

gain accruing from a single transaction or investment which is not akin to the assessee's trade or avocation is not income, gain or profit from business, which, in our opinion, is contrary to the plain meaning of the words employed in the Act. That a single transaction or investment may be business cannot admit of doubt. Any receipts exceeding the capital must be treated as profit. It is true that if Kanhaiya Lal had lost the case the assessee would probably have lost all he had advanced to him. That, however, is beside the point. The fact remains that he received Rs.15,000 as a return on the sums which Kanhaiya Lal had borrowed.

For the reasons given above we answer both the questions in the affirmative. The assessee shall pay the costs of this reference. We assess the fee of the advocate for the department at Rs.150, for which a certificate shall be filed within the time allowed by the rules.

*Before Mr. Justice Niamat-ullah and Mr. Justice Bennet*

RAMRATAN MADANGOPAL (APPLICANT) v. COMMISSIONER OF INCOME-TAX (OPPOSITE PARTY)\*

1934

November, 30

*Income-tax Act (XI of 1922), section 55, proviso—"Individual" whether includes a Hindu undivided family—Hindu undivided family becoming a partner in an unregistered firm—Income-tax and super-tax paid by the unregistered firm—Whether the Hindu undivided family liable to pay super-tax on its share of the income of the unregistered firm—Interpretation of statutes—Same word used in different places of same section.*

Where a Hindu undivided family was one of the partners in an unregistered firm, and the unregistered firm had paid income-tax and super-tax on the income made by that firm: *Held*, that the Hindu undivided family was exempted, by the proviso to section 55 of the Income-tax Act, from paying super-tax in respect of the share of the income of the unregistered firm which came to the Hindu undivided family as a partner of that firm.

The word "individual" in the proviso to section 55 must be deemed to include a Hindu undivided family. Although in the main section itself the word "individual" is used in

\*Miscellaneous Case No. 39 of 1934.

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juxtaposition to, and as distinct from, a Hindu undivided family, yet having regard to the scheme and policy underlying the whole Act and the absence of any reason for a differential treatment between an individual person and a Hindu undivided family as a unit in the matter dealt with by the proviso, it must be deemed that the word "individual" has been used in the proviso in a slightly wider sense than the same word occurring in the section itself, so as to include a Hindu undivided family. The scheme of the Act appears to be that where the income of an assessee is part of the income of a firm which has already paid income-tax and super-tax, the assessee should not be called upon to pay any income-tax or super-tax on the amount received by him as his share of the profits of the firm. The context in which the word "individual" occurs in the proviso to section 55 shows that it has been used to indicate one of the component parts of an unregistered firm, an "individual partner", be he a person or the legal entity, a Hindu undivided family.

Ordinarily, where the same word occurs in two different parts of the same section the same meaning should be assigned to it, but if there is anything in the context to indicate a different meaning or the principle underlying the section makes it more logical to assign a different but legitimate meaning, it is permissible to construe the same word occurring in two parts of the same section differently.

Dr. K. N. Katju and Mr. Harnandan Prasad, for the assessee.

Mr. K. Verma, for the Crown.

NIAMAT-ULLAH and BENNET, JJ.:—This is a reference under section 66(3) by the Income-tax Commissioner. There is a connected reference No. 40 of 1934. The assessee in the present case is a joint Hindu family represented by its karta Lala Ramratan Das. The assessee in the connected case is a joint Hindu family represented by its karta Lala Jaidayal. The two joint families entered into a partnership having equal shares and became a registered firm styled Jaidayal Madangopal. This registered firm (consisting of the two joint families as partners) became a partner in nine other unregistered firms. On a reference made by the Income-tax Commissioner on a previous occasion it has been held by a

Bench of this Court that the registered firm (consisting of the two joint families) could not in law be a partner in the aforesaid nine unregistered firms. The result of this decision was that each of the two joint families was taken to be severally a partner in the nine unregistered firms and not as a component part of the registered firm.

A sum of Rs.1,81,338 was received by the registered firm as its share of the profits from some of the unregistered firms of which it had become a partner. The share of each of the two joint families in such profit came to Rs.90,669. This, added to the other income of the joint family represented by Lala Ramratan Das, gave a total of Rs.98,409, on which the Income-tax department assessed a super-tax after making allowance for Rs.75,000 up to which a joint Hindu family is exempt from the payment of super-tax. An objection was taken on behalf of Lala Ramratan Das to the sum of Rs.90,669 being included as part of the income of his joint family for the purpose of super-tax, on the ground that the same was exempt from payment of super-tax under section 55, proviso, of the Income-tax Act. The objection was overruled. The Income-tax Commissioner was directed by an order of this Court, dated the 25th of August, 1933, to submit a case for the determination of the following question: "Whether the applicant is liable to pay super-tax on that part of its income which represents profits received by it from the unregistered firms in its capacity as a partner in the firm Jaidayal Madangopal?"

The Income-tax Commissioner has recorded his opinion as regards the proper construction of the word "individual" occurring in the proviso to section 55 on which the decision of this case turns. Section 55 runs as follows: "In addition to the income-tax charged for any year, there shall be charged, levied and paid for

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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 learned advocate for the department has strenuously contended that the word "individual" occurring in the proviso must be assigned the same meaning as it bears in the main section. He points out that the word "individual" has been used in the section as not including a Hindu undivided family, which is separately referred to, and contends that the same word occurring in the proviso must be taken to be used in an exclusive sense. He also argues that the legislature has not advisedly used in the proviso the word "person" which includes a Hindu undivided family under section 2(g). As against this the learned advocate for the assessee lays stress on the fact that no reason can be suggested why a differential treatment should have been made in the case of an individual, implying a man or a woman, while a Hindu undivided family should have been made liable to pay super-tax a second time. The learned advocate for the department suggested that the difference is due to the fact that a Hindu undivided family is exempt from payment of super-tax where its income does not exceed Rs.75,000, while any other person is liable to pay super-tax on the excess over Rs.30,000.

We have carefully considered the phraseology of section 55 and its proviso and the policy underlying the whole Act and are of opinion that the word "individual" has been used in the proviso in a slightly wider

sense than the same word occurring in the section itself. Ordinarily where the same word occurs in two different parts of the same section the same meaning should be assigned to it, but if there is anything in the context to indicate a different meaning or the principle underlying the section makes it more logical to assign a different but legitimate meaning, it is permissible to construe the same word occurring in two parts of the same section differently. Section 55 lays down generally that every individual, joint Hindu family, company, unregistered firm (a registered firm is separately provided for) or other association of individuals is liable to pay super-tax in addition to the income-tax payable under the Act. As the section makes, *inter alia*, an unregistered firm liable to super-tax, the proviso is intended to make it clear that the component parts of such unregistered firm cannot be made to pay super-tax if the firm itself has already paid it. If the contention put forward on behalf of the department be accepted the result will be somewhat anomalous in a case in which an unregistered firm consists of partners one of whom is a Hindu undivided family, as on the profits received by individual partners none of them except the Hindu undivided family will be liable to pay super-tax, the firm itself having already paid it. The Hindu undivided family though similarly situated will be called upon to pay super-tax a second time. It seems to us that the proviso to section 55 provides in case of super-tax what section 14(2)(b) does in reference to the income-tax. The scheme of the Act appears to be that where the income of an assessee is part of income of a firm which has already paid income-tax and super-tax, the assessee should not be called upon to pay any income-tax or super-tax on the amount received by him as his share of the profits of the firm. The use of the word "individual" in the proviso was not in our opinion intended to exclude from its benefit a Hindu undivided family. It cannot be denied that the word is wide

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enough to include a group of persons forming a unit. The context in which it occurs suggests to our mind that it has been used to indicate one of the component parts of an unregistered firm. It is followed by the words "having a share in the firm", which indicates that the word is intended to connote an "individual partner", be he a person or the legal entity, the Hindu undivided family.

The argument that only a single individual as distinguished from a Hindu undivided family was intended to have the benefit of the proviso because he is liable to pay super-tax on his income in excess of Rs.30,000 while a Hindu undivided family is exempt from super-tax where its income does not exceed Rs.75,000 does not impress us. The reason why a higher limit is fixed for a Hindu undivided family is obviously the consideration that its income is shared by all the coparceners, whereas in case of an ordinary individual the income belongs to him exclusively.

For these reasons we think that the word "individual" in the proviso to section 55 includes a Hindu undivided family and the difficulty in adopting that construction is due to somewhat inartistic drafting of it.

The result is that we answer the question referred to us in the negative. We assess the fee of the advocate for the Commissioner at Rs.150. The costs of this reference shall be paid by the department.