

M/S. Badri Prasad Jagan Prasad vs Commissioner Of Income Tax, U.P., ... on 20 September, 1985

Equivalent citations: 1986 AIR 358, 1985 SCR SUPL. (2) 879, AIR 1986 SUPREME COURT 358, 1985 (4) SCC 664, 1985 TAX. L. R. 1382, (1985) 49 CURTAXREP 223, (1986) 1 SUPREME 236, (1986) IJR 260 (SC), 1986 SCC(TAX) 130, 1986 UPTC 205, 1986 UJ(SC) 691, (1985) 79 TAXATION 203, (1985) 156 ITR 430

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Bench: Sabyasachi Mukharji, V.D. Tulzapurkar

PETITIONER:

M/S. BADRI PRASAD JAGAN PRASAD

Vs.

RESPONDENT:

COMMISSIONER OF INCOME TAX, U.P., LUCKNOW

DATE OF JUDGMENT 20/09/1985

BENCH:

MUKHARJI, SABYASACHI (J)

BENCH:

MUKHARJI, SABYASACHI (J)

TULZAPURKAR, V.D.

CITATION:

1986 AIR 358 1985 SCR Supl. (2) 879

1985 SCC (4) 664 1985 SCALE (2) 1246

CITATOR INFO :

D 1987 SC 785 (23)

ACT:

Income Tax Act, 1922 , s.25(4) - Hindu undivided family
- carrying on business - Assessed under Act of 1918 -
Partial partition of family on 11th October, 1948 -
Partnership firm succeeding family business on 12th October,
1948 - Succession - When takes place - Intention to carry on
business - Relevancy of - Assessee whether entitled to
relief under s. 25(4).

HEADNOTE:

The Assessee, a Hindu undivided family, carrying on business was assessed under the Indian Income Tax Act, 1918. In the assessment year 1949-50 the assessee contended that there was partial partition of the family on 11th October 1948 and various businesses owned by the family were divided through entries made in the account books. A partnership firm was constituted to carry on those businesses and it succeeded the family. The assessee filed an application before the Income-tax Officer claiming the benefit of s. 25(4) of the Act, which was rejected.

On appeal, the Appellate Assistant Commissioner set aside the order and called for a remand report. The remand report set out that the partnership firm succeeded to the business of the family on the 12th October, 1948. The Appellate Assistant Commissioner held that as the succession took place on a day of the previous year relevant to the assessment year 1950-51 the claim could not be considered in respect of the assessment year 1949-50.

The assessee's appeal to the Tribunal was dismissed.

The High Court, on the Reference made to it, held that there was a definite finding by the Tribunal that succession took place on 12th October 1948, that the date marked the commencement of the previous year relating to the assessment year 1950-51, that no tax was chargeable for any profits that might have accrued on 12th October, 1948, the date on which the succession took place, and that the Tribunal was right in holding that the assessee was not entitled to the benefits of s. 25(4) in the year 1949-50 but he could avail of that benefit in the year 1950-51.

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Allowing the appeal to this Court,

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HELD: 1. The assessee was entitled to relief under s. 25(4) of the Income Tax Act, 1922 in the assessment year 1949-50. [897 C]

2. Section 25 sub-s. (1) dealt with the case of a business which was discontinued and which had not been subjected to double taxation having paid tax under the provisions of the Indian Income Act, 1918, and that the provisions of sub-s. (1) was that if a business was discontinued in the middle of a year, then the business which was discontinued had to pay tax both with regard to the whole of its previous year and also for the broken period of the year of assessment. The scheme of the section seems to be that instead of the business being assessed again for a broken period, the business should pay tax not only for the previous year which it ordinarily would do, but also for the additional period being the period up to its discontinuance. Sub-s. (4) dealt with a business which had paid tax under the Indian Income Tax Act, 1918, and that the sub-section dealt not so much with the mode of taxing a business which was discontinued as with giving relief to a business from double taxation. It dealt with a situation

where one business was succeeded by another, and the first relief to which the business which ceased to continue and which had been succeeded by another, was entitled, was that no tax should be payable by the first mentioned person, that is, the person whose business had come to an end, in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession; and the second relief to which such person was entitled was that he might further claim that the income, profits and gains of the previous year should be deemed to have been the income, profits and gains of the said period. Looking at the plain language of the section, it was clear that the first relief had to be claimed by the assessee in the year of assessment in which the said succession took place, and the nature of the relief was that he was not obliged to pay tax on that particular specific period which was made up of the last date of the previous year and the date of succession. Therefore, it was necessary to ascertain what was the date of succession, because it was in relation to the date of succession that the relief had to be computed. The period might be anything from one day to 364 days. [886 C-H, 887 A-C]

Ambaram Kalidas v. Commissioner of Income Tax, Bombay North, 19 I.T.R. 227, approved.

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Commissioner of Income-tax, Madras v. K. Srinivasan and K. Gopalan, 23 I.T.R. 87, re Dalsukh Rai Jaidayal, 44 I.T.R. 417, Commissioner of Income-tax v. Teja Singh 35 I.T.R. 408, Mahabir Pershad & Sons v. Commissioner of Income-tax, Delhi 135, I.T.R. 775, English v. Cliff [1914] 2 Ch. D. 376, referred to.

3. On which date the succession takes place is a question of fact to be determined on the facts and circumstances available in each case. In this case, there was a disruption of HUF. The entries in the account books indicated that there was a partial partition of HUF and the various businesses owned by the family were divided through entries made in the account books. The partnership account books indicated that and that is what happened on 11th October, 1948. The partnership deed recited to carry on the business with effect from 12th October, 1948. There were in the facts of this case two stages - one partial partition of the assets of HUF business and there was evidence that various businesses owned by the family were divided through entries made in the account books, and next the succession, the partnership firm carried on the said business immediately. No vacuum was intended because the clear expression of intention in the deed of partnership indicated that disruption and succession were intended by the parties to be simultaneous. There was continuity of the disrupted assets, with which the partnership business was carried on as an integrated whole and there was transfer of ownership - these are the two essential conditions required to be

fulfilled in order to be entitled to relief under s. 25(4) of the Act. And all were intended to happen on the same day. Though the deed stated that partnership would come on 12th October, 1948, the intention to carry on business jointly from the date of the division of assets is writ large - it is clear in this case that succession took place on 11th October, 1948. In these matters one should adopt a pragmatic approach and not get enmeshed in technicalities. [896 A-E]

4. In the facts of this case and in view of the entries in the account books, there was succession on 11th October 1948 - succession not only of the assets of the business as co-owners but succession of the business. The succession of the assets with which the business was carried on and the assent of the co-owners to carry on the business in partnership from the very next day is evidenced by the document of partnership. It is to be presumed what was divided was not merely assets but business. The purpose of s. 25(4) contemplates, inter alia, that no tax shall be payable in respect of the income of the period between the end of

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the previous year the date of succession to the business. If the assets were succeeded to or divided as business assets amongst the erstwhile co-parceners then there was succession within the relevant assessment year 1949-50. [896 F-H, 897 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 182 (NT) of 1974.

From the Judgment and Order dated 4.2.1971 of the Allahabad High Court in Income Tax Reference No. 460 of 1964.

T.A. Ramachandran and A.G. Ratnaparkhi for the Appellant.

G.C. Sharma, K.C. Dua and Miss A. Subhashini for the Respondent.

The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J. This appeal by special leave arises from a judgment and order of the High Court of Allahabad in respect of a reference under Section 66(1) of the Income-Tax Act, 1922 (hereinafter referred to as the 'Act'). The appeal relates to the assessment year 1949-50, the relevant previous year being the year commencing 24th October, 1947 and ending on 11th October, 1948. The following questions of law were referred to the High Court under Section 66[1] of the Act:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was not entitled to the relief under section 25(4)

in the year 1949-50?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the succession took place on 12th October, 1948 and consequently the benefit of section 25(4) could be availed of only in the year 1950-51?"

There was another question not connected with the first two which was answered in favour of the assessee and is not the subject matter of this appeal and need not be considered.

In the relevant year, the assessee was a Hindu undivided family carrying on business under the name and style M/s. Badri Prasad Jagan Prasad, Agra. It had a branch styled as M/s. Jagan Prasad Shiv Prasad of Achnera. The assessee was assessed under the Indian Income-Tax Act, 1918.

In the assessment year in question, the assessee contended that there was partial partition of the family on 11th October, 1948 and various business owned by the family were divided through entries made in the account books. A partnership firm was constituted to carry on those businesses and succeeded the family on 12th October, 1948, according to the High Court. The assessee filed an application before the Income-tax Officer claiming the benefit of Section 25(4) of the Act. The Income-tax Officer rejected the application. On appeal, the Appellate Assistant Commissioner set aside the order and called for a remand report from the Income-tax Officer. The remand report submitted by the Income-tax Officer set out that the partnership firm succeeded to the business of the family on the 12th October, 1948. The Appellate Assistant Commissioner held that as the succession took place on a day of the previous year relevant to the assessment year 1950-51, the claim could not be considered in respect of the assessment year 1949-50. There was an appeal by the assessee. The Tribunal held that the date of succession was 12th October, 1948 and hence the claim of the assessee to the benefits under Section 25(4) could be considered only in the course of assessment proceedings for the year 1950-51. The High Court held that so far as the first question referred to hereinbefore, there was a definite finding by the Tribunal that the succession took place on 12th October, 1948. The date marked the commencement of the previous year relating to the assessment year 1950-51. The High Court was of the opinion that no tax was chargeable for any profits that might have accrued on 12th October, 1948, the date on which the succession took place. The profits of the broken period are exempt from tax. The Tribunal had also found that an application was made within time by the assessee that the profits of the previous year should be substituted by the profits of the broken period. It was held by the Tribunal that the benefit so applied for was available to the assessee, not in the assessment year 1949-50 but in the assessment year 1950-51. The High Court was of the view that the Tribunal was right having regard to the decision of the Bombay High Court in the case of *Ambaram Kalidas v. Commissioner of Income-Tax Bombay North*, 19 I.T.R. 227. Reliance was also placed on the observations of this Court in the case of *Commissioner of Income-Tax, Madras v. K. Srinivasan and K. Gopalan*, 23 I.T.R. 87. The High Court was of the opinion that in view of these observations, upon the finding of the Tribunal that the succession took place on 12th October, 1948, the Tribunal was right in holding that the assessee was not entitled to the benefit of Section 25[4] in the year 1949-50 but he could avail of that benefit in the year 1950-51. The first two questions were accordingly answered in the affirmative and in favour of the revenue.

The moot question is when did the succession, if at all, take place. There was no controversy in that there was succession. The Tribunal had recorded that the succession took place on 12th October, 1948. If this is a question of fact as held by the Tribunal and the High Court and as contended by the revenue, then relief can only be given in the assessment year 1950-51. But is a pure question of fact or is it a mixed question of law and facts having regard to the relevant scheme of the Act?

Section 25 of the Act deals with assessment in case of discontinued business. Sub-section (1) of that section provided that where any business, profession or vocation to which sub-section (3) was not applicable, was discontinued in any year, an assessment might be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year. Sub-section (2) of Section 25 stipulated that any person discontinuing any such business, profession or vocation should give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person failed to give the notice required by this sub section, the Income-Tax Officer might direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession or vocation upto the date of its discontinuance. Sub-section (3) stipulated that where any business, profession or vocation on which tax was at any time charged under the provisions of Income-tax Act 1918, was discontinued, then, unless there was a succession by virtue of which the provisions of sub-section (4) have become applicable no tax shall be payable in respect of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance, and the assessee might further claim that the income, profits and gains of the previous year should be deemed to have been the income, profits and gains of the said period. Where any such claim was made, an assessment should be made on the basis of the income, profits or gains of the said period, and if an amount of tax had already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund should be given of the difference.

Sub-section (4) of Section 25 is relevant and the material portion was as follows:-

"(4) Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), carrying on any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is succeeded in such capacity by another person, the change not being merely a change in the constitution of a partnership, no tax shall be payable by the first mentioned person in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession, and such person may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and, if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference:"

It is not necessary to deal with provision which make sub-section (4) inapplicable in certain cases as these are not applicable to the facts of this case. Sub-sections (5) and (6) are also not relevant for the controversy in this appeal.

Three aspects are important - (1) discontinuance (2) succession, (3) date of succession. All these relate only to the business, profession or vocation. Certain aspects of this aspect of law have been considered in the decisions of the Courts. Some of these may be briefly considered.

Before the Bombay High Court in *Ambaram Kalidas v. Commissioner of Income-Tax, Bombay North* (supra), the assessee, a Hindu undivided family, was a dealer in cloth and was taxed under the provisions of the Indian Income-tax Act, 1918. Its accounting year was Samvat year. The assessee disrupted on Aso Vad 30th, Samvat year 2000 (17th October, 1944) and on Kartak Sud 1st. Samvat year 2001 (13th October, 1944) the joint family business was taken over by a firm consisting of the erstwhile coparceners. In the assessment year 1945-46 the question was raised whether the assessee was entitled to relief under Section 25(4) of the Act. It was held inter alia (1) that the relief under Section 25(4) could not be granted to the assessee in the assessment year 1945-46, but it could only be granted in the assessment year 1946-47 and it would be open to the assessee to make a claim under Section 25(4) in the assessment year 1946-47; (2) that the income of the assessee from the 17th October, 1944 till the 18th October, 1944, was exempt, that the assessee need not make a claim for this relief and that the period of limitation provided in Section 25(5) did not apply to this relief.

Chagla, C.J. of the Bombay High Court set out the scheme of Section 25 and observed that it dealt under sub-section (1) with the case of a business which was discontinued and which had not been subjected to double taxation having paid tax under the provisions of the Indian Income-tax Act, 1918, and that the provisions of sub-section (1) was that if a business was discontinued in the middle of a year, then the business which was discontinued had to pay tax both with regard to the whole of its previous year and also for the broken period of the year of assessment. According to the learned Chief Justice, the scheme seemed to be that instead of the business being assessed again for a broken period, the business should pay tax not only for the previous year which it ordinarily would do, but also for the additional period being the period up to its discontinuance. So far as sub-section (4) was concerned, the Chief Justice was of the view that it dealt with a business which had paid tax under the Indian Income-tax Act, 1918, and that the sub-section dealt not so much with the mode of taxing a business which was discontinued as with giving relief to a business from double taxation. Sub-section (4) dealt with a situation where one business was succeeded by another, and the first relief to which the business which ceased to continue and which had been succeeded by another, was entitled, was that no tax should be payable by the first mentioned person, i.e., the person whose business had come to an end, in respect of the income profits and gains of the period between the end of the previous year and the date of such succession; and the second relief to which such person was entitled was that he might further claim that the income, profits and gains of the previous year should be deemed to have been the income profits and gains of the said period.

So far as the first relief was concerned, in the facts of the case before the Bombay High Court that the joint Hindu family would be entitled to which it would not be liable to pay any tax in respect of

the income, profits and gains of a period which consisted of the end of the previous year and the date of succession, the Bombay High Court was of the view that looking at the plain language of the section, it was clear that this relief had to be claimed by the assessee in the year of assessment in which the said succession took place, and the nature of the relief was that he was not obliged to pay tax on that particular specific period which was made up of the last date of the previous year and the date of succession. The Bombay High Court, therefore, felt that it was necessary to ascertain what was the date of succession, because it was in relation to the date of succession that the relief had to be computed. The period might be anything from one day to 364 days. In the facts of the particular case, before the Bombay High Court, the date of succession was the 18th October, 1944, i.e. assessment year 1946-47. Therefore, the end of the previous year was the 17th October, 1944 and the date of succession was the very first day of the following assessment year. Therefore, under this section the relief that the assessee was entitled to was the period between the 17th October, 1944, and the 18th October, 1944, and as the Tribunal had held that no profits could have been earned between that period, the result might seem to be anomalous. The Bombay High Court held accordingly. The other controversy about the limitation does not arise in the facts of the present case before us. So it need not be discussed.

This Court in the case of Commissioner of Income-Tax Madras v. K. Srinivasan and K. Gopalan (supra) held that the expression 'end of the previous year' in sub-section (3) and (4) of Section 25 of the Act in the context of those sub-sections meant the end of an accounting year (a period of full 12 months) expiring immediately preceding the date of discontinuance or succession. In that case the assessee was carrying on in partnership a business the profits of which had been charged to income-tax in their hands under the Indian Income-tax Act, 1918. Then it transferred the business as a going concern to a private limited company on 1st March, 1940. The firm's year of account was a period of twelve months ending with 30th June each year and the firm was charged to tax in the year 1939-40 in respect of the profits of the year of account ending 30th June, 1938. For the assessment year 1940-41 the assessee claimed that the firm was not liable to pay any income-tax on the income of its business from the end of the accounting year ending 30th June, 1938, to 29th February, 1940, under Section 25(4) of the Act. The Income-tax authorities held that the exemption claimed applied only to the income of the period 1st July, 1939, to 29th February, 1940. The Appellate Tribunal and the High Court affirming the decision of the Appellate Tribunal allowed the claim of the assessee for the entire period of 20 months. Viswanatha Sastri, J. held to the contrary.

This Court observed that the scheme of the Act was that by the charging section i.e., Section 3, income-tax was levied for a financial year at the rate prescribed by the annual Finance Act on the total income of the previous year. Each previous year's income was the subject of separate assessment in the relative assessment year. Though the year of assessment was the financial year, the previous year of an assessee need not necessarily be the previous financial year, for this expression had to be understood as defined by Section 2(11)(a) of the Act.

This Court was of the view that sub-section (1) of Section 25 of the Act merely empowered the Income-tax Officer, if he so chose to do, to make an accelerated assessment in case of discontinuance of business at the time of discontinuance to save loss of revenue by the disappearance of an assessee. In other words, the sub-section imposed a liability of premature

assessment on the assessee. It conferred no benefit on him. Sub-sections (3) and (4) of Section 25 have a different end in view and these are not in pari materia with sub-section (1). These are in the nature of substantive provisions intended to give relief from tax charged in certain cases. The mere circumstance of their being grouped together with sub-section (1) in Section 25 could not lead to the conclusion that the provisions contained therein were of the same nature and character as the provisions contained in sub-section (1). It was not correct, according to this Court, to hold that these two sub-sections were in the nature of exceptions to the rule laid down in sub-section (1). Sub-section (1) was itself an exception to the general rule laid down in the charging section of the Act. The object of sub-sections (3) and (4) was to provide relief to a business for the double assessment suffered by it in the financial year 1922-23 and it was entitled to this relief in the year of assessment in which the income and profits of the accounting period in which discontinuance or succession took place fell to be assessed.

This Court expressed the view that the expression 'end of the previous year' in sub-sections (3) and (4) of Section 25 in the context of those sub-sections meant the end of the accounting year (a period of full 12 months) expiring immediately preceding the date of discontinuance or succession. The expression 'previous year' in the context of Section 25(3) and (4) meant a completed accounting year immediately preceding the discontinuance or succession.

The Allahabad High Court in *re Dalsukh Rai Jaidayal* 44 I.T.R. 417, had to consider this question. There the assessee was a Hindu undivided family which carried on business. For the assessment year 1944-45 its accounting year was the period, 19th October, 1942 to 7th October, 1943. It claimed exemption from tax for that period under Section 25(4) of the Indian Income-tax Act, 1922 on the ground that a partnership succeeded to its business on 8th October, 1943.

The question referred to the Allahabad High Court was "Whether on the facts of the case, the assessee family is entitled in respect of its Benaras business, to exemption from tax under Section 25(4) of the Income-tax Act for the period from 19th October, 1942 to 7th October, 1943"

Bhargava, J. observed in his judgment that for the purposes of applying the provisions of Section 25(4) of the Act, it was necessary to determine in each case, where the question arose, as to what was the date of succession and what was the previous year for purposes of Section 25(4) of the Act. Bhargava, J. was of the opinion that in the case before the Allahabad High Court, the date of succession was 'admittedly 8th October, 1943'. The previous year, for the purpose of Section 25(4) of the Act would be completed accounting year of the assessee ending on any date preceding the date of succession, i.e. 8th October, 1943. This is the principle, according to the Allahabad High Court, laid down by this Court in the case of *Commissioner of Income-tax v. Srinivasan* (supra). The same principle, according to the Allahabad High Court, was laid down by the Bombay High Court in the case of *Ambaram Kalidas v. Commissioner of Income-tax* (supra). Applying that principle to the facts before the Allahabad High Court the previous year for the purpose of Section 25(4) of the Act would be the period beginning on 19th October, 1942, and ending on 7th October, 1943, because 7th October, 1943 was a date preceding the

date of succession which, as mentioned above, was `admittedly 8th October, 1943'a basis upon which the High Court proceeded.

It was a case where the findings of fact recorded led to the conclusion that the date of succession was 8th October, 1943 and the previous year for purposes of Section 25(4) of the Act was the accounting period beginning on 19th October, 1942 and ending on 7th October, 1943. Under the first part of Section 25(4) of the Act, the assessee was entitled as of right to be exempted from tax on the income earned during the period between the end of the previous year and the date of succession. Therefore, the income that would be exempted from tax, according to the Allahabad High Court, under this part of Section 25(4) of the Act would be the income earned between 7th October, 1943 which was the date on which the previous period ended, and 8th October, 1943, which was the date on which the succession took place.

The Allahabad High Court, accordingly held that the contention of the assessee that under the first part of Section 25(4) of the Act, the income earned during the period 19th October, 1942 to 7th October, 1943, was exempted was incorrect and could not be accepted. The High Court felt that it was unfortunate that the succession took place on 8th October, 1943, which was the very first day of the next accounting period following the previous year (19th October, 1942 to 7th October, 1943), with the result that the assessee in effect get no relief at all because no income was earned by the assessee between 7th October, 1943 and 8th October, 1943. If the date of succession had been later than 8th October, 1943, and any income had been earned during that period that could have been the income of the assessee which would have been exempt from tax. Even in that case, if the assessee had earned any income in the period between 7th October, 1943 and 8th October, 1943, and before succession took place, that income would have been the income exempt under the first part of Section 25(4) of the Act. According to the High Court, such a contingency could have arisen if on 8th October, 1943, the date of succession itself, any income had been earned by the assessee in that Benaras business prior to the succession taking place on that very day. The facts showed, however, that no such income was earned.

The High Court further observed that under the second part, the assessee could have made a second claim that the income of the assessee for the previous year 19th October, 1942 to 7th October, 1943 be deemed to be the income of the period in respect of which he could claim exemption as of right, which meant that the assessee could claim that the income earned between 19th October, 1942 and 7th October, 1943 be treated as the income for the period 7th October, 1943 to 8th October, 1943 and exemption for that period be granted on that basis. The High Court noted further that question did not arise in the reference made to this Court.

Upadhya, J. could not agree with the decision of Bhargava, J. Upadhya, J. after setting out the facts expressed the view that such a construction should be placed on the expression "end of the previous year" in Section 25(4) which should be consistent with the object of the provision. This "end of the previous year" therefore, could not be taken to be 7th October, 1943, in that case, for that would leave no period at all between the end of the previous year and the date of succession. Having regard to the object of the statutory provision it appeared proper to construe the phrase "end of the previous year" as meaning the end of that previous year which the preceded succession and the

period in respect of which exemption was claimed. The learned judge noted that the assessee who had paid income-tax under the Act of 1918 and subsequently under the Act of 1922 paid the tax twice in respect of one year's income that of 1921-22. The statute had provided that if that business whose income was thus subjected to double taxation was discontinued or was succeeded to by another person, the person who paid the tax twice on the income of the period 1921-22 should be granted relief in respect of one year's tax. If however this discontinuance or succession took place not at the end of a year the law, according to the learned judge, cast a duty on the Income-tax Officer not to tax the income for that part of the previous year or accounting period which ended with the date of the discontinuance or succession and commenced with the end of the preceding accounting period. The "end of the preceding accounting period" had been expressed as "the end of the previous year"

in these provisions. The language of the provisions indicated that it was assumed that in every case there would necessarily be a period between the end of the previous year and the date of succession. But if there had been no period at all the provisions of Section 25(4) would be evidently inapplicable completely. The assessee would not get any exemption because there would be no broken period and as there would be no such period no question of his claiming any substitution as mentioned in the second part of Section 25(4) could possibly arise. He was, therefore, in favour of answering the question mentioned hereinbefore in the affirmative in favour of the assessee. The matter was, therefore, referred to a learned third judge, Jagdish Sahai, J. He, after setting out the facts and the object of introduction of Section 25(3) and (4) and the relevant decisions of this Court and the Bombay High Court as well as the decision of this Court in the case of Commissioner of Income-tax v. Teja Singh, 35 I.T.R. 408., was of the view that the assessee could not only have got an exemption in respect of the payment of tax on account of income which might have accrued to it but would also have been entitled, on an application being made, to get the income for the year 19th October, 1942 to 7th October, 1943, treated as the income for that period and obtained relief under the second part of Section 25(4). He (Jagdish Sahai, J.) agreed with the views of Bhargava, J. The question was answered in accordance with the majority view.

The matter was considered by the Delhi High Court exhaustively in the case of Mahabir Pershad & Sons v. Commissioner of Income-tax, Delhi 135 I.T.R. 775. There the assessee, an HUF carrying on business had paid tax under the Indian Income-Tax Act, 1918. There was partition on 31st March, 1943, and in the document written on 29th April, 1943, it was recited that the family business was dissolved on 31st March, 1943, and each of the coparceners had taken his share after having understood the accounts. On 30th April, 1943, a partnership deed was executed between the three adult coparceners of the HUF; the minors were not admitted to the benefits of the partnership but amounts were credited to the accounts in their names through their guardians. As the terms of the deed are of some significance, it is necessary to refer to these. The partition deed mainly contained recitals regarding the allocation of immovable property among the various members of the family. So far business was

concerned which is material for the present purpose, there was a deed, preamble of which recited: "...Where as the joint family after due rendition of accounts disrupted on 31st March, 1943, and whereas the immovable property pursuant to a separate partition deed had been divided inter-se the constituents of the erstwhile family and whereas the said constituents had taken over their shares and the joint family no longer existed, all the assets had been fully divided, now, therefore, with effect from 1st April, 1943 we the parties to this deed start (emphasis supplied) a partnership business in equal shares regarding all business activities"

of the business conducted by the HUF. The question was whether the HUF was entitled to the relief upon succession to its business provided by section 25 (4) of the Act, of the tax for the entire period 1st April, 1942, to 31st March, 1943 as claimed by the assessee or whether, as contended by the revenue, because the HUF had been partitioned on 31st March, 1943, and the succession by the firm to the business had taken place on 1st April, 1943, the assessee was not entitled to any relief in that year. It was held that the assessee was entitled to the relief under Section 25 (4) in respect of the entire profits of the accounting year 1942-43 because of any of the following three alternative reasons: (a) if it was taken that the family got disrupted on 31st March, 1943, and the firm commenced on 1st April, 1943, the relief that was contemplated by Section 25 (4) was in respect of the period 1st April, 1942 to 31st March, 1943; (b) since the case of both the parties was that the disruption and formation of the partnership were simultaneous, it would be correct to say that the succession took place on the same date as the partition, viz., 31st March, 1943, although the partnership could, from another point of view, be said to have commenced business only on 1st April, 1943; (c) on a proper construction of the documents, there was disruption of the family on 31st March, 1943, followed by succession, on the same day, to the business by the erstwhile family as co-owners, some of whom subsequently converted it into a partnership business which was run with effect from 1st April, 1943. Ranganathan, J. of the Delhi High Court analysed the provisions of the section and referred to the relevant decisions.

In *English v. Cliff* [1914] 2 Ch. D 376., a settlement had been made on 13th May, 1982 by which the settlor conveyed real estate unto and to the use of two trustees upon certain trusts declared therein. It was further declared that the trustees should stand possessed of the premises during the terms of 21 years from the date of the trust upon trust to apply the rents and profits in the manner specified. It was further declared that the said trustees should "at the expiration of the said term of twenty-one years" sell the said premises as mentioned therein. The validity of this settlement was attacked on the ground that it offended the rule against perpetuity. It was argued that an estate or trust in order to be valid and not to infringe the rule against the rule of perpetuity, must where there are no lives or life in being to be taken into account, arise not later than the term of twenty-one years from its creation. It was contended that as the trust for sale in that case arose at the expiration of 21 years it necessarily followed that it did not arise within this period. Warrington, J. observed at page 380 of the report of the Chancery Division as follows:

"Is that argument sound? It is perfectly true that in many of the well-known text-books relating to the rule against perpetuity the rule is stated somewhat in this form, namely, that the estate or the trust or other limitation must arise 'within' the

period allowed by law, and I am quite willing to accept that statement as being for all practical purposes a sufficient statement of the rule, but when I come to consider what that statement means and to apply it to such a case as the present, then, in my opinion, the trust which is to arise 'at the expiration' of the term of twenty-one years does arise 'within' the period of twenty-one years, because I should have to resort to all sorts of subtle calculations and distinctions unless I were to hold that an estate or a trust to arise coincidentally with the termination of the period of twenty-one years was a valid estate or trust. To put an analogous case which occurred to me in the course of the argument; there must be many cases in which testator has fixed the period of twenty-one years from his death as that at which a class of beneficiaries is to be ascertained.....I think that any lawyer dealing with such a limitation as that would say without doubt that it was a good limitation, and yet in that case it is necessary to wait until the last infinitesimally small fraction of a minute has expired before it can be said whether a certain number of persons will be living or not at the expiration of that moment of time. The trust in the present case is to arise at the expiration of the term of twenty- one years, and if looked at from one point of view that trust arises coincidentally with the last moment of the term, although, if looked at from another point of view, it may be said to arise at some infinitesimally small fraction of time after the last moment of the term. In my opinion, however, the only sensible view to be taken of such a limitation is that the term determines and the trust arises at the very same moment of time, and if looked at in that way it is impossible to say that the trust arises at a later period than that allowed by law. It seems to me, therefore, that the term determines and the trust arises at mathematically and identically the same moment, and so far as that objection goes I am of opinion that the trust is a good one."

It is not possible for the Court to indulge in differential calculus in cases as was observed by the Delhi High Court, which deal with a point of time which coincides with the end of one interval and the commencement of another. In such a case, it would be as true to say, that the partnership commenced on last day of the previous year, for certain purposes as to say that it commenced only on 1st day of the next year. The fact of the matter is that the succession took place (in the absence of anything definite in the relevant documents) at a zero hour which is as much part of the last date of one year as it is of the first day of the next year. In such a situation, the Delhi High Court felt that it would be inequitable to deny relief to the assessee under Section 25 (3) on the theoretical assumption that the firm commenced business on 1st April, 1943, and, therefore, the succession took place on that date.

In our opinion, having regard to the facts and circumstances of this particular case, in the background of relevant provisions of law and the relevant documents it is a mixed question of law and fact, especially in view of the documents involved in this case, i.e. entries in the books of account and the deed of partition.

In the instant case before us, the partnership deed dated 28th February, 1949 recites as follows:

"WHEREAS (1) Jagan Prasad (2) Har Prasad (3) Mathura Prasad (4) Shiva Prasad (5) Basdeo Prasad and (6) Dilsuk Rai, first five sons of L. Nak Ram and the sixth son of L. Badri Prasad, all caste Vaish Agarwal resident of Achnera (For Jagan Prasad Har Prasad Shiva Prasad and Dil Sukh Rai) and of Agra (For Mathura Prasad and Basdeo Prasad) are carrying on the business at Agra, under the name and style of Agarwal Iron Works at Achnera, under the name and style of Jagan Prasad Shiva Prasad, Jagan Prasad Har Prasad as members of the Hindu Undivided Family known as Badri Prasad Jagan Prasad, but since Deshehra (Kunwar Sudi 10) Sambat 2005 corresponding to 12th October, 1948, the business of the family has been divided amongst the six members of the family for which necessary entries are made in the account books and the capital account which is distributed equally among the partners as required by all members signifying the assent thereto, and since that date the members of the family have become partners and the business has become a partnership business. It has now been decided amongst the partners, above mentioned to execute a proper deed of partnership and it has been mutually agreed that the following terms and conditions herein after specified shall govern the partnership in all matters."

We adopt the analysis of law as laid down by Chagla, C.J. in the decision in the case of *Ambaram Kalidas v. Commissioner of Income-Tax, Bombay North* (supra) but in each case on which date the succession takes place is a question of fact to be determined on the facts and circumstances available for such case. In this case, there was a disruption of HUF. The entries in the account book indicated that there is a partial partition of HUF and the various business owned by the family were divided through entries made in the account books. The partnership account books indicated that and that is what happened on 11th October, 1948. The partnership deed recited to carry on the business with effect from 12th October, 1948. In case of succession of a business - there were in the fact of this case two stages - one partial partition of the assets of HUF business and there was evidence in the instant case that various businesses owned by the family were divided through entries made in the account books and next succession and the partnership firm carried on the said business immediately. No vacuum was intended because the clear expression of intention in the deed of partnership as set out before indicated that disruption and succession were intended by the parties to be simultaneous. There was continuity of these disrupted assets, with which the partnership business was carried on as an integrated whole and there was transfer of ownership - these are the two essential conditions required to be fulfilled in order to be entitled to relief under Section 25 (4) of the Act. And all were intended to happen on the same day. Though the deed stated that partnership would come into effect on 12th October, 1948 but the intention to carry on business jointly from the date of the division of assets is writ large - it is clear in this case that succession took place on 11th October, 1948. One should take a pragmatic approach in these matters and not get enmeshed in technicalities.

In the facts of this case and in view of the entries in the account books, there was succession on 11th October, 1948 - succession not only of the assets of the business as co-owners but succession of the business. The succession of the assets with which the business was carried on and the assent of the co-owners to carry on the business in partnership from the very next day is evidenced by the

document of partnership. It is to be presumed what was divided was not merely assets but business. It is true that co-ownership of assets merely does not ipso facto mean co- ownership of the business but to hold them as co-owners of business is evidenced from the facts of this case and the subsequent conduct can be taken into consideration in certain cases like this. Looked at from this point of view, there is really no question of any conflict arising in the facts of this case between the principles enunciated by the Bombay High Court and the principles enunciated by the Delhi High Court in the last mentioned case. The purpose of Section 25 (4) has been noted. It contemplates, inter alia, that no tax shall be payable in respect of the income of the period between the end of the previous year and the date of succession to the business. If the assets were succeeded to or divided as business assets amongst the erstwhile co- parceners then there was succession within the relevant assessment year 1949-50.

We are of the opinion that the assessee was entitled to relief under Section 25 (4) in the assessment year 1949-50. The question number 1 is therefore answered in the negative and in favour of the assessee and in that view of the matter, the question number 2 does not arise.

The appeal is accordingly allowed. The appellant is entitled to the costs of the appeal.

A.P.J. Appeal allowed.