

The Commissioner of Income Tax, Bombay Presidency
and Aden - - - - - *Appellant*

v.

A. P. Swamy Gomedalli, Kalbadevi Road, Bombay - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 30TH APRIL, 1937.

Present at the Hearing :

LORD MACMILLAN.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* LORD MACMILLAN.]

Since the order pronounced by the High Court in the present case on the 28th March, 1935, this Board has had occasion to consider the interpretation of the words "Hindu undivided family" as employed in section 55 of the Indian Income-tax Act, in the case of *Kalyanji Vithaldas v. Commissioner of Income Tax, Bengal*, in which the judgment of their Lordships was delivered on the 30th November, 1936 (64 I.A. 28). In that case the meaning of those words in the section in question, where they are used in connection with liability to super-tax, was very fully examined in the judgment which Sir George Rankin prepared on behalf of the Board, and a conclusion was reached contrary to the view which the High Court has adopted in the present case. Mr. de Gruyther has sought to show that the principle of that decision does not apply to the facts of the case now before the Board. Their Lordships have listened attentively to Mr. de Gruyther's observations; but they are not satisfied that the facts of the present case differ in any material respect from the facts which were before the Board in the previous case in 1936, and the decision in that case must accordingly rule the present appeal.

Their Lordships will, therefore, humbly advise His Majesty that the appeal should be allowed, and the order of 28th March, 1935, be reversed; that it should be found in answer to the first question as follows:—

"That 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 for the purposes of assessment to super-tax under section 55 of the Indian Income-tax Act, 1922.";

and that the answer to the second question should be in the affirmative.

The appellant will have his costs here and below.

In the Privy Council

THE COMMISSIONER OF INCOME TAX,
BOMBAY PRESIDENCY AND ADEN

v.

A. P. SWAMY COMEDALLI, KALBADEVI
ROAD, BOMBAY

DELIVERED BY LORD MACMILLAN

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