

PATNA HIGH COURT

Commissioner of Income-Tax

Vs

Darsanram

(Manohar Lall, J.)

15.08.1945

JUDGMENT

Manohar Lall, J.

1. This is a reference under Section 66 (1) of the Indian Income-tax Act asking the opinion of the Court upon the following question :-

"Whether in the circumstances of the case and on the finding of the fact arrived at be the Tribunal, it can be said that the remuneration of Rs. 9,250 received by the director could be said to be the income of the family."

It is necessary to state the facts which have been found out of which the question of law arises. Two Hindu undivided families represented by Darsanram and Chatturam as their kartas owned a limited company known as Chatturam Horilram Limited. During the previous year a sum of Rs. 9,250 was paid to these two persons as directors fees. The contention of the assessee was that this was a lawful deduction in computing their profits for the assessment year. The department, on the other hand took, the view that the sum was received by these two persons "by virtue of the family being the sole owners of the company and not because the individuals are working in the capacity of outsiders." The Appellate Assistant Commissioner pointed out in his order that if these sums were received from any other company then the case would have been different, but these are received from the private limited company owned by the two families, and, therefore, the sum received by them cannot be viewed in any other aspect than the income of the joint family. The Appellate Tribunal by its order dated the 27th July, 1943, accepted the contention of the assessee and held : "The income arising out of the assets of the family is only the dividends and the directors fees are received by any member of for services rendered by him to the company. It is personal earning and is not liable to be assessed as the income of the Hindu family to which they belong." Being dissatisfied the question stated above has been referred to this Court at the instance of the Commissioner. In my opinion upon the facts stated the question formulated

above must be answered in favor of the assessee. It was argued by the learned standing counsel that in order to become the directors of the company it was necessary qualification that a certain number of shares in the company should be held by the directors, and that in this case the directors became qualified by reason of the fact that the shares of the joint Hindu family were placed at their disposal. He, therefore, argued that this was a case where the income of the directors arose from the aid of the joint family funds and must in law be treated as the income of the joint Hindu family. I am unable to agree with this contention. The joint family property has not been spent in this case in earning the remuneration of the directors. The dividends that were earned on the shares are still the income of the joint Hindu family. A similar view was taken by me in *Sardar Indra Singh v. Commissioner of Income-tax, Bihar and Orissa*. It must, therefore, be held that the remuneration of the directors is their personal earnings and not the income of the joint Hindu family. For these reasons I would answer the question in the negative. The assessee is entitled to the costs which I would assess at Rs. 250.

Fazl Ali, C.J. - I Agree.

Reference answered in the negative.