Privy Council Appeal No. 65 *of* 1946

Lala Lachhman Das - - - - - - - - - *Appellant*

v.

Commissioner of Income Tax, Punjab, N.W.F. and Delhi Provinces, Lahore - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH JULY, 1947.

Present at the Hearing :

LORD SIMONDS
MR. M. R. JAYAKAR
SIR JOHN BEAUMONT

[*Delivered by* MR. M. R. JAYAKAR]

This is an appeal under the provisions of Section 66A of the Indian Income Tax Act, 1922, from a judgment and decree of the High Court of Judicature at Lahore dated 8th April, 1944, delivered and passed on a reference made by the Income Tax Appellate Tribunal Punjab under Section 66 (1) of the Indian Income Tax Act, 1922 (Act XI of 1922), as subsequently amended, and hereinafter referred to as " the Act."

The year of assessment concerned is 1938-39.

The question referred to the High Court by the Income Tax Appellate Tribunal (hereinafter called " the Tribunal ") was as follows: " Whether in the circumstances of this case, there could be a valid partnership between Lachhman Das as representing a Hindu undivided family on the one hand and Daulat Ram, a member of that undivided Hindu family in his individual capacity, on the other? " This question was decided by the High Court in the negative—thereby reversing the decision of the Tribunal dated 8th September, 1942.

A Hindu named Tulsi Ram had two sons, Chunilal and Lachhman Das (the Appellant). Chunilal had three sons and Lachhman Das had seven sons, two of whom were named Daulat Ram and Kanhaya Lal. Shortly before his death in 1930 Tulsi Ram made a gift of Rs.30,000 to Daulat Ram. Daulat Ram deposited this sum at interest with the firm of the joint family carried on by Chunilal and Lachhman Das. The family was governed by the Mitakshara Law.

In or about 1938 a partition took place between Chunilal and his sons on the one hand and Lachhman Das and his sons on the other. Lachhman Das and his sons, however, remained joint. Daulat Ram was repaid his deposit, which, with interest, had increased to Rs.48,000, and this sum he invested in certain mills called the Indian Woollen Textile Mills. It is undisputed that this sum was his separate property. It has been found as a fact by the Tribunal and that question is not now before this Board that the mills were the property of a partnership consisting of the undivided family of Lachhman Das and his sons of the one part and Daulat Ram in his individual capacity of the other part.

In the assessment for the year 1938-39 on the Appellant the question arose whether for the purposes of such assessment the mills could be held to belong to the joint family of the Appellant and his sons or to a partnership consisting of the joint family of the one part and Daulat Ram and Kanhaya Lal of the other. In his assessment order dated 11th July, 1941, the Income Tax Officer, Amritsar, held that the mills belonged to the joint family and that the sum of Rs.48,000 should be treated as a loan by Daulat Ram to the family. The assessment was made accordingly. The Appellant appealed against the order to the Appellate Assistant Commissioner of Income Tax, who, by his order dated 1st November, 1941, upheld the order of the Income Tax Officer. The Appellant thereupon appealed to the Tribunal against this order of the Appellate Income Tax Commissioner. The contention that Kanhaya Lal was a partner, which had been urged in the previous proceedings, was given up at the hearing. By its order of 8th September, 1942, the Tribunal allowed the appeal, holding that the mills belonged to a partnership consisting as stated above. The Tribunal held that Daulat Ram received as aforesaid by a gift from his grandfather as early as 1929-30 a sum of Rs.30,000, which he at first invested in the joint family business and subsequently, when it had increased to Rs.48,000, he invested it in the mills. This investment has all along been treated by the Income Tax Department as the individual asset of Daulat Ram, and the interest earned on that amount from the business had been included in his separate assessment and had been allowed as such in the assessment of the mills for 1938-39. The Tribunal went on to add that, in view of this treatment of the capital as well as the interest, they found it difficult to appreciate the conclusion of the Income Tax authorities that Daulat Ram could not be deemed to have any separate interest in his individual capacity as a partner in the mills. There was no evidence whatever, they added, to show that either the capital or the interest was blended with the joint family property or its income or merged in one general account. On the other hand, it is common ground that in the account of the mills the investments of the family and the interest derived on their capital were systematically discriminated from those belonging to Daulat Ram.

The Tribunal then referred to certain authorities and distinguished some of them from the case before them, holding, in the result, that the mills belonged to a partnership consisting of the joint family of the one part and Daulat Ram, in his individual capacity, of the other part, and that it was competent for a member of a joint Hindu family to contract in his own individual capacity with the family as a matter of partnership and to maintain a separate interest for himself in that concern. For these reasons they reversed the decision of the Appellate Assistant Commissioner and allowed the appeal.

Application was made by the Respondent for a reference to the High Court. In that application it was stated that the following questions of law arose: " (1) Can there be a partnership within the meaning of Section 2 (6B) of the Indian Income Tax Act, 1922, between a Hindu undivided family as such on the one part and one of its undivided members in his individual capacity on the other part? (2) Even if such a partnership was permissible in law, is there any evidence on record in this case to show the existence of such a partnership between the Hindu undivided family of Messrs. Lachhman Das and Sons (including Daulat Ram) as represented by its Karta Lachhman Das on the one part and Daulat Ram on the other part? "

The form of the second question suggested that for the purposes of the partnership the Hindu undivided family concerned was represented by its Karta Lachhman Das. It appears that, when so stated, the question was subjected to a slight variation from the form in which it was adumbrated before the Income Tax authorities.

The Tribunal drew up a statement of the case and referred it to the High Court. The case set out the facts stated above and added that the accounts of the business showed that a two-annas share of the profits had

been allocated to Daulat Ram; there was no written instrument of partnership, but it had been shown before the Tribunal that a certificate of registration of the firm was granted by the Registrar of Firms under the Income Tax Act on 2nd March, 1938. The case further stated that the suggestion that Daulat Ram was simply a creditor of the mills in his individual capacity was negatived by the fact that, as stated above, a portion of the profit had been allocated to him in accordance with his alleged share in the firm.

The Tribunal proceeded to say that they accepted as a fact and there was evidence to show that Daulat Ram was interested in his own right in the concern, having contracted expressly in his private capacity and having taken care not to merge his interest in that of the joint family of which he was a member. Consequently, the Tribunal held, there could be no legal objection to a valid partnership existing between the Hindu undivided family and one of its members.

Out of the two questions mentioned above, the Tribunal regarded the second question as one of fact, and as it had been decided by the Tribunal as a fact, they declined to refer that question to the High Court. As to the first question, the Tribunal, with the consent of both sides, framed it in the form mentioned at the commencement of this judgment.

The reference came on for hearing before Din Mohammad and Sale, JJ., of the Lahore High Court, on 18th April, 1944, and on the same day the judgment of the High Court was delivered, answering the question in the negative and thus reversing the decision of the Tribunal.

Before their Lordships objection was taken to the form of the question as set out above on the ground that in the previous proceedings before the Income Tax authorities the partnership relied upon was between the members of the Hindu family as such on the one hand and Daulat Ram, in his individual capacity, on the other. Their Lordships, however, must accept the question as stated in the case presented for their consideration, whatever its previous form might have been. Their Lordships are therefore concerned in this case only with the validity of a partnership between the Karta of the family representing it on the one hand and a member of that family in his individual capacity on the other. It is unnecessary to consider in this case the question relating to the validity of a partnership between a Hindu undivided family as such of the one part and one of its undivided members in his individual capacity of the other. With reference to the latter kind of partnership, there seems to be some authority favouring the view that such a partnership cannot exist under the rules of Hindu Law, but their Lordships do not propose to deal with that question in this case.

The argument before their Lordships on behalf of the Appellant is as follows:—

> (1) It cannot be doubted that a co-parcener in a joint and undivided Hindu family can enter into contractual relationships with the members of that family while remaining joint with them; and (2) if so, partnership being in its nature a contractual relationship, there should be, on general principles of Hindu Law, no objection to the validity of such a transaction. This argument was reinforced by another that the rules of Hindu Law permit the formation of a partnership between the managing member of a Hindu joint family on the one hand and a stranger on the other. In such a case, it is argued, the family as a unit does not become a partner, and consequently the objections to the formation of such a partnership due to the fleeting and changeable nature of a joint Hindu family do not arise; such of its members as in fact enter into contractual relations with the stranger alone become partners, and the partnership would be governed by the Indian Partnership Act.

Authority for this proposition, it would appear, was to be found in Mayne's Hindu Law, 9th Edition, page 398, and in a decision of this Board (*P.K.P.S. Pichhappa Chettiar* v. *Chokalingam Pillai*, (1934), 36 Bom. L.R. 976) where this passage from Mayne was approved and relied

upon. The Tribunal relied upon Mayne's authority but the High Court distinguished it on the ground that Daulat Ram, though he might have made a contribution in his individual capacity from his separate funds, could not be regarded as a stranger so long as he continued his connection with his undivided family in the capacity of a co-parcener. The term " stranger ", the High Court said, implies an idea of being foreign or alien to the family, and this description cannot fit in with a co-parcener of the same family " so long as he is a composite member thereof ".

After careful consideration, their Lordships cannot accept this view and on general principles they cannot find any sound reason to distinguish the case of a stranger from that of a co-parcener who puts into the partnership what is admittedly his separate property held in his individual capacity and unconnected with the family funds. Whatever the view of a Hindu joint family and its property might have been at the early stages of its development, their Lordships think that it is now firmly established that an individual co-parcener, while remaining joint, can possess, enjoy and utilise, in any way he likes, property which was his individual property, not acquired with the aid of or with any detriment to the joint family property. It follows from this that to be able to utilise this propery at his will, he must be accorded the freedom to enter into contractual relations with others, including his family, so long as it is represented in such transactions by a definite personality like its manager. In such a case he retains his share and interests in the property of the family, while he simultaneously enjoys the benefit of his separate property and the fruits of its investment. To be able to do this, it is not necessary for him to separate himself from his family. This must be dependent on other considerations, and the result of a separate act evincing a clear intention to break away from the family. The error of the Income Tax Officer lay in his view that, before such a contractual relationship can validly come into existence, the " natural family relationship must be brought to an end ". This erroneous view appears to have coloured his and the subsequent decisions of the Income Tax authorities.

In this view of the Hindu Law it is clear that if a stranger can enter into partnership, with reference to his own property, with a joint Hindu family through its Karta, there is no sound reason in their Lordships' view to withhold such opportunity from a co-parcener in respect of his separate and individual property.

For the Respondent it was argued that the case of a partnership with a stranger can be distinguished on the ground that the Karta's entering into a partnership on behalf of a joint Hindu family is in substance of the nature of an alienation, insofar as it permits the person accepted into partnership to participate in the fruits of the family partnership and to that extent it causes a loss or detriment to the family, much in the same way as if the Karta had made a *pro tanto* alienation of the family property. On this basis, it is argued, that, on general principles of Hindu Law, an alienation may be permitted, in certain events, in favour of a stranger, but not in favour of a co-parcener; the two cases are therefore distinguishable. Dealing with this argument, their Lordships find the analogy remote and fantastic between an alienation of the family property and an acceptance of a stranger to the benefits of a partnership with it. In no sense can such acceptance be regarded as an alienation; and, further, even if it could be so regarded, it is now established by several rulings, including one of this Board (see *Sardar Bahadur Sir Sunder Singh Majithia* v. *Commissioner of Income Tax* (1942) L.R. 69 I.A. 119), that a joint Hindu family can alienate an asset belonging to it to a member of the family without causing a disruption of the family. This case also throws a sidelight upon the question at issue in this appeal insofar as it holds that there is nothing to prohibit members of an undivided Hindu family from entering into a partnership in respect of a portion of the joint property which they have partitioned among themselves.

On the Respondent's behalf their Lordships' attention was invited to a case (*Rai Bahadur Lokenath Prasad Dhandhania* v. *Commissioner of Income Tax, Bihar and Orissa* (1940) 8 I.T.R. 369), but the facts of that

case are clearly distinguishable. The partnership there (as the Judgment of the High Court in that case states) was formed between the same individual acting, on the one hand, as the Karta of the joint Hindu family and, on the other, as a partner in his individual capacity. He came to occupy, in the same transaction, two different capacities: one as representing the interests of the family and the other as representing his private interests. These two capacities might in certain conceivable circumstances be in conflict. The partnership in that case was therefore rightly disallowed.

In conclusion, it was argued for the Respondent that a joint Hindu family being, by its nature a frequently changing entity no partnership could be formed with it. This objection, if valid, would be equally operative against a partnership of the family with a stranger, which the authorities prove, and it is practically conceded in this case, can be validly formed. But, apart from this answer, it may be pointed out that though in its nature a joint Hindu family may be fleeting and transitory, it has been regarded as capable of entering, through the agency of its Karta, into dealings with others. Without accepting the view of some eminent Hindu Judges that a Hindu joint family is, in its true nature, a " corporation " capable of a continuous existence in spite of fleeting changes in its constitution, it is enough to state that for the purpose of such a transaction effected through the medium of its Karta, it has been, for a long time past, regarded as an entity capable of being represented by its manager. The class of cases, of which the ruling (*Chandrika Prasad Ram Swarup* v. *Commissioner of Income Tax* (1939) 7 I.T.R. 269) is an illustration, went on a different principle, namely, that a firm, not being recognised as a legal entity, cannot as such enter into partnership with another firm as such. That principle cannot be applicable to a joint Hindu family in transactions where it acts through the agency of its Karta.

For all these reasons, their Lordships' answer is in the affirmative to the question which is before them. The appeal will therefore be allowed, the decision of the High Court reversed and that of the Tribunal restored, and the case will be referred back to the Income Tax authority concerned to be dealt with in the light of their Lordships' answer. The Respondent will pay the costs of the Appellant here and of the proceedings in India. Their Lordships will humbly advise His Majesty accordingly.

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In the Privy Council

LALA LACHHMAN DAS

v.

COMMISSIONER OF INCOME TAX,
PUNJAB, N.W.F. AND
DELHI PROVINCES, LAHORE

DELIVERED BY MR. M. R. JAYAKAR

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