

# **Prahlad Singh Dhuru Prasad vs Commissioner Of Income-Tax on 5 May, 1950**

**Equivalent citations: AIR1950ALL589**

**Author: V. Bhargava**

**Bench: V. Bhargava**

JUDGMENT

Malik, C.J.

1. This a reference under Section 66 (1), Income-tax Act of 1922. The question referred to us runs as follows:

"Whether on the facts found by the Tribunal the benefit of Section 25 (4) is equally applicable to the business income done under the style of Prahlad Singh Dhuru Prasad started in 1933?"

2. There was a sarrafa shop known as Hargyansingh Jagannath, Meerut. It was carried on by three brothers of a Hindu undivided family, viz., Prahlad Singh, Dhuru Prasad and Prakash Chandra. In 1933 the joint family entered into a partnership with one Gangu Mal and a new firm known as Prahlad Singh Dhuru Prasad was started. In this firm the same type of business, i. e., sarrafa business, was carried on and the joint family had eight annas share in it and the other eight annas belonged to Gangu Mal. During this period the joint family sarrafa business continued to be carried on. The Appellate Tribunal came to the conclusion that this was a separate business and there was no interlacing between this partnership business and the old joint family sarrafa business. The facts on which this conclusion is based are as follows :

(1) That the partnership business of Prahlad Singh Dhuru Prasad was started in the same locality but at a shop different from the one in which the ancestral sarrafa business was being carried on :

(2) that the partnership firm had a separate establishment;

(3) that the partnership firm had separate sets of accounts;

(4) that the management of this new firm was separate;

(5) that the outsider who was a partner in this business had a half share and the other half share belonged to the Hindu undivided family;

(6) that at the end of the assessment year when the profits and loss account was worked out, half share of the profits was given to the Hindu undivided family and it was then entered in their books;

(7) that it was admitted that the discontinuance of the Hindu undivided family sarrafa shop could not result in the automatic discontinuance of the firm's sarrafa shop;

(8) that the control and management of the partnership firm's business was not vested in the Hindu undivided family as such; and (9) that there was no interlacing of the two. On these findings there was no doubt that the Tribunal could come to the conclusion that the partnership business that was started in 1933, though it was also a sarrafa business, was a separate business.

3. In 1934 the stranger partner in Prahlad Singh Dhuru Prasad firm went out and the Hindu undivided family took over the sarrafa business of that firm. There was a partition in October 1945 when Prahlad Singh got, under the partition, both the businesses, i. e., the business of the joint family firm known as Hargyansingh Jagannath and the business of Firm Prahlad Singh Dhuru Prasad. The old joint Hindu family firm known as Hargyansingh Jagannath was assessed to income tax under the Income tax Act of 1918 and, on the succession of the business in 1945 by reason of the partition and by reason of the business having been handed over to Prahlad Singh, the question arose whether the joint family could claim a relief under Section 25 (4), Income-tax Act. The point for consideration was whether a relief could be claimed only with respect to the amount paid as income-tax on the profits made by the joint Hindu family firm known as Hargyansingh Jagannath, or with respect to the profits of Firm Prahlad Singh Dhuru Prasad also. The Income-tax Officer, the Appellate Assistant Commissioner and the Tribunal all came to the conclusion that the partnership firm was a separate and distinct business which, was started in 1933 and as it had not paid any income-tax under the Income-tax Act of 1918, no relief was claimable with respect to the profits made by this firm.

4. Dr. Agarwala on behalf of the assessee has urged that even though the partnership business started in 1933 might have been a separate business if the joint family, carrying on business under the name and style of Hargyansingh Jagannath, acquired the business of Firm Prahlad Singh Dhuru Prasad and made it a part of its own business so that the identity of the two businesses got merged, it could not be said that there was no succession with respect to this part of the business and no relief was claimable for this part. He has further urged that, as a matter of law, it is not possible for a joint family to carry on two separate businesses in the same commodity and as soon as the stranger partner left and the joint family came to own the entire sixteen annas share in Firm Prahlad Singh Dhuru Prasad, it must be deemed to have become a part of the ancestral joint family business carried on by Firm Hargyansingh Jagannath for which income-tax had been paid under the Income-tax Act of 1918.

5. The statement of the case is again defective and, in spite of the fact that the defects were pointed out several times, we regret to say that there is no improvement in the statements which are drafted practically in the same manner in which they used to be drafted before. We have made it clear more than once that it is not for us to gather the facts from the various orders of the income-tax authorities or of the Appellate Tribunal and it is for the Appellate Tribunal to classify the findings on which they want our answer to the question formulated by them. In para. 4 of the statement of the case, the Appellate Tribunal begins by putting forward the facts on which the assessee based his claim under Section 25 (4), Income-tax Act; in para. 5 the Tribunal gave its finding on the relief allowed by the Appellate Assistant Commissioner; and in para. 6 they purport to give the findings of fact and start with the sentence. "The Tribunal came to the following findings of fact." But when we look at the rest of the quotation, we find that, instead of giving the findings, they just quote the conclusions and begin the quotation as follows :

"On the facts of this case as stated above, we are of opinion that the old Hindu undivided family sarrafa business. . . . ."

We had, therefore, to fall back on the order of the Appellate Tribunal but even that order does not appear to have set out the findings clearly on which they came to the conclusion that after 1934 when the joint family firm came to acquire the entire sixteen annas share in the business of Firm Prahlad Singh Dhuru Prasad, the business of Firm Prahlad Singh Dhuru Prasad was kept as a distinct and separate business and not as a part and parcel of the joint family business. It is not necessary for us at this stage to express any opinion on any question of law and, therefore, we should not be deemed to have accepted Dr. Agarwala's arguments that a joint family cannot have more than one business in the same commodity.

6. As a result, therefore, we must, under Section 66 (4), Income-tax Act, send this case back to the Appellate Tribunal to record the findings on which they hold that the business of Firm Prahlad Singh Dhuru Prasad did not get merged in the business of Firm Hargyansingh Jagannath and become a part and parcel of that business and continued to remain distinct and separate, though carried on by the same joint Hindu family. Further, it appears from the statement of the case that Firm Prahlad Singh Dhuru Prasad is the applicant and the Commissioner of Income-tax, United Provinces, is the opposite party. It is not clear whether Firm Prahlad Singh Dhuru Prasad of Meerut is entitled to claim this relief under Section 25 (4), Income-Act. It appears to be necessary that the Appellate Tribunal should clearly state the facts as to who is claiming the relief and in what right and refer a further question to us on that point for our consideration.