

BOMBAY HIGH COURT

The Commissioner of Income-Tax

Vs

Dwarkanath Harischandra Pitale

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

27.09.1937

JUDGMENT

John Beaumont, Kt., C.J.

1. This is a reference made by the Commissioner of Income-tax under Section 66(2) of the Indian Income-tax Act, and the questions raised are :

(1) Whether in the circumstances of the case, the assessee constituted in law an association of individuals within the meaning of Section 3 of the Indian Income-tax Act?

(2) Whether the said association can be said to be the owner of the properties within the meaning of Section 9 of the Indian Income-tax Act and was rightly assessed as such ?

(3) Whether the assessee were in any event rightly assessed as owners of the said properties under Section 9(2) of the Act ? The facts found are that the assessee became entitled as residuary legatees under the will of their grandfather to certain house properties in the city of Bombay of the aggregate rental value of Rs. 25,000. They so became entitled in the year 1929, when the properties were handed over to them, and they have since managed the properties as joint owners, and derived profit therefrom. (I think this case is really governed by the decision of this Court in Commissioner of Income-tax, Bombay v. Laxmidas in which we held, following the principle laid down by the Calcutta High Court in *In re B.N. Elias* (1935) I.L.R. 63 Cal. 538 that two persons who had purchased property and managed it for the purpose of producing income were properly assessed as an association of individuals under Section 3 of the Indian Income-tax Act. The only distinction between that case and the present is that the original association in the present case was not a voluntary act on the part of the assessee. They did not purchase the property for the purpose of managing it; they received it under a will and; it may be said, that in the first instance they did not constitute an association of individuals. But as soon as they elected to retain the property and manage it as a joint venture producing income, it seems to me that they became an association of individuals within the meaning of the Indian Income-tax Act, and that

they are properly assessed as the owners of the property under Section 9. In my opinion, therefore, the questions must all be answered in the affirmative. The assessee to pay the costs of the Commissioner on the Original Side scale to be taxed by the Taxing Master, less the deposit of Rs. 100.

Blackwell, J.

2. I agree.