

State Of Orissa By The Commissioner Of ... vs Shyam Sundar Patnaik on 27 October, 1965

Equivalent citations: AIR1966SC1271, [1966]60ITR213(SC), [1966]2SCR402, AIR 1966 SUPREME COURT 1271

Bench: J.C. Shah, K. Subba Rao, S.M. Sikri

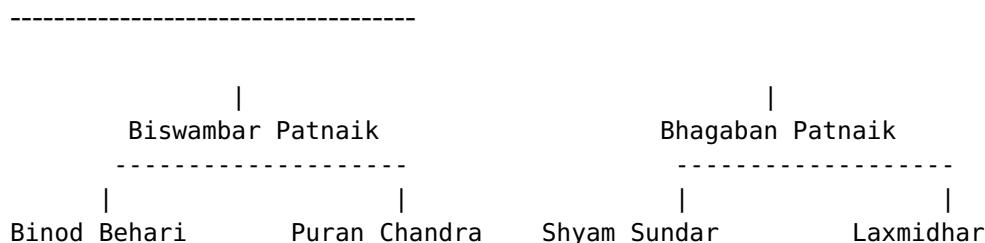
JUDGMENT

Shah, J.

1. These three appeals relate to proceedings for assessment of agricultural income-tax under the Orissa Agricultural Income-tax Act, 1947, for the years 1950-51, 1951-52 and 1952-53, and raise common questions.

2. The respondent represents a joint Hindu family consisting of four members, relationship between whom is explained by the following table :

Jadimani Patnaik



Before the relevant years of account Jadimani, Biswambar and Bhagaban had died and Binod Behari, Puran Chandra, Shyam Sundar and Lamidhar were the surviving members of the family. The joint family owned agricultural lands, cows and buffaloes. The assessing officer determined the income of the respondent for 1950-51 at Rs. 11,949, for 1951-52 at Rs. 10,850 and for 1953-54 at Rs. 9,549. In these sums were included in each year Rs. 200 as income derived by sale of milk of cows and buffaloes maintained by the family. The order of assessment was confirmed by the Assistant Collector of Agricultural Income-tax. In appeals to the Agricultural Income-tax Tribunal, the amount of Rs. 200 in each year derived from sale of milk was excluded and the Tribunal gave to the respondent benefit of the rates prescribed in the Schedule to the Act.

3. At the instance of the State of Orissa, the following questions were referred to the High Court under Section 29(2) of the Act :

"(1) Whether in the facts and circumstances of the case the Tribunal is right in holding that income from milk derived from milch cows maintained by the opposite party is not agricultural income so as to be assessed to income-tax under the Agricultural Income-tax Act, 1947 ? (2) Whether in the facts and circumstances of the case the Tribunal is right in holding that the Hindu undivided family represented by Sri Shyam Sundar Patnaik in the instant case, is a Hindu undivided family consisting of brothers only ?"

4. The High Court answered both the questions in the affirmative. The State of Orissa has preferred these appeals with special leave.

5. Before us the correctness of the answer recorded by the High Court on the first question is not challenged, because the question raised is concluded by the judgment of this court in Commissioner of Income-tax v. Raja Benoy Kumar Sahas Roy.

6. The second question alone remains to be determined.

7. Section 2(1) of the Orissa Agricultural Income-tax Act, 1947, defines "agricultural income". Section 3 defines the incidence of tax on agricultural income. By section 5 it was provided at the material time that agricultural income-tax shall be payable by every person whose total agricultural income of the previous year exceeds five thousand rupees. By section 10 it is provided :

"10. (1) The total agricultural income of a Hindu undivided family shall be treated as the income of one individual and assessed as such :

Provided that if a Hindu undivided family consists of brothers only as explained in the Schedule, the total agricultural income of the family shall be assessed at the rate specified in the Schedule..."

8. Clause B of the Schedule prescribed the rates of agricultural income- tax in the case of every Hindu undivided family consisting of brothers only :

"(a) If the share of a brother is five Three pies in the rupee thousand rupees or less

(b) If the share of a brother exceeds The average rate applicable five thousand rupees to the share of such brother if he were assessed as an individual"

9. The Explanation to the Schedule states that for the purpose of the Schedule "brother" includes the son and the son of a son of a brother and the widow of a brother, and the "share of a brother" means the portion of the total agricultural income of a Hindu undivided family which would have been allotted to a brother if a partition of the property of such family had been made on the last day of the

previous year.

10. Binod Behari and Puran Chandra, sons of Biswambar, were brothers, and Shyam Sundar and Laxmidhar, sons of Bhagaban, were brothers. By the Explanation, the expression "brother" includes the son and the son of a son of a brother. The learned Solicitor-General for the State of Orissa submitted that the four members of the respondent could not be regarded as brothers within the meaning of the Schedule, clause B. The Solicitor General concedes that if in the year of assessment, Biswambar and Bhagaban were living and were sought to be taxed in an undivided Hindu family, they could obtain the benefit of a clause B of the Schedule. Even if one of them had died before the year of account and the family consisted of the surviving brother and the sons of the deceased brother, the benefit of clause B would, it is conceded, have been available. But, says the Solicitor-General, after the two brother Biswambar and Bhagaban died, the family could not be regarded as consisting of brothers only. If, however, by the Explanation Explanation clause the expression "brother" has been given an artificial meaning as including the son and the son of a son of a brother, it would be difficult to regard the family as not consisting of brothers only. For the purpose of interpreting Cl. B, we must incorporate the Explanation (i) in the expression "consisting of brothers only" and by so doing the conclusion is inevitable that an undivided family consisting of sons of the deceased brothers, for the purpose of taxation under the Orissa Agricultural Income-tax Act, would be regarded as one consisting of "brothers only".

11. The appeals, therefore, fail and are dismissed. There will be no order as to costs.

12. Appeals dismissed.