

# BOMBAY HIGH COURT

The Commissioner of Income-Tax

Vs

Makanji Lalji

(John Beaumont, Kt., C.J. Blackwell, J.)

25.03.1937

## JUDGMENT

### **John Beaumont, Kt., C.J.**

1. This is a reference by the Commissioner of Income-tax under Section 66(2) of the Indian Income-tax Act. The question is whether certain allowances ought to be given to the assessee. The assessee is a Hindu undivided family. Originally the family consisted of a father and two brothers, the father died, and then one of the brothers named Mathuradas died leaving a widow Nambai. The other brother Kalianji then became the sole surviving coparcener. He has got a son, so that the coparcenary now consists of Kalianji and his son, and the widow of Mathuradas is a member of the joint family in her capacity as widow of a deceased coparcener. She applied to the Court for maintenance, and by a decree of this Court she was allowed maintenance at the rate of Rs. 165 per month, and the question is whether that sum can be deducted from the assessable income. Now inasmuch as the assessee is the Hindu undivided joint family which includes this widow, it is difficult to see how any deduction can be allowed in respect of a share of the income going to one of the members of the joint family. Mr. Daphtary contends that the result of the decree in the widow's favour is really to take her out of the joint family qua maintenance. It is quite clear to my mind that the decree would not amount to a severance, and the widow would still have her rights, e.g., of adoption, as a member of the joint family, and I think there is no ground for the contention that the decree which fixes the amount of the maintenance alters the character of the sum which the widow receives, which is still maintenance paid to her as a widow in a joint family, although the amount is fixed by the decree. Mr. Daphtary relies on the decision of the Privy Council in *Bejoy Singh Dudhuria v. Commissioner of Income-tax, Calcutta*<sup>1</sup> In that case there was a surviving male member of a joint family, and his step-mother had obtained a decree for maintenance. It appears from the report that the Advocate General abandoned the contention that the appellant and his step-mother were members of an undivided Hindu family, and accepted the position that the appellant was liable to be assessed as an individual and in no

other manner, and what the Privy Council held was that the assessee being an individual, the sum which he had to pay out of income to his step-mother never formed part of his income. It had been diverted to the step-mother before the income came to the hands of the assessee, and on that basis he was allowed a deduction in respect of the maintenance. But in this case the assessment being on a Hindu undivided family, it seems to me that the whole of the income of the Hindu undivided family is liable to assessment, and that it is impossible to deduct this sum payable to the widow of a deceased brother, who gets it in her capacity ultimately as a member of the joint family. I think, therefore, that the first question, "In the circumstances of the case, has the Income-tax-Officer correctly computed the income from house property at Rs. 4,767"? should be answered in the affirmative, and the second question, whether the assessee is entitled to any deduction from the above income of Rs. 4,767 in respect of Rs. 165 per mensem paid to Bai Nambai on account of maintenance under the consent decree, should be answered in the negative. Assessee to pay the costs of the Commissioner of Income-tax on the original side scale to be taxed by the Taxing Masterless Rs. 100.

**Blackwell, J.**

2. I agree, and have nothing to add.

Cases Referred.

1(1933) L.R. 60 I.A. 196, s.c. 35 Bom. L.R. 811