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me to express an opinion on this point, I should have certainly agreed with the view taken by the learned Judge.

I agree, therefore, that the appeal must be dismissed with costs.

Attorneys for appellant: Messrs. *Aibara & Co.*

Attorney for respondent: Mr. *G. Louis Walker.*

Appeal dismissed.

B. K. D.

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Rangnekar.

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March 28

THE COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY AND ADEN (REFEROR) *v.* THE HEIRS OF THE LATE GOMEDALLI LAXMINARAYAN (ASSESSEES).*

Indian Income-tax Act (XI of 1922), sections 2 (9), 3, 14 (1) and 55—Hindu undivided family consisting of two males and two females—Death of one of male members—Income received by sole surviving member—If such income is that of individual or that of Hindu undivided family.

An assessee, his father, mother and wife formed a joint Hindu family. They were possessed of ancestral property which on the death of the father devolved on the assessee by survivorship and thereafter the assessee, his mother and wife continued to live as members of an undivided Hindu family.

For the Income-tax year 1932–33 the assessee's total income was determined at Rs. 77,000 and odd and he was assessed, as an individual, to pay income-tax and super-tax. The assessee contended that he was entitled to be taxed as a Hindu undivided family. The Income-tax authorities did not accept his contention. On reference to the High Court:—

Held, (1) that the income of the assessee should be taxed as the income of a Hindu undivided family for the purposes of super-tax under section 55 of the Indian Income-tax Act, 1922;

(2) that the assessment levied in the present case was not in order.

Vedathanni v. *Commissioner of Income-tax, Madras*,[1] approved.

In the matter of Moolji Sicka[2] disapproved.

* Civil Reference No. 15 of 1934.

[1] (1932) 56 Mad. 1, S. B. [2] (1934) Cal. (Unrep.).

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COMMISSIONER OF INCOME-TAX, BOMBAY v. LAXMINARAYAN

CIVIL REFERENCE made by the Commissioner of Income-tax, Bombay Presidency and Aden, under section 66 (2) of the Indian Income-tax Act, 1922.

One Gomedalli Laxminarayan died in December 1929 leaving him surviving a son, A. P. Swamy Gomedalli (assessee), a widow and his son's wife.

For the Income-tax year 1932–33 a return of his income was made by the assessee and thereafter the Income-tax Officer, C Ward, Section II, determined the total income at Rs. 77,559. The assessee claimed to be assessed to income-tax as a Hindu undivided family. The Income-tax Officer was of the opinion that the assessee being the sole surviving member of a Hindu undivided family should not be treated as representing a joint Hindu family and that he should be taxed as an individual. He accordingly taxed the total income to income-tax and super-tax by his order dated November 25, 1933.

The assessee then appealed to the Assistant Commissioner of Income-tax, A Division, who agreed with the order of the Income-tax Officer with the result the appeal was dismissed.

The assessee then applied in revision to the Commissioner of Income-tax, praying that if the Commissioner was not able to give him the necessary relief, the case might be referred to the High Court. The Commissioner found himself unable to agree with the assessee's contention and he accordingly referred the following two questions under section 66 (2) of the Indian Income-tax Act, 1922, viz. :

(1) " Whether, in the circumstances of the case, the income received by right of survivorship by the sole surviving male member of a Hindu undivided family can be taxed in the hands of such male member as his own individual income, or it should be taxed as the income of a Hindu undivided family, for the purposes of assessment to super-tax under section 55 of the Indian Income-tax Act, 1922 ? "

(2) " Whether, under the circumstances of the case, the assessment as levied is proper ? "

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In the course of the letter of reference the Commissioner observed as follows :—

"I am respectfully of opinion that the words 'Hindu undivided family' as used in the said section 14 (*1*) of the said Act have reference only to a family consisting of more than one male member with or without a female member or members and that when there is only one male member left in a Hindu undivided family even with female member or members, such a male member must for the purposes of the said Act be treated as an individual and not as representing a Hindu undivided family. I further respectfully submit that a larger deduction amounting to Rs. 75,000 is allowed for the purposes of super-tax in the case of a Hindu undivided family than in ordinary case as the income in that case is not that of one individual but of several individuals, viz., the male members of the undivided family. The female members of a Hindu undivided family are not entitled to such income but only to maintenance out of it.

My answers accordingly to the above two questions would be as under :—

(1) That for the purposes of assessing super-tax under section 55 of the Income-tax Act, the income of the property in the hands of the sole surviving male member of a Hindu undivided family is liable to be taxed as the income of an individual and not that of a Hindu undivided family.

(2) In the affirmative."

The reference was heard.

K. McI. Kemp, Advocate General, with *G. Louis Walker*, Government Solicitor, for the referor.

Sir Chimanlal Setalvad, with *Engineer* with *Raghavayya, Nagindas and Co.*, Attorneys, for the assessees.

BEAUMONT C. J. This is a reference made by the Commissioner of Income-tax under section 66 (*2*) of the Indian Income-tax Act, and the first question raised is :

"Whether, in the circumstances of the case, the income received by right of survivorship by the sole surviving male member of a Hindu undivided family can be taxed in the hands of such male member as his own individual income, or it should be taxed as the income of a Hindu undivided family, for the purposes of assessment to super-tax, under section 55 of the Indian Income-tax Act, 1922."

The facts are that there was a joint Hindu family consisting of a father and his wife and a son and his wife, the son being the present assessee. The father died in 1929 before the year of assessment, so the joint Hindu family then consisted of the son, his mother and his wife, and the

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question raised by the Commissioner appears to me to admit the existence of a joint Hindu family. Of such existence, I think, there can be no question. It is clear law that you may have a joint Hindu family consisting of one male member and female members who are entitled to maintenance, although that does not mean that every Hindu who possesses a wife and a mother is necessarily a member of a joint Hindu family, as Mr. Justice Lort-Williams seems to think in the Calcutta case referred to below. The question raised is whether the assessee is to be assessed as an individual or as a member of the joint Hindu family, and the importance of the question lies in this, that for the purposes of super-tax he will be allowed a larger exemption if he is taxed as the manager of a joint Hindu family than if he is taxed as an individual.

The Income-tax Act refers in various sections to a Hindu undivided family, though that expression is nowhere defined. A Hindu undivided family is a unit for taxation under sections 3 and 55, and under section 14 (*1*) it is provided that the tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family; which seems to mean that as a Hindu undivided family is taxed as a unit, the individual members thereof are not liable to be charged in respect of what each member receives as his or her share of the joint income. The nature of a Hindu undivided family was perfectly well-known to the Legislature when the Indian Income-tax Act was drafted, and it was well-known that the expression "Hindu undivided family" includes females, and is much wider than the expression "coparcenery" which includes only the males in whom the joint family property is vested. It is argued by the Advocate General that the Act, dealing as it does with property, when it refers to a Hindu undivided family, really means to denote the coparceners, that is to say, male members of the family in whom the family property is vested. I see no ground for arriving at that conclusion,

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since the meaning of the two expressions was well-known when the Act was drafted, and the Legislature has thought fit to use the wider expression rather than the narrower one. I have no doubt that this was deliberate. The more liberal allowance to a joint family in respect of super-tax was presumably given because the whole income of the family would not go to one individual. If there were a large number of male members, each member would get only a small portion of the income, and it would be hard to charge the family with super-tax merely because the joint income was over the limit at which super-tax commences for an individual. But the same principle would apply, though perhaps to a less extent, to the case of a Hindu joint family consisting of one male member and several female members entitled to maintenance, where maintenance might absorb a large share of the family income.

It has been held by a Special Bench of the Madras High Court in *Vedathanni* v. *Commissioner of Income-tax, Madras*[a] that one male member and the widows of deceased coparceners can form a joint Hindu family, and that therefore the arrears of maintenance received by a widow of a deceased coparcener are exempt from tax under section 14 (*1*) of the Act. If we were to accept the view contended for by the Advocate General, I think we should have to differ from the basis of that decision, and I see no reason for so doing. We have also been referred to a decision, at present unreported, of a Division Bench of the Calcutta High Court consisting of Lort-Williams and Jack JJ. (*In the matter of Moolji Sicka and five other assessees*, decided on December 13, 1934.) We have only an uncertified copy of the judgment, and therefore I hesitate to deal in any detail with the reasoning in the judgment, but the effect of the decision appears to be that references in the Income-tax Act to a Hindu undivided family should be read as referring to coparcenery. I am

[a] (1932) 56 Mad. 1, s. c.

unable to agree with that view, which seems to me inconsistent with the words of the Act.

I think, therefore, the first question submitted to us must be answered by saying that the income of the assessee should be taxed as the income of a Hindu undivided family for the purposes of super-tax under section 55. The second question "Whether, under the circumstances of the case, the assessment as levied in this case is in order" must be answered in the negative.

The Commissioner to pay the costs of the assessee to be taxed by the Taxing Master on the Original Side scale.

RANGNEKAR J. The question raised on this reference is whether the assessee is liable to be taxed as an individual or as a representative of an undivided Hindu family. The importance of the question lies in the fact that an undivided Hindu family is treated as a single unit for assessment under section 3 of the Act and is also entitled to a larger exemption in the matter of assessment to super-tax.

The facts are that the assessee, his father, mother and wife formed a joint Hindu family. They were possessed of ancestral property which on the death of his father devolved on the assessee by survivorship, and thereafter he and his widowed mother and his wife continued to live together as members of an undivided Hindu family.

Under section 2 (*9*) of the Indian Income-tax Act a Hindu undivided family is included under the definition of "person", but has not been otherwise defined anywhere in the Act. In my opinion, therefore, the expression must be construed in the sense in which it is understood under the Hindu law.

Under the Hindu law, an undivided Hindu family is composed of (*a*) males and (*b*) females. The males are (1) those that are lineally connected in the male line, (2) collaterals, (3) relations by adoption, and (4) poor dependants. The female members are (1) the wife or the

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"widowed wife" of a male member, and (2) maiden daughters. The commentaries mention female slaves and illegitimate sons also as being members of an undivided Hindu family. I shall content myself by referring to two well-known text books. Mayne in his work at page 344 observes as follows :—

> "The whole body of such a family, consisting of males and females,....some of the members of which are coparceners, that is, persons who on partition would be entitled to demand a share, while others are only entitled to maintenance."

Then dealing with what is called coparcenery, the learned author at page 347 observes :—

> "Now it is at this point that we see one of the most important distinctions between the coparcenery and the general body....."

I think perhaps a more accurate description of what a Hindu undivided family means is given by Sir Dinshah Mulla in his Principles of Hindu Law, 7th Edition, at page 230, in these words :—

> "A joint Hindu family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters."

An undivided Hindu family in this sense differs from what is called a Hindu coparcenery, which is a much narrower body. A Hindu coparcenery includes only those male members who take by birth an interest in the coparcenery property. This is what is known as *apratibandha daya* or unobstructed heritage, which devolves by survivorship. These are the three generations next to the last holder in unbroken male descent.

The Crown contends that the assessee was the sole surviving coparcener and therefore free to deal with the property in any way he liked, and that being so, there was no undivided Hindu family. Now under the Hindu law undoubtedly the sole surviving coparcener has wider powers to deal with property which he takes by survivorship. But these powers are subject to well recognised rights of the female members of the family. Thus the widow of a deceased coparcener has a right to be maintained out of the family

property and a right to a due provision for her residence. An unmarried daughter has a right to maintenance and residence and to marriage expenses. Similarly the disqualified heirs, such as the blind, the deaf, etc., have similar rights. If the rights of these persons are threatened, or if the holder of the estate is dealing with the property in a manner inconsistent with or so as to endanger the rights of these persons, he may be restrained by a proper action from acting in that manner. Similarly, the widow of a deceased coparcener may adopt a son to her deceased husband and he would therefore become a coparcener with the sole surviving coparcener. Then the expenses of religious ceremonies such as the *shradha* relating to deceased coparceners have also to come out of the property. I need not refer to the other restrictions on the power of the sole surviving coparcener. Therefore because there is no coparcenery, it does not follow that there is no undivided Hindu family. The joint status of the family does not come to an end merely because for the time being there is only one member of the family who is in possession of the family property. It is clear, therefore, that there is a sharp distinction between what is understood in the Hindu law by the expressions "undivided Hindu family" and "coparcenery". Now these two expressions which are known to every Hindu lawyer were before the legislature when the Income-tax Act came to be enacted. It is a canon of construction that one cannot impute ignorance to legislature of well-known legal expressions. The legislature must be presumed to be acquainted with not only the actual state of the law but with the legal interpretation put upon technical expressions by the Courts. If then the legislature chose to adopt a wider expression like "undivided Hindu family" instead of the narrower one "coparcenery", the Courts have no option left but to construe the wider expression in the way in which it has been construed and understood under the Hindu law. To put a narrower meaning on the expression "undivided Hindu family" as the

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Crown wants us to do, would, in my opinion, be legislating instead of interpreting the section. The view which we are taking is not without authority, and I need refer only to *Vedathanni* v. *Commissioner of Income-tax, Madras.*[1] It is said that that was a decision under section 14 (*I*) of the Indian Income-tax Act; but reading the judgment carefully, it seems to me that the point which has arisen before us also arose before the Judges of the Madras High Court, and the whole *ratio decidendi* of that case is that the expression "undivided Hindu family" has to be understood in the sense in which it is understood in the Hindu law.

The learned Advocate General has referred to an unreported decision of the Calcutta High Court and produced an uncertified copy of the judgment. I have no hesitation in saying, with respect to the learned Judges in that case, that their reasoning does not appeal to me and is opposed to the fundamental principles of the Hindu law.

For these reasons, I agree that the questions raised must be answered in the manner proposed by my Lord the Chief Justice.

Answer accordingly.

Y. V. D.

[1] (1932) 56 Mad. 1, S. B.

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Rangnekar.

1935
April 1

THE COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY AND ADEN, REFEROR *v.* GOPAL VALJINATH MANOHAR, ASSESSEE.*

Indian Income-tax Act (XI of 1922), section 34—Income-tax—Assessment—Low rate of profits assessed—Revision of assessment in following year—"Escaped assessment", meaning of.

In the course of assessment for the year 1932-33, the Income-tax Officer added to the assessee's income a certain percentage on the sale of gold and silver, 3 per cent. on the sale of gold and 5 per cent. on the sale of silver, and on that basis made the

*Civil Reference No. 2 of 1935.