

PATNA HIGH COURT

Rai Bahadur Lokenath Prasad

Vs

Commissioner of Income Tax Bihar

(Manohar Lall, J.)

02.04.1940

JUDGMENT

Manohar Lall, J.

1.The Commissioner of Income-tax has submitted a statement of the facts which are relevant to the question formulated at page 26 by a Bench of this Court on the 30th of March, 1939. The question formulated may be conveniently stated here :

"Is the assessee as donee under the deed of gift from Debi Prasad, dated the 13th of May, 1933, entitled to have registration of a firm consisting of himself as the donee of the one part and the joint Hindu family of which he is a Karta of the other part ?"

The facts found by the Commissioner are not disputed and may be briefly reproduced thus. The genealogical table of the family of the assessee is given at page 23. It shows that the original ancestor of this family was one Bhudarmal who had four sons Chandi Prasad, Durga Prasad, Rai Bahadur Debi Prasad and Lakhi Prasad, Chandi Prasad was the father of Lokenath and Radha Krishna. Lokenath has two sons Badribishal, a major, and Kishorilal, a major. It appears that on the 26th of January, 1920, Chandi Prasad had become of unsound mind and the other members of the family, that is to say Lokenath, Durga Prasad, Debi Prasad and Lakhi Prasad entered into a deed of partnership on a contractual basis having a four annas share each in the family properties. In 1923 Durga Prasad and Lakhi Prasad withdrew from the partnership and the business then became the business of Rai Bahadur Debi Prasad and Lokenath in equal shares. On the 21st of February 1930, a fresh deed in confirmation of this situation was drawn up between Rai Bahadur Debi Prasad and Lokenath, and the firm as such was registered by the Income-tax Officer. On the 13th of May 1933, Rai Bahadur Debi Prasad made a gift of his interest in favour of Lokenath absolutely. The recitals in the deed of gift are that the property will go to Lokenath and his sons generation. This has been treated by the Income-tax Department as meaning that the donee was not Lokenath in his absolute capacity but that the donee was the joint Hindu family of Lokenath

and his two sons. It is clear that this interpretation is incorrect. The recitals in the deed amply justify the conclusion which was sought to be drawn by the learned Advocate that Lokenath became the absolute owner of the share which before that date belonged to Rai Bahadur Debi Prasad. On the 24th of February, 1936, another deed of partnership was drawn up between Lokenath in his individual capacity of the one part and the joint Hindu family consisting of himself and his two sons of which he is the Karta of the other part. That deed is printed at page 23 of the paper-book, and it is the construction of this deed which has given rise to the questions which has given rise to the question which is to be answered in this reference. The assessee filed an application for registration under Section 2, sub-clause (14), Income-tax Act, along with a copy of this instrument of partnership before the Income-tax Officer. The Income-tax Officer by his order dated the 22nd March, 1937, refused to register the firm on the foot of this deed upon the ground that in his opinion on firm as defined in Section 2, Sub-section (6-A), Income-tax Act existed and that as there was no partnership firm under the Indian Contract Act he had no power to register such a firm. The Assistant Commissioner by his order dated the 21st of December, 1937, confirmed that decision. It is out of this appellate order that the assessee moved an application to the Commissioner to make a reference to the High Court which was refused by the Commissioner who also took the view that he could not understand how a man could be a partner with himself and also was of opinion that the gift to Lokenath was a gift to the joint Hindu family which I have already held to be incorrect. The learned Advocate for the assessee has drawn our attention to the decision of their Lordships of the Judicial Committee in P. K. P. S. Pichappa Chettiar and Others v. Chockalingam Pillai and Others where at page 659 Sir Lancelot Sanderson, in delivering the opinion of the Board, approved of the following statements in Maynes Hindu Law (9th Edn.) at page 398 :-

"Where a managing member of a joint family enters into a partnership with a stranger the other members of the family do not ipso facto become partners of the business so as to clothe them with all the rights and obligations of a partner as defined by the Indian Contract Act. In such a case the family as a unit does not become a partner, but only such of its members as in fact enter into a contractual relation with the stranger : the partnership will be governed by the Act".

The Act referred to in this passage was the Indian Contract Act, but the sections referring to partnership in that Act have been repealed and are now embodied in the Indian Partnership Act, 1932. It seems to me that this observation of their Lordships when applied to the facts found in the present case which I have reproduced above, lead inevitably to the conclusion that the question formulated should be answered in the way suggested by the Commissioner. The recitals in the deed of partnership at page 23 are very clear and show that the partnership was being entered into between Lokenath on the one hand and the joint Hindu family of which Lokenath on

the one hand and the joint Hindu family of which Lokenath was the Karta on the other hand. The question which has been formulated was formulated upon this assumption of facts. The learned Advocate for the assessee contended, however, that the partnership was not entered into between Lokenath as Karta of the joint Hindu family but between Lokenath Badribishal and Kishorilal. But it was admitted that Kishorilal was an infant and the only major who was then capable of contracting was Badribishal. If the partnership had been entered into by Badribishal on the one hand and Lokenath on the other there would be something to be said in favour of the argument advanced by the assessee; but the share of the other contracting parties in this deed is stated to be eight annas belonging jointly to Lokenath Badribishal and Kishorilal. It is true that Badribishal has signed at page 24, but it is nowhere suggested that he signed on behalf of himself. It may be that Badribishal signed the deed as Lokenath was entering into the partnership on behalf of himself and on behalf of the joint Hindu family. But in all the petitions which were filed by the assessee before the Income-tax Department and in the orders pronounced by these officers from time to time the petition has always been accepted that the other contracting party in this partnership was the family of which Lokenath was the managing head. In these circumstances it appears to me that the partnership which was sought to be entered on the 24th of February, 1936, was between Lokenath on the one hand and Lokenath on the other as the managing member of the joint Hindu family with the result that in this case the family as a unit did not become a partner; in other words that the partnership could be only treated to be in fact between the member of the joint Hindu family and the Karta as the other contracting party which in this case is the same person. The result inevitably follows that there is no partnership in law which could have been registered by the Income-tax Officer. For these reasons I am of opinion that the answer to the question set out above is in the negative. The assessee will pay the costs of this reference. The hearing fee is fixed at one hundred and fifty rupees. This is exclusive of the amount of Rs. 100 which is already in deposit with the Commissioner.

Harries, C. J.

I agree.

Reference answered in the negative.