

## **Pt Lachhman Pandey In Re. vs Unknown on 18 November, 1952**

**Equivalent citations: [1953]23ITR250(ALL)**

### **JUDGMENT**

MALIK, C.J. - This is a reference under Section 66(1) of the Indian Income-tax Act and the question, which has been referred to us for decision, is as follows :-

"Whether, on the finding of fact that Pandit Lachhman Prasad was, at the commencement of the Indian income tax (Amendment) Act of 1939, carrying on the business in his capacity as an individual but was succeeded in his capacity as karta of an Hindu undivided family by his sons under the award of 31st March, 1941, the provisions of Section 25(4) of the Income-tax Act. allow any relief to him ?"

In other words, the question for our decision is whether the estate of Lachhman Prasad Pandey is entitled to the benefit under the provisions of Section 25(4) of the Indian income-tax Act.

Pandit Lachhman Prasad Pandey had three sons, Chintamani Pandey, Vishnu Datt Pandey and Hari Datt Pandey. He was assessed to income-tax from the assessment year 1918-19 to the assessment year 1926-27. It was not mentioned in what capacity he was being assessed but, from the order of the Income-tax Appellate Tribunal it appears that he was assessed as an individual. From the assessment year 1927-28 to the assessment year 1937-38. Lachhman Prasad Pandey was assessed to income tax as representing the Hindu undivided family. It appears that, in 1932 there was some litigation and civil suit No. 15 of 1932 was filed in which Lachhman Prasad Pandey had claimed that he was the exclusive owner of the business and that his sons had no interest in it. There was a compromise entered into between the parties which was filed in the chief court of Avadh. Under this compromise, it was recognised that Lachhman Prasad Pandey was the sole owner. on 28th July, 1938, Lachhman Prasad Pandey executed a will, declaring therein that all the properties which were the subject-matter of the will including the business were his selfacquired properties and that he was competent to divide the same. By reason of that compromise and the assertions made in the will, the income-tax officer started assessing Lachhman Prasad Pandey as an individual from the assessment year 1938-39 and the capacity, in which he continued to be assessed, remained the same till his death in 1942. there was some dispute in 1940 or 1941 between the three sons and Lachhman Prasad Pandey and the matter was again referred to arbitration. The sons claimed that they were living with Lachhman Prasad Pandey as members of the joint Hindu family and as they had also worked in running the business, the business must be deemed to be joint family business. On the 31st March, 1941, the arbitrators gave an award, holding that the business belonged to the joint family. They also proceeded to partition the properties, giving the business to the three sons of Lachhman Prasad. and the other property to Lachhman Prasad Pandey. On 5th April, 1942, Lachhman Prasad Pandey died.

During the assessment proceedings for the year 1941-42 against Lachhman Prasad Pandey through Chintamani Pandey, one of his sons, the three sons of Lachhman Prasad Pandey filed an application

on the 25th of September, 1942, claiming the reliefs under section 25(3) of the Indian income tax Act. They claimed that no income-tax should be levied for the year 1941-42. The Income-tax Officer, however, rejected this contention and made the assessment on the 5th of March, 1943. There was an appeal before the Appellate Assistant Commissioners of Income tax who, on 4th September, 1943, allowed the appeal and sent the case back to the Income-tax Officer, directing him to re-consider whether relief should be given under section 25(4) of the Indian Income-tax Act. On 19th October 1943, the Income-tax officer held that no relief under section 25(4) of the Act was claimable and that order was confirmed by the Appellate Assistant Commissioner of Income-tax though on different grounds. There was a further appeal to the Income-tax Appellate Tribunal which proceeded to record some findings of fact, on the basis of which it wanted to decide the question of law. The facts, which the Tribunal found, were as follows :-

1. that Lachhman Prasad Pandey had paid income tax under the provisions of the Indian Income-tax act of 1918 as an individual on the profits of the business which was being run by him;
2. that he was carrying on the business in the same capacity, i.e., as an individual, at the commencement of the Indian Income-tax Act of 1939; and
3. that the award given on 31st March, 1941, "affected his title to the property divesting him of a portion of it and investing the same in his three sons, a succession to Lachhman Prasad as an individual did take place on the date of the award i.e., 31st march, 1941."

After having recorded these three findings, the tribunal held that the assessee was not entitled to claim the benefit of section 25(4) as "the succession of the three sons was not as an heir to an individual but was by virtue of an independent title which was held by the arbitrator to have accrued to them through their personal efforts to expand the business."

This is the only reason given for the conclusion that the three sons had not succeeded in the same capacity.

The relevant portion of section 25(4) of the Indian Income-tax Act runs as follows :-

"Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), carrying on any business 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... 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..."

There can be no doubt that, on the findings of fact recorded by the Tribunal Lachhman Prasad Pandey was carrying on a business which had been charged to income tax under the provisions of the Indian Income-tax Act of 1918. On those findings, it cannot be disputed that Lachhman Prasad Pandey was carrying on the same business in the year 1939 when the amendment came into force.

The Income-tax Appellate Tribunal has recorded a finding that Lachhman Prasad was succeeded by his three sons under the award. Apparently, therefore, the requirements of this section were fulfilled. The Tribunal however, appears to have been under the impression that as Lachhman Prasad had paid income-tax as an individual and, in 1941, the arbitrators had held that the property had become the joint family property and proceeded to divide the same among the three sons of Lachhman Prasad, the sons could not be said to have succeeded to the business in the same capacity as Lachhman Prasad Pandey. The Tribunal however, if we may say so, does not appear to have analysed the result of its own findings step by step. According to the Tribunal, the business exclusively belonged to Lachhman Prasad Pandey, and he had paid income-tax as an individual under the Indian Income-tax Act of 1918, it had continued to remain his business even when the Amendment Act of 1939 came into force. It, however, ceased to be his business and became the business of the joint family as a result of a valid award given on the 31st March, 1941. To pause here, if Lachhman Prasad Pandey had transferred the property from his own individual ownership to the ownership of the joint family, it could not be said that the joint family had not succeeded to the business which was owned by Lachhman Prasad Pandey. As a matter of fact, in the case before, as the Tribunal has, in so many words, held that there was succession on the date of the award. i.e., on the 31st of March, 1941. The fact that not only did not arbitrators hold that the property was joint family property but they actually proceeded to divide it into different shares among the three sons of Lachhman Prasad Pandey giving other property instead to Lachhman Prasad means that Lachhman Prasad Pandey ceased to be the owner of the business and the ownership in the business passed to his sons. We, therefore, find it difficult to understand what the Tribunal exactly meant when it said that the three sons had not succeeded in the same capacity. The portion quoted above would show that what probably the Tribunal meant was that they had not succeeded Lachhman Prasad Pandey but had acquired independent title under the award. As a result of the award, Lachhman Prasad's right as an individual came to an end and other rights were created under it. A succession therefore, did take place on the date of the award, i.e., 31st March, 1941, and the appellate order would show that the Tribunal came to the same conclusion.

The question, however, remains whether the sons had succeeded in "such capacity". The words "in such capacity" came up for consideration before their Lordships of the Privy Council in the case of *Maharajadhiraj of Darbhanga v. Commissioner of Income-tax, Bihar and Orissa*. Their Lordships held that a succession "in such capacity" meant a succession by a person carrying on the business. The point was elaborately discussed by the Supreme Court in the case of *Executors of the Estate of J. K. Dubash v. Commissioner of Income-tax, Bombay City*. Kania, C.J. at page 187 of the report said that when the legal estate is transferred by operation of law to an executor, the executor holds the business in the same capacity as the previous owner. His Lordship remarked :-

"The words in such capacity in that clause further make the position clear. It makes the distinction of legal and beneficial ownership irrelevant. The contention that the

business was to be carried on by the executors as such, as a going concern or that it was being carried on for the benefit or loss of the testators estate is not relevant for the present discussion. The only relevant question under Section 25(4) of the Indian Income-tax Act is whether in respect of the business there is a succession to another person."

There can be no doubt that was such a succession in the case before us. The property had ceased to be the self-acquired property of Lachhman Prasad Pandey and became the property of the joint Hindu family and was thereafter allotted to his three sons. Dealing with the same point, Patanji Sastri, J. (as he then was), observed :-

"The words in such capacity in Section 25(4) and 26(2) means nothing more than the capacity of a person who carried on the business as the predecessor was carrying it on, the is, with a liability to be taxed on its profits and gains."

All that section 25(4) requires is that, if a person was carrying on a business in the year 1939, for which he had paid income tax under the provisions of the Indian Income-tax Act of 1918, and his rights had been transferred to some one else, he should be given the benefit under that section so that he may get relief for the fact that in one year he had been subject to double taxation. On the findings recorded by the Tribunal, Lachhman Prasad Pandey had fulfilled the requirements mentioned in the first part of that clause and, on the further finding that there had been a succession as a result of the award, we think the Tribunal erred in unnecessarily laying stress on the word "capacity" to mean that his sons did not get the property by inheritance but by transfer. The fact that they got it by transfer as a result of decision of the arbitrators to the effect that they had acquitted some interest in the property by reason of their own exertions should make no difference. If the sons had purchased the property for cash, nobody would have doubted that they owned the business in the same capacity.

We have already said that the award is dated the 31st March, 1941, and the tribunal has found that the succession took place on that date. A question has arisen that, with reference to the assessment year 1941-42 what exactly is the period for which relief should be granted under clause (4) of section 25 of the Act? We have carefully considered the provisions and we find no difficulty. The account year in the case before us was the financial year from 1st April, 1940, to 31st March, 1941. The clause provides that "...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."

The date of succession in this case was 31st March, 1941, the end of the previous year was thus 31st March, 1940. The assessee was, therefore, not liable to pay any income tax on the income of the period from the 1st of April, 1940, to the 31st of March, 1941. As the assessee, we are informed, has not applied for the benefit of the second portion of that clause, we need not discuss it at length. The clause goes on to provide that -

"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..."

The period, as we have already said, is from 1st April, 1940, to 31st March, 1941, and if the assessee had made an application within year, he would have been entitled to claim that the assessment for the year 1940-41 should be re-opened and the income for that year should be deemed to be the income made by him during the period from 1st April, 1940, to 31st March, 1941. It has been urged by the learned counsel for the assessee that there was some conflict of opinion and the words "previous year" might mean either the account year or the assessment year. We do not think that there is any reason to think that the previous year would mean anything other than the account year preceding the date of succession.

Our answer, therefore, to the question referred to us is in the affirmative. The assessee is entitled to his costs which we assess at Rs. 300.

Reference answered in the affirmative.