# Bithal Das vs State Of U.P. on 2 August, 1955

## Equivalent citations: AIR1956ALL156, [1956]30ITR647(ALL), AIR 1956 ALLAHABAD 156, (1956) 30 ITR 647 ILR (1956) 2 ALL 722, ILR (1956) 2 ALL 722

JUDGMENT

Mootham, C.J.

1. These are six applications under Section 24 (4), U. P. Agricultural Income-tax Act arising out of the refusal of the Revision Board to state a case for the opinion of this Court. These six applications are based on the same facts and purport to raise common questions of law.

2. One Sri Mahadeo Prasad was in the year 1355 Fasli the manager of a joint Hindu family consisting of himself, his wife, his widowed mother and his three sons, and in that year he was assessed to Agricultural Income-tax as the head of the family. In the following year Sri Mahadeo Prasad filed an application before the Collector, Gorakhpur, who was the assessing authority, alleging that a separation had taken place in the family and that the shares of the members had been declared by a decree of the Civil Court dated 12-12-1948.

The Collector Was satisfied that there had been a disruption of the joint family, and by an order dated 15-10-1949, he transferred the case to the Assistant Collector directing him to assess separately each of the six members of the family, The Assistant Collector- did so on 25-10-1949, when he passed a separate assessment order in respect of each of the six members of the family.

3. On 6-12-1950, the State filed an application in revision against the orders of the Col- lector and Assistant Collector dated respectively the 15th October and 25th October, 1949. It seems that the only prayer was that the assessment orders be set aside and it appears -that Sri Mahadeo Prasad was the only person cited as opposite party, for subsequently five further applications in revision were filed, one against each member of the family, except Sri Mahadeo Prasad, and an application was also made for leave to amend the prayer, presumably in the first application, in order to make it clear that the State Government challenged not only the assessment order but also the earlier order of the Collector. This amendment was allowed by the Revision Board.

4. The applications in revision were resisted by the assessees on two grounds: In the first place they contended that the applications were unduly delayed and consequently not maintainable. That objection was overruled by the Board on the two-fold ground that the Act did not pre- . scribe any period within which an application for revision must be filed and because the Board had ignored the question of limitation in several ap- plications which were presented on behalf of the assessees

having regard to the fact that the Act was new and the assessees were not fully convex-sant with the procedure;

5. The second contention was that the assessees had ceased to constitute a joint Hindu family within the meaning of the Agricultural Income-tax Act. Their case was that a separation had ' been orally effected in June 1948, and that as evidence thereof a partnership deed had been executed on 7-7-1948, and a suit filed in the Civil Court in November 1948 for a declaration that each of the parties had a one-sixth share in the property.

The plaintiffs to that suit were the five assessees qther than Sri Mahadeo Prasad, who was the defendant. The suit was not contested and a decree waS passed, on 13-12-1948. Subsequently mutation of names was effected in the revenue records.

6. The Revision Board came to the conclusion that not only had there been no separation in fact but that there had been no intention to separate, & in arriving at this finding it took Into consideration the following circumstances:

> (1) The assessment order for the year 1355 Pasli was made against Mahadeo Prasad alone as head of the undivided Hindu family.
>
> (2) Nothing was reduced to writing in June 1948, when separation is alleged to have taken place;
>
> (3) The family consisted of six members who were sons of Mahadeo Prasad, his wife, his mother and himself;
>
> (4) No reason was given as to why the members had decided to separate; all that was stated in the plaint was that the members chose to separate for domestic reasons;
>
> (5) It was admitted that apart from the alleged intention to separate no change whatsoever had taken place so far as the management of the property or the collection of rent etc., was concerned. A common Mukhtar worked even after the alleged separation for all the members, and (6) There is no mention in the plaint that the parties were living or messing or carrying on cultivation separately, and the return submitted showed the entire income as divided into six equal shares.

The Board's conclusion was that the alleged separation was fictitious and collusive, and it accordingly held that the assessees continued to constitute an undivided Hindu family and were liable to the payment of Agricultural Income-tax as such.

7. On the question of limitation it has been urged by the assessees that although Section 22 of the Act does not contain any provision as to the time within which an application in revision may be moved, the provisions of Section 25 place a limitation upon the time within which proceedings may be taken to assess tax on agricultural income which has escaped assessment, and that, therefore, the

effect of the latter section is to place a limitation upon proceedings under the former" section at the instance of the Department, which cannot, it is contended, circumvent the provisions of Section 25 by having recourse to Section 22.

In my opinion a question of law does arise as to whether the Revision Board had power under Section 22 to revise an order of assessment in a manner prejudicial to the assessees after the period laid down in Section 25 of the Act had expired.

8. On the other question, the contention of the assessees is that it is immaterial whether there has been in fact a separation of the joint property; it is sufficient in law if there has been an intention to separate, and that the facts found by the Revision Board do not justify the inference that there was no such intention.

9. Learned counsel for the Department contends that the question whether a Hindu family has separated or not is solely a question of fact and that the finding of the Revision Board must be treated by this Court as final. This objection raises a question of some importance.

10. There can be I think no doubt that it the Revision Board bases its conclusions of fact on material which is legal evidence, the sufficiency or otherwise of that material cannot be questioned by the Court, which must accept as final the finding of. the Board: see -- 'De Beers Consolidated Mines Limited v. Howe', 1906 AC 455 (A); and -- 'Inland Revenue Commissioners V. Lysaght', 1928 AC 234 (B).

The material on which the Board bases its conclusion must however be relevant; if it be irrelevant, or such as not to warrant the inference drawn by the Board, the Court will have Jurisdiction to intervene. Lord President Normand in

-- Commissioners of Inland Revenue v. Fraser', (1942) 24 Tax Cas 49S (C), observed:

> "I think we have jurisdiction to entertain the question of law, which is whether .....
>
> the Commissioners were warranted on the evidence in determining as they did."

The decision in 'Praser's case (C)', was approved by the Supreme Court in -- Liquidators of Pursa Ltd. v. Commissioners of Income-tax, Bihar', AIR 1954 SC 253 (D), in which Das J., said:

> "It is now well settled that the Court has always jurisdiction to intervene if it appears either that the Tribunal has misunderstood the statutory language -- because the proper cork- " struction of the statutory language is a matter of law or that the Tribunal has made a finding for which there is no evidence or which is inconsis-tent with the evidence and contradictory of it.".

11. The Revision Board has found that the as-sessees had no intention to separate and the question which arises is whether there is evidence to support that finding, or, stated in another way, whether

the facts found by the Board justify the inference which they have drawn. I use the phrase "justify the inference" in the sense in which I understand it to have been used by Sir John Beaumont C. J., in -- 'Commissioner of Income-tax, Bombay v. Gokal Das Hukum Chand', 1943-11 ITR 462 (Bom) (E), as referring to the quality and not to the quantity of the evidence.

12. Now it appears to me to be at least arguable -- and that is I think all that it is necessary to say at this stage -- that the facts and circum-stances upon which the Revision Board placed reliance do not justify the inference that the family had no intention to separate. In my opinion those facts justify the inference that there has been no separation of the joint family property but that is quite a different thing, and it has not been disputed by learned counsel for the Department that for the purposes of the Agricultural Income-tax Act the disruption of the joint family is itself sufficient to absolve the members of the family from liability to tax as an undivided Hindu family.

13. In the circumstances I am not satisfied that the decision of the Revision Board refusing to state a case was correct.

14. I would therefore require the Revision Board to refer the questions of law with regard to limitation and also as to whether there was material on which the Board could base its finding that there was no intention on the part of the assessees to separate. I am accordingly of opinion that each of these applications should be allowed with costs which I would fix at Rs. 51/-.

Upadhya, J.

15. I respectfully agree with my Lord the Chief Justice. In Income-tax cases this Court has repeatedly taken the view that the material on record may be examined to see if the findings of the Income-tax Tribunal are based on relevant material. The Court has not hesitated to Interfere where upon such examination it was of opinion that the findings of facts could not be based on the material set out.

In 'Lalit Ram Mangi Ram v. Commr. of Income-tax, U. P. Lucknow', AIR 1950 All 390 (P), the Tribunal had upheld as proper the tax on gains made on the sale of the gold bars with a finding that the purchase of the bars had been made with a view to profit. Examining the material set out by the Tribunal a Bench of this Court held that the finding was not sustainable on that material and answered the reference in the negative.

A similar answer was given, again after examining the material, in -- 'A. Grezo v. Commr. of Income-tax', 1954-26 ITR 169 (All), (G). The primary facts stated, in support of the finding that the income from a firm earned by a minor admit-ted to the benefits of the partnership belonged to his family, were examined in -- 'Padampat Singhania v. Commissioner of Income-tax, U. P. and Ajmer Merwara, Lucknow', AIR 1953 All 773 (H), and the Court held that there was no material to support the finding.

Whether there is material to support a finding of fact has been construed to mean whether there is relevant material on which the finding could be properly based. In some cases, however, the material may be so obvious as to leave no doubt about the finding being sustainable. But unless the

evident is of such a nature the proper course is to formulate a question and to state a case so that the Court may be in a position to examine the material and answer the question as to whether there is any material to support the finding.

In the present case the facts and circumstan ces set out by the Board as the basis of the in ference drawn do not appear to be of a conclur sive nature and without pre-judging the matter it can be said that an argument that there was no material to sustain the finding cannot be ruled out.

16. In the U. P. Agricultural Income-tax Act, 1948, Section 3 makes every 'person' liable to tax. 'Person' has been defined in Section 2 (11) as including, among others, an 'undivided Hindu family'. This 'undivided. Hindu family' has been again referred to in Section 10 of the Act, which deals with the assessment of the income of such family and this section lays down that tax on agricultural income of an undivided Hindu family shall be so assessed that the share of income which a coparcener would receive upon partition of the family shall be treated as a separate income of each coparcener. This indicates that the expression 'undivided. Hindu family' is used in the sense of a coparcenary.

This Act does not contain any provision similar to Section 25-A, Indian Income-tax Act which lays down that if a partition is claimed by or on behalf of any member of a Hindu family, the Income-tax Officer is to be satisfied that "the joint family property has been partitioned among the various members or groups of members in definite portions". Unless the property is so divided a family is held to continue as undivided.

The provisions of the U. P. Agricultural Income-tax Act do not appear to impose any such condition. Learned counsel argued that if a coparcenary ceased to be in existence because of the unequivocal expression of an intention to separate by a member the assessment could not be made as on Hindu undivided family at all. This aspect of the matter does not appear to have been clearly considered by the taxing authorities, and as observed by my Lord the Chief Justice, a question of law relating to this contention also does arise.

BY THE COURT

17. The revision Board is required to state a case and refer to this Court the questions of law with regard to limitation and as to whether there was material on which the Board could base its finding that there was no intention on the part of the assessees to separate. Each of the applications is allowed with costs which we fix at Rs. 51/-; the fee of the learned Standing Coun sel in each case will be the same.