PRIVY COUNCIL.

KALYANJI VITHAL DAS

v.

THE COMMISSIONER OF INCOME-TAX, BENGAL.

P. C.*
1936

Nov. 2, 3, 5, 30.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Income-tax—Partnership formed by individual members of separate Hindu undivided families—Income of partners, how assessable—Existence of wife and daughter, whether sufficient to constitute family and undivided family within the Act—Indian Income-tax Act (XI of 1922), s. 55.

Where three individuals, each a member of a Hindu undivided family, enter into a partnership and the income of the individual partners from the firm is their separate and self-acquired income and is not thrown into the common stock of their respective families, the income is not assessable as the income of the family.

Under the law of the *Mitâkshard* the mere existence of a wife and daughter does not make ancestral property joint and income from property received by a man from his father is not assessable as the income of a Hindu undivided family merely because the assessee has a wife or daughter.

Lal Ram Singh v. *Deputy Commissioner of Partabgarh* (1) ; *Shiva Prasad Singh* v. *The Crown* (2) and *Krishan Kishore* v. *Commissioner of Income-tax* (3) referred to.

Vedathanni v. *Commissioner of Income-tax, Madras* (4) distinguished.

Commissioner of Income-Tax, Bombay v. Laxminarayan (5) and *Bhunesh Pratap Narain Singh* v. *Commissioner of Income-Tax, United Provinces* (6) disapproved.

CONSOLIDATED APPEALS (Nos. 24 to 29 of 1936) from Orders of the High Court (December 13, 1934) on six References by the Commissioner of Income-tax on behalf of Kalyanji Vithal Das, Chatur Bhuj Vithal Das, Sew Das Moolji, Kanji Moolji, Purshottam Sikka and Moolji Sikka respectively, under s. 66(*2*) of the Indian Income-tax Act (XI of 1922).

The material facts are stated in the judgment of the Judicial Committee.

* *Present* : Lord Alness, Sir Shadi Lal and Sir George Rankin.

(1) (1923) I. L. R. 45 All. 596 ; L. R. 50 I. A. 265.
(2) (1924) I. L. R. 4 Pat. 73.
(3) (1932) I. L. R. 14 Lah. 255.
(4) (1932) I. L. R. 56 Mad. 1.
(5) (1935) L L. R. 59 Bom. 618.
(6) (1932) 6 Ind. Tax Cas. 175.

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De Gruyther, K.C., for the appellants: [Referred to s. 14(*1*) of the Act.] The words "Hindu undivided "family" in the Act covers the case of a family consisting of a single male and female members entitled to maintenance. To constitute a Hindu undivided family, it is not necessary that there should be more than one male member: *Vedathanni* v. *Commissioner of Income-tax, Madras* (1). It is not necessary that there should be any one having a right to claim partition: *Krishan Kishore* v. *Commissioner of Income-tax* (2); *Commissioner of Income-Tax, Bombay* v. *Laxminarayan* (3); *Janakiram Chetty* v. *Nagamony Mudaliar* (4). [Reference was made to Mayne's Hindu Law, s. 271; Mulla's Hindu Law (8th ed.), Chap. XII, 228 and The Law of Income-Tax by N. Rajagopala Chari, p. 32.] Where there is a Hindu undivided family, the family remains an undivided family even when reduced to a single member. Kanji had a wife and daughter and Sew Das a wife and mother. In each case there is an undivided family. Kalyanji and his sons would constitute an undivided family though Kalyanji had separated from his brothers. Even if a member has no son at the time of partition, as soon as a son is born to him, the son becomes a sharer with him. The separated member holds the share which fell to him as an undivided member of a new family. The findings of the Commissioner in disregard of the law must be disregarded by the Court. It is found that Moolji made a gift to his sons. The gift in the hands of the sons would be joint property: *Muddun Gopal Thakoor* v. *Ram Buksh Pandey* (5) and *Hazari Mall Babu* v. *Abaninath Adhurjya* (6). This was followed in *Janakiram Chetty* v. *Nagamony Mudaliar* (*supra*). Allahabad and Bombay took a different

(1) (1932) I. L. R. 56 Mad. 1.
(2) (1932) I. L. R. 14 Lah. 255.
(3) (1935) I. L. R. 59 Bom. 618.
(4) (1925) I. L. R. 49 Mad. 98.
(5) (1863) 6 W. R. (C. R.) 71.
(6) (1912) 17 C. W. N. 280, 284-5.

view. Oudh followed Allahabad. I refer also to *Lal Ram Singh* v. *Deputy Collector of Partabgarh* (1).

Pugh, following: [Referred to G. C. Sarkar Sastri's Hindu Law (6th ed.), p. 280; The Law of Income-Tax in India by Sundaram (4th ed.), p. 118; *Rampershad Tewarry* v. *Sheochurn Doss* (2) and *Inland Revenue Commissioners* v. *Duke of Westminster* (3).] An undivided Hindu family or a joint Hindu family is distinct from a co-parcenary. It is a fundamentally different thing: *Virada Pratapa Raghunada Deo* v. *Brozo Kishoro Patta Deo* (4).

Dunne, K.C., and *Norton* for the respondents: On the facts found, the family is not one of the nature contended for by the appellants. The funds with which the firm was started in 1912 has been found to be 'admittedly' not ancestral. The findings are pure findings of fact not of mixed law and fact. The finding is that the capital of the firm was supplied from self-acquired property. If the capital came from family funds, the family accounts would show it, but the accounts have been mislaid. The High Court confined itself to the facts found. "Joint," the common term used in regard to Hindu families, is a word that has been avoided by the legislature in framing the Act. *Janakiram Chetty* v. *Nagamony Mudaliar* (*supra*). The last word in the judgment shows that the Court expressly reserved its view as to whether the expression in the Act connoted the same thing as a co-parcenary.

The findings of the Commissioner are inconsistent with either the wider or the narrower view of the undivided family as used in the Act. The findings are that the legislature did not intend to include in the unit, undivided family, persons who had no rights in the property. [Sections 3(9), 5, 14(1), 15 and 23(*a*) were referred to.]

(1) (1923) I. L. R. 45 All. 596; L. R. 50 I. A. 265.
(2) (1866) 10 M. I. A. 490, 505.
(3) [1936] A. C. 1, 16.
(4) (1876) I. L. R. 1 Mad. 69; L. R. 3 I. A. 154.

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Notice of separation must be given. That would be inapplicable to female members.

Section 38(*1*). For the purpose of taxation, the authorities are concerned with males alone, for they are the only persons who can effect a division.

[Reference was made to ss. 55, 58(*a*), (*b*) (*1*) and 63.]

The term "joint" is not used. The only test is in division. "Undivided" can refer only to members capable of dividing.

In the case of Moolji, who has a son, it may be there is an undivided family. The question is who is to be taxed and on what income. The legislature put in as the one test that it was to be a Hindu family who have not divided. The Act makes the test the unity of the members.

Mayne says a joint family is a co-parcenary plus a fringe, females and dependants. The Act does not intend to include those who cannot divide. It follows that the meaning intended was the narrower one of co-parcenary.

The findings were that there was never any common stock, never joint earnings, the earnings were always kept separate. Those findings negative the contention that the property was family property.

The undivided family must consist of at least two members. There must be some one who can divide. A woman cannot be a member of an undivided family. Mayne suggests that there can be an undivided family consisting of one male and females. So do others.

A joint family group includes dependant members in Hindu law. The words in the Act are not intended in this wider meaning. The Hindu law is directed to ascertainment of persons who have a right to be

maintained. The Act is directed to ascertaining what income is to be taxed and what is the source of that income. The phrase in the Act must be construed and it is impossible to suggest that females who cannot divide can become undivided members within the Act. One test is whether the income belongs to an individual or to several individuals, members of a family. In s. 14(*1*) and the old Act the same expression is used.

There must be a co-parcenary to support the connotation of undivided. It may be that sons will be born. The Act deals with income as it arises, whether it is the income of a single individual or not: *Bhunesh Pratap Narain Singh* v. *Commissioner of Income-Tax, United Provinces* (1) raises the exact point.

In speaking of the ownership of property, when it is said that it cannot be predicted what the share of each member is, the reference is to the co-parcenary, the ownership of male members who can partition and the rights of dependent members are not included.

[Mayne s. 271 was referred to and reference was also made to *Vedathanni* v. *Commissioner of Income-tax, Madras* (*supra*) and *Commissioner of income-Tax, Bombay* v. *Laxminarayan* (*supra*).]

De Gruyther, K. C., in reply: The words "undivided" and "divided" must be taken in the sense in which they are used in *Soorjeemoney Dossee* v. *Bundoo Mullick* (2) and Mayne. The matter cannot be determined on the question of the power of disposal. The manager of an undivided family can dispose of the whole property for a proper purpose. The assessment falls on the whole family as a unit. It does not matter whether a member is a male or a female. Females get maintenance out of the income and are members of the unit.

(1) (1932) 6 Ind. Tax Cas. 175. (2) (1857) 6 M. I. A. 526, 538.

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The judgment of their Lordships was delivered by SIR GEORGE RANKIN. These six appeals concern the assessment to super-tax for the year 1931-32 of six of the seven partners of a firm known as Moolji Sikka & Co. This firm was for the year in question registered under s. 26A of the Income-tax Act, the instrument of partnership being a Gujrati deed, dated September 11, 1930. Its business was that of dealers in Indian tobacco and cigarettes. The assessment to income-tax of the registered firm has been made in due course, and the present controversy is whether six of the partners should each be assessed to super-tax upon his share of the profits as an individual, or whether these six shares should each be assessed as income of a Hindu undivided family. The rates of super-tax imposed by the relevant Finance Act are less in the case of a Hindu undivided family than in the case of an individual.

The problem has to be answered by applying to the facts of each case the language of s. 55 of the Act :—

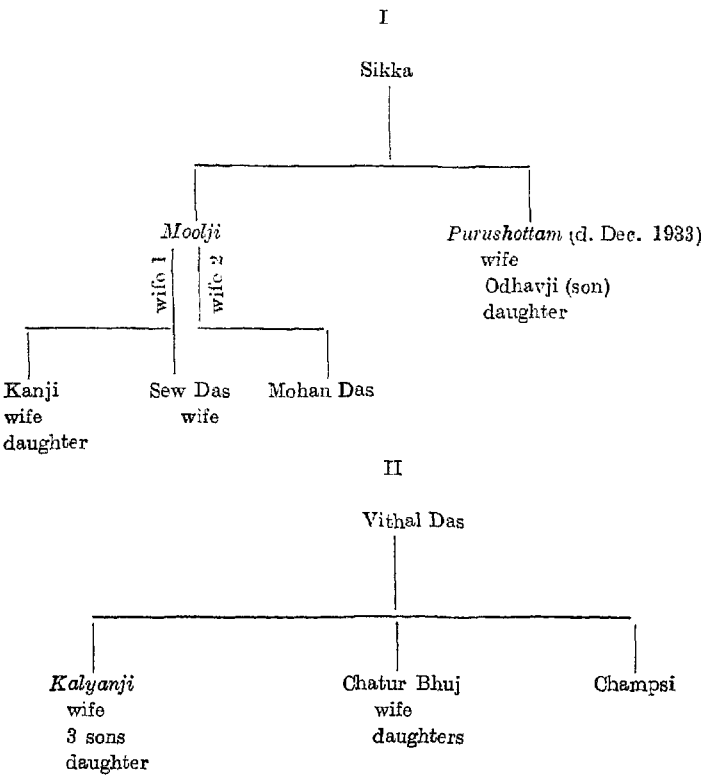
> In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any individual, Hindu undivided family, company, unregistered firm or other association of individuals, not being a registered firm, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Indian Legislature.
>
> Provided that, where the profits and gains of an unregistered firm have been assessed to super-tax, super-tax shall not be payable by an individual having a share in the firm in respect of the amount of such profits and gains which is proportionate to his share.

The two questions finally referred in each case by the Commissioner for the opinion of the High Court at Calcutta are as follows :—

> (i) Whether the family of the assessee, as it now stands, is a Hindu undivided family within the meaning of the Income-tax Act ?
>
> (ii) If the first question be answered in the affirmative, whether in the circumstances recorded in this case the income in question should be treated as income of that family and assessed as such ?

The High Court (Lort-Williams and Jack JJ.) have in each case answered the first question in the negative and held that the second question did not arise.

The parties are governed by the *Mitâkshará* and their pedigrees and families may be exhibited as under :—



The history of the firm according to the Commissioner is that, in or about 1912, the business was begun by Moolji and Purshottam (brothers who had separated) and Kalyanji (who is not related to either), and that in no case were ancestral funds employed for the purpose. That in 1919 Moolji made gifts of capital to each of his sons by his first wife—*viz.*, Kanji and Sew Das. That at least since 1919 Moolji, Kanji and Sew Das have been separate from each other. That in 1919 on the terms of a Gujrati deed, dated 1st May, Kanji (son of Moolji) and Chatur Bhuj (brother of Kalyanji) were taken into the partnership. That in 1930 Sew Das and Kalyanji's brother Champsi were taken into the firm on the terms of the deed of September 11, 1930, already mentioned. That the interest of Kanji and of Sew Das was a gift from their father

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Moolji, and that of Chatur Bhuj a gift from his brother Kalyanji. That in no case has it been proved that the individual partner has thrown his interest in the firm or his receipts therefrom into the common stock, *i.e.*, treated it as joint family property. Their Lordships are of opinion that the High Court was right in proceeding upon these findings of fact by the Commissioner.

From these facts it clearly appears, so far as Moolji, Purshottam and Kalyanji are concerned, that they are each members of a Hindu undivided family. Each has a son or sons from whom so far as the evidence goes he is not divided. But the income from the firm is clearly the separate and self-acquired property of the partner, and, as it has not been thrown into the common stock, it cannot be regarded as income of the family. It is the income of an individual and assessable to super-tax as such under s. 55 of the Act. In these three cases, therefore, the High Court should have answered the first question in the affirmative and the second question in the negative.

The interest of Chatur Bhuj in the firm was obtained from his brother Kalyanji. It is self-acquired and not ancestral property: Chatur Bhuj has no son, but even if he had, the son would have taken by birth no interest in the income now in question. The High Court might well have answered the second question in the negative and said of the first question that it did not arise.

In none of the four cases abovementioned—*viz.*, those of Moolji, Purshottam, Kalyanji and Chatur Bhuj—does the fact that the man has a wife and daughter (or more than one) affect the result. The existence of a son does not make his father's self-acquired property family property or joint property. That the existence of a wife or daughter does so is untenable.

There remain the cases of Kanji and Sew Das. Neither has a son, but, in the case of each, his interest in the firm was obtained by gift from his father Moolji. Without deciding the question which was left open in *Lal Ram Singh* v. *Deputy Commissioner of Partabgarh* (1), their Lordships, for the purposes of the present case, will assume that their interest was ancestral property, so that, if either had had a son, the son would have taken an interest therein by birth. But, no son having been born, no such interest has arisen to qualify or diminish the interest given by Moolji to Kanji and to Sew Das. Does then the existence of a wife, or of a wife and daughter, make it income of a Hindu undivided family rather than income of the individual partner? Their Lordships think not. A man's wife and daughter are entitled to be maintained by him out of his separate property as well as out of property in which he has a coparcenary interest, but the mere existence of a wife or daughter does not make ancestral property joint. "Interest" is a word of wide and vague significance, and no doubt it might be used of a wife's or daughter's right to be maintained, which right accrues in the daughter's case on birth; but if the father's obligations are increased, his ownership is not divested, divided or impaired by marriage or the birth of a daughter. This is equally true of ancestral property belonging to himself alone as of self-acquired property. The cases of Kanji and of Sew Das can be disposed of by answering the second question in the negative.

The High Court approached the cases by considering first whether the assessee's family was a Hindu undivided family, and in the end left unanswered the question whether the income under assessment was the income of that family. This is due no doubt

(1) (1923) I. L. R. 45 All. 596; L. R. 50 I. A. 265.

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to the way in which the Commissioner had stated the questions. But, after all, if the relevant Hindu law *had* been that the income belonged, not to the assessee himself, but to the assessee, his wife and daughter jointly, it is difficult to see how that association of individuals could have been refused the description "Hindu joint family." The phrase "Hindu undivid-"ed family" is used in the statute with reference, not to one school only of Hindu law, but to all schools; and their Lordships think it a mistake in method to begin by pasting over the wider phrase of Act the words "Hindu co-parcenary"—all the more that it is not possible to say on the face of the Act that no female can be a member. The Bombay High Court, on the other hand, in *Laxminarayan's* case (1), having held that the assessee, his wife and mother were a Hindu undivided family, arrived too readily at the conclusion that the income was the income of the family.

The phrase which has to be considered and applied to the facts is "the total income of the previous year "of any individual, Hindu undivided family, com-"pany, unregistered firm or other association of "individuals not being a registered firm." The words "income of" are simple words and are capable of wider or narrower meaning; but for the present purpose the Courts are concerned with them as they appear in an Income-tax Act; and under s. 3 or s. 55 income is not to be attributed to any one of the five classes of persons mentioned by any loose or extended interpretation of the words, but only where the application of the words is warranted by their ordinary legal meaning. The relevant meaning in the present case is the ordinary meaning in Hindu law according to the Benares school. In an extra-legal sense, and even for some purposes of legal theory, ancestral

(1) (1935) I. L. R. 59 Bom. 618.

property may perhaps be described, and usefully described, as family property; but it does not follow that in the eye of the Hindu law it belongs, save in certain circumstances, to the family as distinct from the individual. By reason of its origin a man's property may be liable to be divested wholly or in part on the happening of a particular event, or may be answerable for particular obligations, or may pass at his death in a particular way; but if, in spite of all such facts, his personal law regards him as the owner, the property as his property and the income therefrom as his income, it is chargeable to income-tax as his, *i.e.*, as the income of an individual. In their Lordships' view it would not be in consonance with ordinary notions or with a correct interpretation of the law of the *Mitâkshará*, to hold that property which a man has obtained from his father belongs to a Hindu undivided family by reason of his having a wife and daughters.

The result is that in the cases of Moolji, Purshottam and Kalyanji the first question stated by the Commissioner should be answered Yes and the second No. In the other cases the second question should be answered No and the first question need not be answered.

Upon the reported decisions cited during argument their Lordships will only observe that the decision in *Vedathanni's* case (1) does not cover the present question which arises under s. 55 of the Act, and that they take no exception to the result arrived at in the case of *Bhunesh Pratap Narain Singh* (2), though they do not agree that a Hindu joint family necessarily consists of male members only. Their Lordships will not here deal with the case of an impartible

(1) (1932) I. L. R. 56 Mad. 1. (2) (1932) 6 Ind. Tax Cas. 175.

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estate held by the senior of several male members of a family, as to which there have been conflicting decisions in India [cf. *Shiva Prasad Singh* v. *The Crown* (1); *Krishan Kishore's* case (2)].

They will humbly advise His Majesty that the appeals should be dismissed with costs.

Solicitors for appellants: *Douglas Grant & Dold.*

Solicitor for respondent: *The Solicitor, India Office.*

(1) (1924) I. L. R. 4 Pat. 73, 87-8. (2) (1932) I. L. R. 14 Lah. 255.