CALCUTTA HIGH COURT

Sri Sridhar Jiew

Vs.

Income Tax Officer

A.F.O.O. Nos. 212, 213, 215 to 217 of 1962

(D.N. Sinha and S.A. Masud, JJ.)

17.09.1965

JUDGMENT

D.N. Sinha, J.

1. The facts in these appeals are briefly as follows: By an Arpannama (Deed of Dedication) dated the 17th Baisakh, 1303 B. S. (the 28th April, 1896), Srimati Kadambini Dassy and Sri Purno Chandra Daw, respectively the widow and the son of late Shibkrishna Daw, for selves and as Executrix and Executor to the state of late Haridas Daw, created a Debuttor Endowment in respect of their family dwelling house at 12, Shibkristo Daw Lane, Jorasanko, Calcutta in which the ancestral family deity Sri Sridhar Jiew was installed and other immovable properties including Debalaya (temple) on the bank of the Ganges at village Barbakpur now known as Barreckpore in which the deities Radharaman Jiew and Sridhar Jiew Salgrarn and six images in Shiva had been enshrined. The said Debuttor is collectively described as "Shib Krishna Debuttor" and the estate is known as the Shib Krishna Debuttor Estate. The present Shebait of the said deities, in terms of the said Arpannama, in Puliu Chandra Daw. For the assessment years 1952-53 to 1956-57, the income Tax Officer District II(I), Calcutta, assessed the income arising out of the said Debuttor properties in the hands of the said Pulin Chandra Daw, as Shebait. The said assessments were challenged before the appellate authorities and ultimately, before the Income Tax Appellate Tribunal, Calcutta. By the decision of the said Tribunal dated 23rd September, 1960 the appeals were partially successful, inasmuch as it was held that so far as income under the head "property" was concerned, it could not be assessed in the hands of the Shebait under Section 9 of the Income Tax Act, 1922 (hereinafter referred to as the "said Act"), inasmuch ,is the Shebaits were not the owners of the debuttor properties. On or about the both March, 1961 five joint notices were issued on the two deities Sri Sridhar Jiew and Radhanumiu Jiew represented by their shebait Sri Pulin Chandra Dav, under Section 34 of the said Act, stating that the Income Tax Officer District II(I), Calcutta, had reason to believe that the income of the said deities assessable to income had escaped assessment and they were, therefore, required to file a return for the said years under section 34 of the said Act. To these notices the deities through their shebait Sri Pulin Chandra Daw, took objection. One of the points taken in the letter of objection was that the said Act did not contemplate assessment of the income of a deity and during the relevant years, the deities were excluded from the operation of the said Act and,

therefore, the notices were without jurisdiction and void. As the Revenue did not desist, applications were made by the said two deities represented by their Shebait Sri Pulin Chandra Daw, under Article 226 of the Constitution, praying for a writ in the nature of mandamus restraining the respondent from giving effect to the said notices and that the said notices be quashed by a writ in the nature of certiorari and for such other order or orders as to the Court may seem fit and proper. Rules were issued in these applications and the five applications were heard by Banerjee, J. who by his Judgment and order dated 13th September, 1962 dismissed the said applications and discharged the rules, but made no order as to costs. These appeals are directed against the said orders. Dr. Pal has formulated his case as follows : The charging section in the said Act is Section 3 and it runs as follows :-

> "Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with and subject to the provisions of, this Act in respect or the total income of the previous year of every individual, Hindu undivided family, company and local authority and of every firm and other association of persons or the partners of the firm or the members of the association individually."

2. It will be observed that this section does not speak of a Hindu deity or indeed, of any juristic person. A Hindu deity can only come within the heading - "individual". The question is whether prior to the amendment in the said Act in 1961, it could be said that a deity might be included within that expression. It is conceded by Dr. Pal that in the Act of 1961 every artificial juridical person, including a Hindu deity, has been expressly made assessable to income-tax. This has been effected by altering the definition of the word "person" in Section 2(31) of the Income Tax Act and also by changing the language of Section 4(1). He however, argues that prior to 1961, Hindu deities were not at all assessable to income-tax:. In order to consider this point, Dr. Pal has invited us to consider the history of the Income Tax Acts commencing from "Act XXXII of 1860 and to observe how they dealt with the question of private religious trusts. He has drawn our attention to the following enactments :-
Act XXXII of 1860

3. Section 133 granted power to the local government to exempt any property movable or immovable solely employed or dedicated to religious or charitable public purposes from being chargeable under the Act.
Act XII of 1871

4. Section 4 provided that nothing in the Act applied to any movable or immovable property solely employed for religious or charitable public purposes.
Act II of 1886

5. Section 5(1) provided that nothing in Section 4 shall render liable to the tax, any income derived from property solely employed for religious or public charitable purposes.
Act VII of 1918

6. Section 3(2) provided that the Act shall not apply to the following classes of income :-

(1) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.
(ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.

In this Sub-Section 'charitable purpose' included relief of the poor, education, medical relief and the advancement of any other object of general public utility.
Act XI of 1922.

7. Section 4(3)(i) and (ii) provided exactly the same as Section 3(2)(i) and (ii) of Act VII of 1918.

Amending Act VII of 1939.

8. This important Amending Act Introduced relevant amendments in the said Act. After amendment Section 4(3) stood thus : -

"Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them." Then followed Clauses (i),(ia) and (ii). Clauses (i) and (ii) were the same as in the original Act or 1922. Clause (a) provided for income derived from business carried on, on behalf of a religious or charitable institution. At the end of the Sub-Section it was laid down as follows :
"In this Sub-Section 'charitable purpose' includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but nothing contained in Clause (i), (ia) or Clause (ii) shall operate to exempt from the provision of this Act that part of the income of a private religious trust which does not enure for the benefit of the public."

9. In May, 1950 a Bench decision of this court in *Sri Gopal Jiew v. Commissioner of Income Tax, West Bengal*[1], held that the withdrawal of exemption applied only when the dedication was through a trust in the English form. It was further held that Section 40 had no application to the case of shebait. In other words, it was held that income arising from property dedicated directly to a deity, as opposed to property held by trustees in trust for a deity e.g. in a trust in the English form, is exempt from tax even if the dedication is to a private family deity which does not enure for the benefit of the public. This decision was superseded by the Income Tax (Amendment) Act 1953 with effect from 1st April, 1952, which amended the last paragraph of the Sub-Section and excluded from exemption not only income from property held under trust but also income from property held under "other legal obligation" for private religious purposes; thus including private religious trusts like debutters. The relevant part of Sub-Section (3) of Section 4, after the amendment stood as follows :-

"(3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them : (i) Subject to the

[1](1950) 18 ITR 743 : AIR 1951 Cal 309

> provisions of Clause (c) of Sub-Section (1) of Section 16, any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, in so far as such income is applied or accumulated for application to such religious or charitable purpose as relate to anything done within the taxable terittories and in the case of property so held in part only for such purposes, the income applied or finally set apart for application thereto'.

In this Sub-Section, 'charitable purpose' includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but nothing contained in Clause (i) or Clause (ii) shall operate to exempt from the provisions of this Act that part of the income from property held under a trust or other legal obligation for private religious purposes which does not enure for the benefit of the public." Chapter V of the said Act deals with liability in such cases. Section 41 of the said Act deals inter alia with the liabilities of trustees. The relevant part of Sub-Section (1) runs as follows :

> "41(1). In the case of income, profits or gains chargeable under this Act which the Courts of Wards, the Administrators General, the Official Trustees or any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, or any trustee or trustees appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including the trustee or trustees under any Wakf deed which is valid under the Mussahnan Wakf Validating Act, 1913), are entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from such Court of Wards, Administrators General, Official Trustee, receiver or manager or trustee or trustees, in the like manner and to the same amount as it would be leviable upon and recoverable from the person on whose behalf such income, profits, or gains are receivable and all the provisions of this Act shall apply accordingly :
>
> Provided mat where any such income, profits or gains or any part thereof are not specifically receivable on behalf of any one person, or where the individual shares of the persons on whose behalf they are receivable are indeterminate or unknown, the tax shall be levied and recoverable at the maximum rate, but, where such persons have no other personal income chargeable under this Act and none of them is an artificial juridical person, as if such income, profits or gains of such part thereof were the total income of an association of persons :
>
> Provided further that when part only of the income, profits and gains of a trust is chargeable under this Act, that proportion only of the income, profits and gains receivable by a beneficiary from the trust which the part so chargeable bears to the whole income, profits and gains of the trust shall be deemed to have been derived from that part."

10. From the above history, Dr. Pal has invited us to come to the following conclusions : He asks us to observe that right up to the Amending Act of 1939 private religious trusts were wholly immune from taxation. It was the Amending Act of 1939 that took away the exemption unless

the income enured for the benefit of the public. This however was interpreted by this High Court to mean that the exemption was taken away if the trust was in the English form and not when it was in the form of an endowment to the deity but not in the English form. According to him, the position was only altered by the Act of 1961, when all juridical persons were included in the net of taxation. He next argues that Section 41 also does not apply in such cases. This part of the argument will have to be considered presently. According to Dr. Pal, a Hindu deity in order to be chargeable to income-tax, would have to come within the definition of "individual" in Section 3. The word 'Individual' is not defined in the said Act and according to him, the expression cannot include a juristic person like a Hindu deity, because of it did, we have to come to this painful conclusion that the said Act intended to make Hindu deities chargeable, but has not provided a machinery for its realization. In other words, Dr. Pal has tried to establish that prior to the Act of 1961 there was no machinery contained in the said Act for assessing a Hindu deity and, therefore, it could be safely concluded that the legislature did not intend to make Hindu deities chargeable to income-tax. The way that he has developed his argument is as follows : Dr Pal refers to the rules made under the provisions of Section 59 of the said Act. Under Section 59 of the said Act, the Central Board of Revenue was given the power, subject to the control of the Central Government, to make rules fen carrying out the purposes of the said Act. Such rules have been promulgated and are known as the "Indian Income Tax Rules, 1922". Under Rule 19, the return of total income and total world income required under Sub-Section (1) or Sub-Section (ii) of Section 22 shall be in form A or B annexed to the said rules. Dr. Pal points out that elaborate forms have been prescribed but there are no columns therein appropriate to a Hindu deity. These forms have to he signed and there is a note appended to the prescribed form which says that a return, in the case of an individual, must be signed by the individual himself. Dr. Pal argues that the consequences of analogous rules in the Bengal Agricultural Income Tax Act, 1944 were considered by the Supreme Court in *Commissioner of Agricultural Income Tax, West Bengal v. Keshab Chandra Mandal*[2], The facts in that case were as follows :

> "In response to a notice issued under Section 24(2) of the Bengal Agricultural Income Tax Act, 1944 which corresponds to Section 22(2) of the said Act, the assessee submitted a return showing his total agricultural income for the assessment year 1944-45 to be Rs. 335. This return was dated the 3rd April, 1945 and just below the declaration appeared a vernacular signature of the assessee. The Agricultural Income-tax Officer fixed the assessment case of 6th May, 1945. On that date, the assessee filed a petition stating that the return which he had submitted under the advice of the headmaster of a school was not a proper return and he wanted to file a fresh return. The Agricultural Income-tax Officer allowed time for one day and the assessee was directed to submit a fresh return and to produce account books and other necessary papers on that date. If he failed to comply with the order it was stated that an assessment would be made under Section 25(5) which corresponds to Section 22(3) of the said Act, On the 7th May, 1945 the assessee did not appear personally but his son Jugal Chandra Mandal filed a return signed in the vernacular as follows : -

Sri Keshab Chandra Mandal Ba : Sri Jugal Chandra Mandal." There was no cross mark of the assessee. The Agricultural Income-tax Officer held that these two returns differed violently and as the latter one had not been signed by the assessee he was going to rely on neither of the returns

and made an assessment under Section 25(5). The case eventually went up to the Supreme Court and the relevant point decided was as to whether the latter

[2](1950) 18 ITR 569

return could be said to be a proper one. The High Court had decided, relying on the decision of The *Queen v. Justice of Kent*[3] that unless the statute makes a personal signature indispensable., the provision as to signature would be satisfied by a person signing by the hand of an agent. The High Court observed that insistence on personal signature of an individual would create an anomaly, in that while an assessee who is an individual will have to sign personally, the persons authorised to sign for other categories of assessees, namely, a Hindu undivided family, a company, the Ruler of an Indian State, a firm or any other association will not be compellable to sign personally. The High Court took the view that to avoid such a patent anomaly which would inevitably result if the interpretation proposed by the department were to be accepted, the Court should follow the common law rule mentioned above and accept the signature made through an agent. This view was not accepted by the Supreme Court. Das, J., (as he then was) pointed out that the form of return which is an analogous form prescribed under the said Act, contained a note which states that the declaration must be signed in the case of individual by the individual himself. The learned Judge said as follows :-

> "..... There are many indications in the Bengal Agricultural Income Tax Act, 1944 and the rules made thereunder evidencing an intention to exclude the common law rule in the matter of the signature of the assessee, appellant or applicant on the return, appeal or application ..... It is quite true that when signature by an agent is permissible, the writing of the name of the principal by the agent is regarded as the signature of the principal himself. But this result only follows when it is permissible for the agent to sign the name of the principal. If on a construction of a statute signature by an agent is not found permissible then the writing of the name of the principal by the agent however clearly he may have been authorised by the principal cannot possibly be regarded as the signature of the principal for the purposes of that statute. If a statute requires personal signature of a person, which includes a mark, the signature or the mark must be that of the man himself. There must be physical contact between that person and the signature or the mark put on the document."

11. The result was that the appeal was allowed and it was held that the return had not been validly made. Dr. Pal argues that if a human being cannot sign through the hand of another, even if it be the hands of his own son, then how can a deity sign the return form, since a juridical person cannot sign at all ? It would be ridiculous to expect a Hindu deity to sign the appropriate return personally. Dr. Pal argues that this shows that it was never intended by the legislature to make a Hindu deity chargeable under Section 3. Next, Dr. Pal was faced with the provisions of Section 41. If the shebait could be assessed under that section in respect of income of a Hindu deity, then he conceded that there was an indirect machinery provided by the Act for the assessment of a Hindu deity's income and the application of Section 3 could not be wholly excluded. He was, therefore, constrained to argue that a she bait of a deity did not come within the scope of Section 41 of the said Act The contention of Dr. Pal may, therefore, be summarized as follows : Firstly, he argues that a Hindu deity was never intended to be made chargeable under Section 3 of the said Act. A Hindu deity does not come within the meaning of the word

"individual". Further, this intention of the legislature is clear from the fact that private religious trusts were always exempted from the operation of the said Act and it was only in 1939 that this

[3](1873) 8 QB 305

exemption was taken away, only in the case of a trust in the English form, Next it is argued that this intention is also clear from the fact that no machinery was provided in the said Act for the realization of any tax from Hindu deities either directly or indirectly. In aid of this argument, it is pointed out that the prescribed form under the rules which under Section 59(5) of the said Act has the effect "as if enacted" in the said Act, require that the assessee must sign the return form personally, but in the nature of things a Hindu deity could never do so. As a corollary to this argument, Dr. Pal has contended that Section 41 does not apply to shebaits, as otherwise it could be said that there was an indirect machinery for making a Hindu deity chargeable for income-tax. I shall first of all, deal with the last point, namely, whether Section 41 applies in the case of a shebait. The learned Standing Counsel has first of all referred me to a decision of Amir Ali, J. in *Sri Sridhar Jew v. Manindra K. Mitra*[4]*,* The learned Judge held that a trust whereby property vests in A for the benefit of B. notwithstanding its origin in the English law of trusts, is a part of the system of Hindu law as administered in India Although Section 1 of the Trusts Act does not apply to religious or charitable trusts, it does not follow that such trusts do not now exist independently of the statute or did not exist prior thereto. A religious endowment not made in the English form of trusts is a gift to the idol, but owing to the peculiar attributes thereof, reflects fiduciary capacity or position in a shebait, although the property endowed vests in the idol. The point, however, was specifically dealt with by a Division Bench of this Court presided over by P.B. Mukharji, J. in an unreported judgment, *Commissioner of Income Tax, Calcutta v. Jogendra Nath*[5]*,* This was a reference by Commissioner of Income Tax, Calcutta, under Section 66(1) of the Income Tax Act and the question referred to was as follows :-

> "Whether on the facts and in the circumstances of the case the assessments on the deities through the shebaits under the provisions of Section 41 of the Indian Income Tax Act were in accordance with law ?"

12. Briefly speaking, the point to be considered was as to whether under Section 41(1), the word "trustee" or "trustees" included a shebait in the case of a Hindu private religious endowment. Incidentally, a point came to be decided namely, whether a Hindu deity, would come under the definition of the word 'individual' in Section 3 of the said Act. Both these points were answered in the affirmative by Mukharji, J. in other words, he held that the word "trustee" or "trustees" in Section 41 of the said Act would include the case of a shebait of a Hindu deity, in the case of a private religious endowment. Also, a Hindu deity was a"individual" under Section 3 of the said Act. Laik, J. agreed with the decision of Mukharji, J. on the first point but differed on the second, although in the result both of them answered the question posed before them in the affirmative. On behalf of the assessee, reliance was placed on three decisions namely, (1) *Vidya Varuthi v. Baluswami Ayyar*[6]*, W. O. Holdsworth v. State of Uttar Pradesh*[7]*,* and (3) *Moti Das v. S.P. Sahi*[8]*,* Mukharji, J., rightly pointed out that all that these three decisions established was, that a shebait was not a trustee in the English sense of the term, or within the meaning of the Indian Trusts Act. They did not, however, establish that a shebait of a Hindu deity was not a trustee in the larger sense of the word. On the other hand, it was laid down that although a shebait was not a trustee In the technical sense of the word as

[4] AIR 1941 Calcutta 272.

[5] ITR No. 50 of 1961 dated 5-4-1963 : AIR 1965 Cal 570

[6]48 Ind App 302

[7](1958) 33 ITR 472 : AIR 1957 SC887

[8](1959) Supp. (2) SCR 563
used in the English law or the Indian Trusts Act, the obligation and duties of a shebait are analogous to those of a trustee. The provisions of Section 41(1) of the said Act, which has been set out above, use the word "trustee" or "trustees" but these terms have nowhere been defined in the said Act. The only restriction is that in order to come under the mischief of Section 41(1), the "trustee" or "trustees" must be appointed under a trust declared by a duly executed instrument in writing, whether testamentary or otherwise. It is significant that trustee or trustees under a Wakf deed which is valid under the Mussalman Wakf Validating Act, 1913, is expressly included. There is, therefore, no reason to exclude shebaits under a deed of endowment. That the word "trustee" is used in the larger Sense in the said Act is clear from the Supreme Court decision in *Aggarwal Chamber of Commerce Ltd. v. Ganpat Rai Hiralal*[9], at pages 251 and 252 : (AIR 1958 Supreme Court 269 lit pp 272-273). The Supreme Court approved of the observations of Viscount Cave in *Williams v. Singer*[10] where the basis of chargeability under the Income-tax Act came to be enumerated as follows :-

> "..... that the person charged with tax is neither the trustee nor the beneficiary as such, but the person in actual receipt and control of the income which it is sought to reach. The object of the Acts is to secure for the State a proportion of the profits chargeable and this end is attained (speaking generally) by the simple and effective expedient of taxing the profits where they are found."

13. In the Privy Council decision *Trustees of Tribune Press, Lahore v. Commissioner of Income-tax, Punjab*[11], Sir George Rankin said as follows : -

> "It is to be observed moreover, that under the Income-tax Act the test of general public utility is applicable not only to trust in the English sense but k to be applied to property held under trust 'or other legal obligation' -a phrase which would include Moslem wakfs and Hindu endowments."

14. The learned Standing Counsel has rightly pointed out that the provisions of Section 41(1) contain internal evidence of the fact that it was also intended to apply to juridical persons, for example, in the proviso which deals with the rate of income-tax to be levied the words used are where such persons have no other personal income chargeable under this Act and none of them is an artificial juridical person. A Hindu deity is such a juridical person as has been laid down in *Pramathi. Nath Mullick v. Pradhyumna Kumar Mullick*[12], where Lord Shaw said as follows :-

> "A Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus and the recognition thereof by Courts of Law, a 'Juristic Entity'. It has a juridical status with the power of suing and being sued."

15. Also, the fact that Mussalman Wakfs are included shows that Hindu religious trusts are not intended to be excluded. That the expressio"trust" can be applied to Hindu Endowments has been explained by Mr. Justice Bijon Kumar Mukherjea in his Tagore Law Lectures "The Hindu Law of Religious and Charitable Trust". After explaining the origin and meaning of the word "trust" in the English Law, the learned author says as

[9]1958-33 ITR 245
[10](1921) 7 tax Cas, 387
[11]1939-7 ITR 415
[12]52 Ind App 245

follows :-

> "You will see that the "Trust" in its origin was a highly artificial thing which had its foundation upon a dual system of law and a dual system of property which came into existence in England under peculiar political and historical conditions.

You could not possibly expect to find a trust in this form in the Hindu system. But the existence of dual ownership is not an essential ingredient in the conception of trust and if you take "Trust" in its broad and general sense as signifying a fiduciary relation under which a person in possession of or having control over any property is bound to use that property for the benefit of certain persons, or specified objects, obviously there are trusts in Hindu Law. A shebait in charge of a temple, or a mohant having control over a religious institution, would be a trustee in this general sense."

16. The learned author has subsequently elaborated this point at page 161 as follows :-

> "In the conception of Debutter therefore, two essential ideas are involved; In the first place, the property which is dedicated to the deity vests in an ideal sense in the deity itself as a juristic person. In the second place, the ideal personality of the idol is in the nature of things linked up with the natural personality of the shebait, manager or Dharmakartta, who as persons entrusted with the custody and worship of the idol are obliged and empowered to do what may be required for the service of the idol and for the benefit and preservation of its property. The title to the Debutter property is in the idol and not in the Shebait who is not and cannot be a trustee in the sense in which it is used in English law. The shebait is however a trustee in the general and ordinary sense of the term and as I have said in the first lecture, the distinction between legal and equitable ownership is a highly artificial distinction which had its origin in England owing to purely historical reasons and such distinction is not essential to the juridical conception of trust. The shebait holds the Debutter property for carrying into effect the pious purposes that are symbolised in the deity and he is bound to carry out the directions given by the founder, in relation to the worship of the idol and management of its property".

17. It is clear from these observations that it is not inappropriate to use the word "Trustee", in connection with a Shebait of a Hindu deity under a private religious endowment, although it is used in the larger sense. It is in the larger sense that the word "Trustee" has been used in Section 41(1) of the said Act and therefore includes a shebait of a Hindu deity. This conclusion is really decisive in this case, because Dr. Pal has conceded that if the word "Trustee" in Section 41(1) includes a shebait then it must be held that the said Act provides a machinery for realising income-tax from a Hindu deity, although it is done indirectly by assessing income in the hands of the shebait and not directly. Since I have held that Section 41(1) does apply in the case of shebait the foundation of Dr. Pal's argument vanishes. However, I will also deal with the general argument that under Section 3 itself, the word "individual", should not include a Hindu deity who is a juristic person. Upon this point, I agree with the view expressed by Mukherjea, J. in the

unreported judgment referred to above, but with respect differ from the view of Laik, J. The word "individual" does not necessarily refer to a human being. This has been made clear by the Supreme Court in the case of *Commissioner of Income-tax, M.P. and Bhopal v. Sodra Devi*[13], The learned Judge in the court below has also relied upon this case. In that case, Bhagwati, J. pointed out as follows : ....the word 'individual' has not been defined and there is authority for the proposition that the word 'individual' does not mean only human being but is wide enough to include a group of persons forming a unit. It has been held that the word 'individual' includes a corporation created by a statute, e.g., a University or a bar council, or the trustees of a baronetcy trust incorporated by a Baronetcy Act. It would also include a minor or a person of unsound mind." Because the expressio "individual" in Section 3 cannot be equated with a human being, that makes the Supreme Court decision, 1950-18 ITR 569 : AIR 1950 Supreme Court 265) (supra) so strongly relied on by Dr. Pal, of no application in this case. Where a human being is concerned, undoubtedly the return must be signed by the assessee himself. That does not however mean that an individual other than a human being would also have to follow that process. Indeed, it is not possible to conceive of a corporation or a bar council signing the return with its own hands. What then is the position in the case of a deity ? It is true that under the provisions of the said Act, a human being has to sign the return with his own hands. If however we include persons other than a human being within the expressio"individual" in Section 3, it must follow that if the signing must be done by the assessee, then, the nature of the assessee cannot be ignored and must be related to the manner of signing. It is therefore relevant to find out the nature of a deity under the Hindu Law and investigate as to how it does hold property and receive its income. A Hindu deity is a juridical concept and the pious idea that it embodies is given the status of a legal person and is deemed capable in law of holding property in the same way as a natural person. "The idol, deity or religious object" observe West and Buhler in their Digest on Hindu Law "is looked upon as a kind of human entity." It is a sacred entity and ideal personality possessing proprietary rights. The Judicial Committee has pointed out on more occasions than one, that it is only in an ideal sense that property can be said to belong to an idol and the possession and management of it must in the nature of things be entrusted to some human being acting as shebait or manager, *Prosunna Kumari Debya v. Golab Chand*[14], The legal principle has thus been summed up in a pronouncement of the Judicial Committee in 52 Ind App 245 at p. 250 : (AIR 1925 PC 139 at p. 140) where Lord Shaw says as follows : -

> "A Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus and the recognition thereof by courts of law, a 'juristic entity'. It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established."

18. In the same case, the Judicial Committee quoted the observations of Sir Ashutosh Mukherji in *Rambrahma Chatterjee v. Kedar Nath Banerjee*[15], by saying :

> "It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The

daily routine of life is gone through with minute accuracy; the

[13](1958) SCA 862: AIR 1957 SC 832 [15]36 Cal LJ 478 : AIR 1923 Cal 60

[14]2 Ind App 145 (PC)

vivified image is regaled with the necessaries and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food and the retirement to rest."

19. This aspect of it has been well brought out in a Bench Decision of this Court - *Tarit Bhusan Roy v. Sree Iswar Sridhar Salagram Shila Thakur*[16], It has been stated there as follows :

The efficient subject of the rights ascribed to an idol must ultimately be some human beings. It must be they who enjoy such rights and, if law protects such rights, it is because of the existence of such ultimate human concern. The idol, as the juridical person, only affords the technical means of developing the juristic relations between those ultimately interested in the endowed property and the strangers. The so-called interest of the idol is merely an ideal interest very different from the interest which an infant has in his property. The introduction of the idol and its recognition as a juristic person are more a matter for the procedure and the procedure in India recognizes the idol as having a locus standi in judicio."

20. It is clear therefore that a Hindu idol is a juristic entity who is given the status of a human being capable of having property, but In fact, it is not a human being and can only act through the shebait who 'speaks for him on earth'. It is the shebait who holds the property, realises the income and looks after the estate or the deity and does all acts in connection therewith which a human being should have been expected to perform. Therefore, if such a person as to sign a return, it is obvious that the signature cannot be that of the deity itself, but that of the shebait. In such cases, the close analogy of a human being signing a form of return should not be imported. Where the shebait signs a form, it is not as if an agent of the deity has signed it. The hand of the shebait is the hand of the deity. The concept of a Hindu deity is such that it must be taken that the signature of the shebait is the signature of the deity itself. Looking from this angle of view, I do not think that the Supreme Court decision cited above militates against the proposition that a Hindu deity cannot be called an 'individual', within the meaning of Section 3 of the said Act.

21. I will now refer back to the various arguments put forward by Dr. Pal. His first argument was that the word 'individual' in Section 3 does not include a Hindu deity. The first part of his argument is that the word 'individual' refers to a human being and a juristic person is not included. For the reasons given above, I am unable to agree with this proposition. There is no reason to confine the word 'individual' to human beings and it may well include a juristic person. The second part of his argument on this point was that a consideration of the history of the Income-tax Acts would show that it was never the intention of the trainers of the Act to bring a private religious trust within the ambit of Section 3. All that he has been able to show is that under Section 4 of the said Act, a private religious trust was exempted from taxation up to 1939 and between 1939 and 31st March 1952, the exemption was taken away only in the case of endowments in the form of an English trust. Endowments in other forms were still exempted. This was however rectified by the amended Act of 1953. In my opinion, this fails to snow that a Hindu deity was never intended to be included within the ambit of Section 3 of the said Act. Section 3 is the primary charging section and Section 4 contains certain exemptions. It may be

that
[16] ILR (1941) 2 Cal 477 : AIR 1942 Cal 99
the net result of the statutory provisions up to 1939 or up to 31st March 1952 was as stated by Dr. Pal, so far as private religious trusts are concerned. That, however, does not necessarily lead to the conclusion that it was intended always to exclude Hindu deities from the operation of Section 3 of the said Act. If it was so, then there was no necessity of making any provisions exempting such income. It is not that there were no restrictions. It was always necessary to consider whether a trust was public or private, or whether the whole of the income was utilised for the benefit of the public or only part of it. In 1939 an amendment was made to the effect that the income of a private religious trust, in order to come within the exemption must enure for the benefit of the public. This, however, was held by the Calcutta High Court to be restricted to trusts in the English form. Even so this shows that Hindu deities were not wholly intended to be put outside the scope of chargeability under Section 3. This controversy was, however, set at rest by the Amending Act of 1953, after which even in the case of private religious trusts not in the English form, the exemption could not be claimed, unless the income enured wholly for the benefit of the public. This confirms that it was intended to make a Hindu deity chargeable under Section 3, although it may be that from time to time certain exemptions were granted and/or taken away. The next argument of Dr. Pal is that a Hindu deity should not be held to be chargeable, because there was no machinery for the purpose of realisation of the tax. He himself conceded that if we hold that under Section 41 the word "trustee includes a shebait, then his argument fails, because the said Act would contain an indirect machinery for the realisation of the tax. We have held above that the word 'trustee' in Section 41 does include a shebait. Therefore, this argument fails. At the present moment, only notice has been given under Section 34. Doubtlessly, after the hearing the parties, the Revenue will decide as to in what exact form the re-opening of assessment will be made. It may be that the Revenue will proceed under Section 3 against the deity or under Section 41 against the shebait. That matter cannot be pre-judged here. But quite apart from Section 41, we do not think that the principle laid down in the case of 1950-18 ITR 569 (supra) applies to the facts of this case.

22. For the reasons given above, we think that it is competent for a shebait to sign a form of the return on behalf of the deity. Such signature should be taken to be the signature of the deity who can hold property and receive income but who cannot be equated with an ordinary human being. In expressly including a juristic person within the net of taxation and in adopting the form of return, the 1961 Act has done nothing new, but has made clear what was always the law.

23. The result is that these appeals tail and should be dismissed with costs. Certified for two counsel.

24. The interim order is vacated but the operation of this order will be stayed for a period of two months from date and the security will also continue.

Masud, J.

25. I agree.
Appeals dismissed.