which course could not properly be given in this country, or is it only for the purpose of affording him an opportunity to go abroad and incidentally to educate himself? As we have already pointed out, these questions have not been considered or dealt with either by the Expenditure Tax Officer, or the Appellate Assistant Commissioner or the Appellate Tribunal, and in such circumstances, we cannot say that it is pursuant to an obligation attached to the karta of the family that the expenditure on the foreign education of Mallikarjuna Prasad had to be incurred. We cannot, therefore, hold that the second requirement of Section 4 (i) also is satisfied.

14. In the light of what we have observed, our answer to the question is in the affirmative and in favor of the assessee. Let the reference be answered accordingly with costs. Advocate's fee Rs. 250.

15. Reference answered in the affirmative.

Cases Referred.

1(1888) ILR 10 All 272 (PC)
2(1899) ILR 22 Mad 383 (PC)
3ILR 41 Mad 778 = (AIR 1918 PC 81)
4ILR 43 All 228 = (AIR 1921 PC 62)
5ILR 59 Cal 1399 = (AIR 1932 PC 216)
6P. 508 (of ILR Mad) = (at pp. 7-8 of AIR Mad)
7ILR (19420 23 Lah 1= (AIR 1941 PC 120)
8ILR (1942) Mad 419 = (AIR 1942 PC 3)
919600 2 Mad LJ 102 at p. 107