

## **Mangalchand Mohanlal vs Re. on 20 December, 1951**

### **Equivalent citations: [1952]21ITR164(ALL)**

#### **JUDGMENT**

The question referred to us by the Income-tax Appellate Tribunal under Section 66(1) of the Indian Income-tax Act is as follows :-

"Whether on the facts found by the Tribunal Dina Nath and Amarnath as the respective members of Ram Bharosey and Ram Sarups branches could represent and bind the other members of their Hindu undivided family under the partnership entered into by them with Har Prasad, an outsider, under the deed of partnership dated February 1, 1944 ?"

It is difficult to understand how this question arose and why it was referred to us for answer.

The facts were that one Kedar Nath had two sons Ram Bharosey and Ram Sarup. Each of them had three sons. Ram Bharosey and Ram Sarup were separate but were joint with their sons. The members of the family were carrying on business in the name and style of Kedar Nath Ram Bharosey which was a registered firm of which Ram Bharosey and his sons and Ram Sarup and his sons were members. In the year 1943-44 a new business was started under the style of Mangalchand Mohanlal. From the deed of partnership it appeared that Amarnath owned a share of five annas, Dina Nath five annas and Har Prasad, an outsider, six annas in this business. The question arose whether this firm of Mangalchand Mohanlal should be treated as a separate firm or the shares of profits realised by Amarnath and Dina Nath in this business should be deemed a part of the partnership asset of Ram Bharosey Ram Sarup.

The Tribunal found that -

- (1) The entire funds were supplied by the old business of the two families;
- (2) The two partners in the new business were members representing the two respective families of Ram Bharosey and Ram Sarup;
- (3) Amarnath and Dina Nath did not contribute anything out of their personal earnings or their funds; and (4) The goods were purchased by Messrs. Kedar Nath Ram Bharosey and given to the appellant without charging any arhat or commission of them.

On a consideration of these facts and Tribunal came to the finding that Amarnath and Dina Nath had entered into a new partnership not in their individual capacity but on behalf of the Hindu undivided family business of Kedar Nath Ram Bharosey whose funds they passed on to the new business. This clearly is a finding of facts and it is not suggested that this finding was not based on evidence.

The question whether Amarnath and Dina Nath had a right to represent the family does not concern the Department and does not really arise. On the facts the only inference that can be drawn is that though the names of Amarnath and Dina Nath only were used the Karta and other members of the family were agreeable to the funds of the joint family being utilised for the purpose, as without their consent, probably, the funds would not had been made available to Amarnath and Dina Nath for the purpose of investment. The Tribunal came to a clear and categorical finding that Amarnath and Dina Nath had not invested from their personal earnings but the entire funds were contributed by the two joint families. If the new venture made any profits, on these facts neither Amarnath nor Dina Nath could claim to keep the money as their own and refuse to part with it for the purposes of the joint family.

Our answer to the question, therefore, is in the affirmative. The Department is entitled to its costs which we assess at Rs. 300.

Reference answered in the affirmative.