

APPELLATE CIVIL.

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

THE COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY, SIND
AND ADEN (REFEROR) *v.* MAKANJI LALJI (ASSESSEE).*

1937
March 25

Indian Income-tax Act (XI of 1922), section 66 (2)—Assessee—Hindu undivided family—Widow—Maintenance—Decree—Family property charged—If amount of maintenance can be deducted from assessable income.

In 1928, a Hindu widow, a member of a Hindu undivided family (assessee), brought a suit for maintenance against her husband's brother and his son, and under a consent decree passed by the High Court in 1930 the amount of maintenance was fixed at Rs. 165 per month and certain family property was charged.

At the time of the assessment of the assessee for the financial year 1935-36 the assessee claimed, from the assessable income, a deduction of the amount of maintenance paid to the widow. On a reference to High Court :—

Held that the assessment being on a Hindu undivided family, the whole of the income of the Hindu undivided family was liable to assessment, and that it was impossible to deduct the sum payable to the widow of a deceased brother, who got it in her capacity ultimately as a member of the joint family.

Bejoy Singh Dudhuria v. Income-tax, Commissioner⁽¹⁾ referred to and distinguished.

CIVIL REFERENCE made by J. B. Vachha, Commissioner of Income-tax, Bombay Presidency, Sind and Aden.

Reference under section 66 (2) of the Indian Income-tax Act, 1922.

The assessee was a Hindu undivided family known as Makanji Lalji. It consisted of one Kalianji Makanji, his minor son, Vallabhdas alias Liladhar and Nambai, wife of Kalianji's deceased brother Mathuradas.

Nambai filed a suit (No. 1251 of 1928) against Kalianji and his minor son for a declaration that the half share in the businesses mentioned in the plaint and the immoveable property were the self-acquired properties of her deceased husband and, in the alternative, she prayed for an order for maintenance and residence. On January 29, 1930, the

*Civil Reference No. 14 of 1936.

⁽¹⁾ (1933) L. R. 60 I. A. 196, s. c. 60 Cal. 1029, p. c.

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High Court passed a consent decree according to which her maintenance allowance was fixed and was charged on certain family property.

For the financial year 1935-36 ended on March 31, 1936, the assessee made a return showing the taxable income at Rs. 9,257 and against the property income the assessee claimed a deduction of Rs. 2,145 being the maintenance allowance paid to Nambai.

The Assistant Income-tax Officer, Bombay, refused to allow the deduction and on appeal, the Assistant Commissioner of Income-tax, B Division, upheld his decision.

On March 30, 1936, the assessee applied to the Commissioner of Income-tax, praying that a reference should be made to the High Court on the questions raised in the petition. The Commissioner of Income-tax accordingly made a reference to the High Court, raising the two questions in the following terms:—

“(1) In the circumstances of the case, has the Income-tax Officer correctly computed the income from house property at Rs. 4,767 ?

(2) Is the assessee entitled to any deduction from the above income of Rs. 4,767 in respect of Rs. 165 per mensem paid to Bai Nambai on account of ‘maintenance and residence allowance’ under the consent decree in High Court suit No. 1251 of 1928 ?”

The reference was heard.

Sir Kenneth Kemp, Advocate General, with *G. Louis Walker*, Government Solicitor, for the referor.

C. K. Daphtary, with *Vachha and Co.*, for the assessee.

BEAUMONT C. J. This is a reference by the Commissioner of Income-tax under section 66 (2) of the Indian Income-tax Act. The question is whether certain allowances ought to be given to the assessee. The assessee is a Hindu undivided family. Originally the family consisted of a father and two brothers, the father died, and then one of the brothers named Mathuradas died leaving a widow Nambai. The other brother Kalianji then became the sole surviving

coparcener. He has got a son, so that the coparcenary now consists of Kalianji and his son, and the widow of Mathuradas is a member of the joint family in her capacity as widow of a deceased coparcener. She applied to the Court for maintenance, and by a decree of this Court she was allowed maintenance at the rate of Rs. 165 per month, and the question is whether that sum can be deducted from the assessable income. Now inasmuch as the assessee is the Hindu undivided joint family which includes this widow, it is difficult to see how any deduction can be allowed in respect of a share of the income going to one of the members of the joint family. Mr. Daphtary contends that the result of the decree in the widow's favour is really to take her out of the joint family *qua* maintenance. It is quite clear to my mind that the decree would not amount to a severance, and the widow would still have her rights, e.g., of adoption as a member of the joint family, and I think there is no ground for the contention that the decree which fixes the amount of the maintenance alters the character of the sum which the widow receives, which is still maintenance paid to her as a widow in a joint family, although the amount is fixed by the decree. Mr. Daphtary relies on the decision of the Privy Council in *Bejoy Singh Dudhuria v. Income-tax, Commissioner*.⁽¹⁾ In that case there was a surviving male member of a joint family, and his step-mother had obtained a decree for maintenance. It appears from the report that the Advocate General abandoned the contention that the appellant and his step-mother were members of an undivided Hindu family, and accepted the position that the appellant was liable to be assessed as an individual and in no other manner, and what the Privy Council held was that the assessee being an individual, the sum which he had to pay out of income to his step-mother never formed part of his income. It had been diverted to the step-mother before the income came

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to the hands of the assessee, and on that basis he was allowed a deduction in respect of the maintenance. But in this case the assessment being on a Hindu undivided family, it seems to me that the whole of the income of the Hindu undivided family is liable to assessment, and that it is impossible to deduct this sum payable to the widow of a deceased brother, who gets it in her capacity ultimately as a member of the joint family. I think, therefore, that the first question, "In the circumstances of the case, has the Income-tax Officer correctly computed the income from house property at Rs. 4,767" ? should be answered in the affirmative, and the second question, whether the assessee is entitled to any deduction from the above income of Rs. 4,767 in respect of Rs. 165 per mensem paid to Bai Nambai on account of maintenance under the consent decree, should be answered in the negative. Assessee to pay the costs of the Commissioner of Income-tax on the original side scale to be taxed by the Taxing Master—less Rs. 100.

BLACKWELL, J. I agree, and have nothing to add.

Answers accordingly.

Y. V. D.

CIVIL REFERENCE.

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

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THE COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY, SIND AND ADEN, (REFEROR) *v.* LAXMIDAS DEVIDAS AND VASANJI RUTTONSEY, (ASSEESSES).*

Indian Income-tax Act (XI of 1922), sections 3, 9 and 9(1)—"Association of individuals", meaning of—Two persons associating in buying property for deriving profits—Whether they are an association of individuals and taxable as owner of property.

Where two persons associate together for the purpose of buying property and managing it so as to produce income, they are an "association of individuals" within

*Civil Reference No. 17 of 1936.