Supreme Court of India
Commissioner Of Income Tax, ... vs Shri Udayan Chinubhai & Ors. Etc on 20 August, 1996
Equivalent citations: JT 1996 (7), 309 1996 SCALE (6)48
Author: S Sen
Bench: Sen, S.C. (J)

PETITIONER:
COMMISSIONER OF INCOME TAX, GUJARAT

Vs.

RESPONDENT:
SHRI UDAYAN CHINUBHAI & ORS. ETC.

DATE OF JUDGMENT: 20/08/1996

BENCH:
SEN, S.C. (J)
BENCH:
SEN, S.C. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
JT 1996 (7) 309 1996 SCALE (6)48

ACT:

HEADNOTE:

JUDGMENT:

THE 20TH DAY OF AUGUST,1996 present:

Hon'ble Mr.Justice B.P.Jeeven Reddy Hon'ble Mr.Justice Suhas C.Sen Dr.V.Gaurishankar, Sr.Adv, S.Rajappa and S.N.Terdol, Advs. with him for the appellant Samuel Parekh, Ms.Indoo Verma,Amit Dhingra and P.H.Parekh, Advs. for the Respondents.

J U D G M E N T The following Judgment of the Court was delivered: Commissioner of Income Tax, Gujarat .

V.

Shri Udayan Chinubhai & Ors. etc J U D G M E N T SEN, J.

The Tribunal referred the following questions of law to the Gujarat High Court at the instance of the assessee:-

> "(1) Whether on the facts and in the circumstances of the case and particularly in view of the facts that
>
> (a) on partial partition of the HUF the assessee received not only assets but also certain liabilities of the HUF and
>
> (b) the income from the assets received on the partition had been considered in computing the total income of the assessee, the Tribunal was right in holding that a part of the interest in respect of amounts due to unsecured creditors should not be allowed either by way of an over-riding title or otherwise?
>
> (2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that such interest as was disallowed was not admissible deduction u/s 12(2) of the I.I.T. Act, 1922?
>
> (3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the said interest should not be taken into account while determining the real income of the appellant?"

The relevant years of assessment were 1951-52, 1952-53 and 1954-55 to 1961-62. The High Court answered question Nos.1 and 2 in favour of the assessee and against the Revenue.

The facts of the case as recorded by the Tribunal in its appellate order dated 22.11.1972 were as follows. Sir Chinubhai Madhavlal had filed a suit in the High Court of Bombay in 1948 against his three sons, Udayan Chinubhai, Kirtidev Chinubhai, Achyut Chinubhai and his wife Lady Tanumati Chinubhai and also his mother Lady Sulochana Phinubhai claiming severance of the joint status of the undivided Joint Hindu Family of the plaintiff and the defendants. The family had considerable movable and immovable properties. There were also various debts and liabilities of Sir Chinubhai who was the Karta of the joint family. Some debts were also incurred by Udayan Chinubhai and Lady Tanumati for maintenance and support and/or education of some of the defendants. With a view to settle these disputes and differences between the parties, Shri K.M. Munshi, Advocate was appointed sole arbitrator. A direction was given by the Court that the defendants will not be permitted to challenge the debts and liabilities as Avyavaharic or illegal or incurred for illegal or immoral purposes. In other words, the defendants will not be entitled to say that these debts were not payable by and binding on the joint family. The Court also directed that Shri Munshi should ascertain and determine the debts, liabilities, claims and demands which were binding on the joint family and also determine whether any of these debts and liabilities etc. were to be taken over by the defendants. The Court further directed that as far as practicable, Shri Munshi would allot to the plaintiffs and also to the defendants such debts, liabilities, claims and demands as related to the properties and businesses coming to the respective shares of the parties.

Shri Munshi gave an interim award on 23.8.1950 which followed by a final award of 15.6.1951. Under these awards, certain properties were given to Sir Chinubhai and certain other properties were given to Lady Tanumati and her three sons. The debts were similarly determined and certain liabilities were to be taken over by Sir Chinubhai Madhavlal and others by Lady Tanumati and her three sons. There was no separate allocation either of the assets or the liabilities amongst Lady Tanumati and her three sons.

In the case of Joint Family of Udayan Chinubhai,etc.V. Commissioner of Income Tax,Gujrat ( 63 ITR 416),a question arose as to whether Lady Tanumati and her three sons constituted a Hindu Undivided Family. The dispute came up to this Court and it was held that after a decree in terms of the award of Shri Munshi was passed, Lady Tanumati and her three sons could not be treated as an Hindu Undivided Family. The original Hindu Undivided Family had no existence. Tanumati and her three sons did not succeed to the properties of the HUF but were allotted their respective shares of properties which were held by them as tenants in common.

In view of the decision of this Court, assessments were made in the case of Lady Tanumati and her three sons in the status of individuals and not as an HUF. The claim of the assessees in the individual assessments was that the assessees had to pay interest on various liabilities taken over by them and these interest payments should be considered as diversion of their income from properties by an overriding title. It may be mentioned that the income of the assessees consisted of income from immovable property, business income and income from other sources. Some of the debts were secured against immovable properties, The Income Tax Officer in working out the property income, allowed these interest payments as admissible deductions. However, he was of the view that the other interests could not be allowed as deductions.

The assessee also made a claim that interest payments should be allowed as deduction under Section 12(2) of the Indian Income Tax Act, 1922 because these interests had to be paid solely for the purpose of making or earning income. The Income Tax Officer held that there was no nexus between payment of interest and earning of the income. merely because, the liabilities and the assets were inherited together from an ancestor or received as a result of partition, it did not follow that the interest was payable for earning the income. It was further pointed out by the Income Tax Officer that the assessee had not even proved that the liabilities were incurred by the previous owner or by the family before its partition to purchase the income- yielding assets.

The case of the assessee was placed before the Income Tax Officer in another way. It was argued that the coparceners were entitled to their shares in the assets of the joint family at the time of partition. But what they received were assets attached with the liabilities and the real income was only that income which remained after payment of interest for such liabilities. This argument was also rejected by the Income Tax Officer.

The assessee went up in appeal to the Appellate Assistant Commissioner who was of the view that the interest payable on debts due to secured creditors were to be allowed as deduction under Section 9(1)(iv) of the Indian Income Tax Act, 1922, but interest payable to unsecured creditors did not qualify for deduction.

The Appellate Assistant Commissioner also rejected the contention of the assessee that some of assets had been purchased by raising loans because there was no evidence to prove this contention. The assessee also claimed allowance of interest against income from dividends. The Appellate Assistant Commissioner held that in the absence of clear evidence, this claim could also not be allowed. Similarly, the claim for allowance of interest against income from deposits were disallowed on the ground that the deposits were not made by raising any loan. Dealing with the other arguments advanced on behalf of the assessee, the Appellate Assistant Commissioner found that the liabilities taken over by Lady Tanumati and her sons were not necessarily incurred in acquiring the assets from which the assessee derived income. Unless there was a connection between the expenditure incurred and the income earned, the claim of interest could not be allowed. The Appellate Assistant Commissioner further noted that the partition had not brought about any change in the nature of ownership of the properties. Tanumati and her sons had interest in the properties even before the partition as members of the joint family. The Karta as well as the coparceners of the Hindu Undivided Family were liable for the debts of the HUF. He also rejected the contention that there had been diversion of income by overriding title. Merely because liabilities and assets were inherited from an ancestor or received on partition, the interest paid on liabilities could not qualify for deduction against income from assets under the head "other sources".

The Tribunal on further appeal rejected the contention of the assessee that there had been diversion of income by overriding title and also that the real income of the assessee must be determined after deduction of all the interest payments. The Tribunal held that the facts of the case did not show that the debts were automatically dovetailed with the HUF properties which the sons or the wife had received on partition. It was not as if the sons acquired the properties subject to overriding claim in respect of the family debts which had been allotted to them. Tanumati and sons could not have been prevented from using the income in any way they liked. No creditor had specific overriding claim in respect of any particular income. The Tribunal came to the conclusion that there was no overriding title or diversion of income as a whole in this case. The Tribunal, however, held that the argument based on the concept of real income had no basis on the facts of this case. There could be no doubt that had the debts been discharged before partition, the assets coming to the share of the assessee would have been much smaller and income from such assets would also have been much less. The Tribunal pointed out that the debts had been incurred before partition. Interests paid on these debts were not considered allowable in the case of the assessment of the HUF before partition. The fact that there was a partition did not give the creditors any better or more effective title. On the contrary, the sons were in a general way responsible for the payment of the debts of their father. This fact would not create any nexus between the claim of the allowance of the interest and the income derived by the sons from properties received on partition. The members had used the income as they liked as the creditors could not have raised any objection to such expenditure. The claims of the creditors were of a general nature. The creditors could not prevent the sons from getting the HUF properties on partition without satisfying the debts.

Aggrieved by the decision of the Tribunal, the assessee prayed for reference of the questions of law set out hereinabove to the High Court. After an elaborate discussion of facts and law, the High Court answered questions in favour of the assessee and against the Revenue. The High Court was of the view that when a partition took place, provisions had to be made for the discharge of pre-partition

debts of the father. If, for some reasons, provision for discharge of liabilities had not be made or could not be made, the persons who get the properties on partition held the properties in their hands subject to the liability to satisfy the demands of the creditors. In this sense, the assessee held the property for the benefit of the creditors to the extent necessary to satisfy the just demands of the creditors in terms of Section 94 of the Indian Trusts Act, 1882.

The High Court was also of the view that certain properties which formed part of a Baronetcy Trust, were partitioned between the father on the one hand and the mother and the sons on the other. The properties were trust properties. A consent decree was passed and an arbitrator was appointed. Under the terms of the consent decree and arbitrator's award, some of the debts of the family were allotted to the mother and the sons. According to the High Court under the doctrine of pious obligation, the assessees were liable to pay the debts of the father. Apart from this liability under the award of the arbitrator, the assessee undertook the liability to discharge the debts. The provision under the Hindu Law, Indian Trusts Act, the terms of the consent decree and the arbitrator's award created an overriding title in favour of the creditors to have their liabilities paid from the assets which came into the hands of the assessee. Therefore, the interest paid to unsecured creditors out of the assets received by the assessee on partial partition were diverted by overriding title and did not form part of the real income of the assessee.

In our view, the High Court overlooked the fact that the position of the creditors was not strengthened in any way by virtue of the partition that had taken place. It is true that the award given by the arbitrator was followed up by a decree in terms of the award. That, however, did not alter the position of the creditors in anyway.There was considerable doubt whether the sons were liable to pay the Avyavaharic debts of the father. After the award of the arbitrator, these questions could not be raised by the sons. The arbitrator had given a finding that these debts will have to be paid. Therefore, the wife and the sons were liable to pay a portion of these debts which were allotted to them. But the High Court overlooked the fact that these debts were not a charge upon the HUF properties before the partition took place. The position continued to be the same after the partition. If a man incurs a debt, he will have to pay the debt and till the debt is paid in full, Se may have to pay interest on that debt. But whether the interest is allowable as a deduction or not will depend upon the provisions of the Income Tax Act. No question of diversion of income by overriding title can arise in a case like this. A man has to pay his debts out of his income. Mercy because of the liability to pay the debts, it cannot be said that the income from the assets that he received on partition stood diverted by overriding title to the creditors. The Tribunal has rightly pointed out that the assessees were at liberty to spend the income from the assets allotted to them as they liked. The creditors could not insist that the debts had to be cleared before spending any money out of the income received by the assessee from the assets.

We also fail to see how the provisions of Section 94 of Indian Trusts Act, 1882 can apply to the facts of this case. Section 94 which has since been repealed by the Benami Transactions (Prohibition) Act, 1988 with effect from May, 19, 1988 stood as under at the material time:

> "94. Constructive trusts in cases not expressly provided for.- In any case not coming within the scope of any of the preceding sections, where there is no trust, but the

person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

Illustrations

(a) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(b) x x x x x x x x

(c) x x x x x x x x"

It has not been shown that after partition, the assessee did not have the entire beneficial interest in the properties allotted to him. It cannot be said that the creditors had any interest in these properties in any manner. If a man takes a loan simpliciter, the creditor does not acquire any interest in the properties of the debtor. In this case, all that has happened is that as a result of the partition, the assessees had been allotted certain properties of the joint family. Some of the liabilities of the joint family have also been allotted to the assessee. The interest payable in respect of these debts and liabilities will have to be paid by the assessees. It may be paid out of the income of the assets received on partition or otherwise. There is no obligation to pay the debts out of any particular asset. It cannot be said that the creditors had acquired any beneficial interest in any of the properties allotted to the assessee or that the property was held for the benefit of the creditors.

The illustration to Section 94 merely embodies the principle that a man must be just before he is generous. A man cannot give away all his properties by will without making any provision for payment of his debts. The executor of a will also cannot lawfully distribute the assets of the testator to the legal heirs without first having paid the debts of the testator in full. Section 325 of the Indian Succession Act, 1925 provides that the debts of every description must be paid before any legacy. But, this is not a case of distribution of legacy by an executor at all. The assessee as a member of the joint Hindu Undivided Family had interest in the properties even before the partition took place. After partition he received his share of the properties as of right. This is not a case of distribution of assets of a testator among the legatees without payment of the debts incurred by the testator.

In our view, in the facts of this case, the principles contained in Section 94 of the Indian Trusts Act cannot be invoked. The assets received by the assesses on partition were not held by them in trust, constructive or otherwise, for the benefit of the creditors.

The next point urged on behalf of the respondent is that under the doctrine of pious obligation of a son to pay the debts of his father which is well-recognised under Hindu Law, the sons were liable to pay the debts of their father. Apart from this, under the award of the arbitrator and the decree, the assessee was legally bound to discharge the debts which was apportioned to them to pay. The

interest accruing on these debts were also to be paid by the assessee. In real terms, the assessee held the properties for the benefit of the creditors to the extent it was necessary to satisfy the debts of the creditors. It was argued that what is taxed under the Income Tax Act is the real income of the assessee. Having regard to the facts and circumstances under which the assessee came to own and possess the properties after partition of the HUF, the assessee could not have disclaimed the debts apportioned to him for payment. Since,interests on the debts had to be paid out of the income of the properties allotted to the assessee on partition, the income had to be reduced by the amount of interest the assessee had to pay to the creditors.

This argument runs against the basic principles of the Income Tax law. The income of an assessee has to be computed in the manner laid down under the Income Tax Act. The Act of 1922 had made elaborate provisions for classification of income under various heads and the deductions permissible under each head. The assessee's claim, in effect, is what is not permissible in law as deduction under any of the Heads will have to be allowed as a deduction on the principle of real income of the assessee. If a man incurs debts in his business and has to pay interest thereon, then such interest will be deductible. But if a person with salary income only incurs a debt, then interest on such debt cannot' be allowed as deduction in computation of salary income on any principle of real income. Even if a man has business income, then unless it can be established that the loan was obtained for business purposes, question of deduction of interest paid on the loan from the business income cannot arise. Whether the assessee is a company or an individual or an HUF is quite immaterial for this purpose. The Tribunal has pointed out that the HUF could not get any deduction in its assessment on account of payment of interest on these loans. The position after partition of the joint family remains the same. The assessee as a member of the joint family, after partition. was allotted his share of the joint properties as well as some of the debts. The principles of computation of income will not change in any way because of the partition. If the HUF could not get any deduction on account of payment of interest on these loans, there is no principle on the basis of which a member of the joint family after partition will get deduction for payment of interest on the loans. The income from the family properties will not stand reduced by payment of interest to the creditors in the eye of law.

The position can be viewed from another angle. The assessee has not received any conditional gift or bequest from any person in this case. The true effect of partition of the joint family property is that each coparcener gets a specific property in lieu of his undivided right in respect of the totality of the property of the family. (V.N. Sarin v. Ajit Kumar Poplai, AIR 1966 SC 432). What the assessee has obtained in this case is by virtue of his right in the joint family properties. He has also been allotted some of the family debts to pay. The income that he earns from the properties is his own income. When he pays interest out of that income, the interest will be income in the hand of the creditor. The income from the property itself can never be treated as the income of the creditor. What the creditor gets is interest income. The assessee pays interest out of his own income. This is a perfectly simple case.

Lord Scrutton in the case of The Commissioners of Inland Revenue v.Paterson. 9 Tax Cases 163, dealing with a case where a debtor bought property with borrowed money and charged the proceeds of the property in favour of the creditors to repay the debt, observed ". . . I may ask, if they are not

income of the debtor whose income are they? . . . Whose income was it that paid those debts? It seems to me that in any ordinary sense it was the income of the debtor, the lady, which discharged the debts and which she was obliged to allow to be used to discharge the debts by the charge she had given on that income to the creditor." Lord Scrutton concluded by saying, "It appears to me, if it is not the debtor's income, it must be the creditor's income, and I am not sufficiently topsy-turvy to think of a creditor discharging debts due to him out of his own income." In the case of Patersons (supra), a charge was created on the property from the income of which the debt was paid. In the case before us, there is not even a charge. It is a simple case where the assessee has paid interests on loans in the relevant years of assessment. The interests may have been paid out of income derived from the property allotted to the assessee on partition of the joint family property. But what was received by the assessee out of the assets was his own income.

The assessee will have to bear the burden of the liabilities that have been allotted to him. The interests on the loans will have to be paid to the creditors. But such payment will only be application of income. The income from the assets were received by the assessee. Payment to the creditors may have been made out of that income. The application of the income will not in any way alter the character of the income received by the assessee.

In the leading case of Pondicherry Railway Co. Ltd. v. The Commissioner of Income-tax,Madras, 5 I .T.C. 363, it was observed by Lord Macmillan:-

> "But profits on their coming into existence attract tax at that point and the revenue is not concerned with the subsequent application of the profits."

It was reiterated that the principle to be applied in cases like these was laid down by Lord Chancellor Halsbury in Gresham Life Assurance Society v. styles. (1892) A.C. 309 at p. 315 :

> "The thing to be taxed" said his Lordship, is the amount of profits or gains. The word "profits" I think is to be understood in its natural and proper sense-in a sense which no commercial man would misunderstand. But once an individual or a company has in that proper sense ascertained what are the profits of his business or his trade,the destination of those profits or the charge which has been made on those profits by previous agreement or otherwise is perfectly immaterial."

The Tribunal has found as a fact that the assessee was free to spend the income received from the assets as he liked. It is difficult to see how this income was not the real income of the assessee.

Strong reliance was placed on behalf of the assessee before the High Court as well as this Court on the decision of the Judicial Committee of the Privy Council in the case of Raja Bejoy Singh Dudhuria v.Commissioner of Income-Tax, Bengal (1933 (1) ITR 135), There the Raja was the assessee. He had succeeded to the family ancestral estate on the death of his father. His step-mother brought a suit for maintenance against him which ultimately resulted in a consent decree by which the Raja was directed to make a monthly payment of a fixed sum to his step-mother. This payment was declared a charge on the ancestral estate in the hands of the Raja. In computing his income, it was claimed that

the amounts paid by him to his-step mother should be deducted. It was held by the Judicial Committee that the assessee's liability under the decree did not fall within any of the exemptions or allowances provided under Sections 7 to 12 of the Indian Income Tax Act, 1922. But the sums paid by the assessee to his stepmother were not his "income" at all. The decree of the Court by charging the assessee's whole resources with a specific payment to his step-mother had to that extent diverted his income from him and had directed it to his step-mother. To that extent what he received for her was not his income. Lord Macmillan observed that "it is not a case of the application by the appellant of part of his income in a particular way, it is rather the allocation of a sum out of his revenue before it becomes income in his hands".

In that case, the step-mother had filed a suit for maintenance. Chief Justice Rankin of Calcutta High Court had rejected the argument that the assessee's liability to his step-mother was of the same kind as his liability to provide for his wives and daughter and stated that the position is the same as if the appellant "had received his various properties, securities and businesses under a bequest from his father upon the terms that these assets were charged with an annuity for the maintenance of the widow". Lord Macmillan observed that this was the correct approach to the question raised before it and emphasised that the decree of the Court by charging the appellant's whole resources with a specific payment to the step-mother had diverted his income from him. The amounts payable to the step-mother under the decree could not be treated as the income of the assessee.

But this is not a case of a bequest at all. No charge has been created on the assets received by the assessees on partition of the family by the award or the decree passed in terms of the award. The income has not been diverted at source in any way. This is a simple case of partition of properties of a Joint Hindu Family. The assessee has been allotted his legitimate dues on partition. It has been pointed out by the Judicial Committee in the case of Bejoy Singh Dudhuria (supra) that if a charge was created by the assessee or his father, for the payment of the debts which he had voluntarily incurred, the position would not have been the same.

Strong reliance was also placed on the decision of Commissioner of Income Tax, Bombay City II v. Sitaldas Tirathads (41 ITR 367). There the assessee sought to deduct the amounts paid by him as maintenance to his wife and children under a decree of Court passed by consent in a suit. No charge was created on any property of the assessee at all.It was pointed out by Hidayatullah, J (as his Lordship then was) that this was a case in which the wife and children of the assesses who continued to be members of his family received a portion of his income after he had received it as his own. It was, therefore, one of application of a portion of the income to discharge an obligation and not one in which, by an overriding charge, the assesses became only a collector of another's income. The assessee was not, therefore, entitled to deduction claimed by him. Far from supporting the contention of the assessee, this decision directly goes against his case. The assessee was under a legal obligation to maintain his wife and children. A suit was filed and a decree was passed by consent. Even then, it was held that it was a case of application of income to discharge an obligation. In the case before us, the assessee is under an obligation to pay the creditors. If he derives income from the properties which had been allotted to him and pays the creditors, it would be an application of income received by him which cannot in any way be treated as diversion of income by an overriding title. The creditors do not have any title to this income and claim any portion of the

income received out of the property as their own. Hidayatullah, J. pointed out that mere obligations to pay does not have the effect of diverting income at source. It was the nature of the obligation which was the decisive fact. There was a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation, cannot be said to be a part of the income of the assessee. Where by the obligation, income was diverted, before it reached the assessee, it was deductible; but where the income was required to be applied to discharge an obligation after such income reached the assessee,the same consequences in law did not follow. It was the first kind of payment which could truly be excused and not the second. The second payment was merely an obligation to pay another a portion of one's own income which had been received and was since applied.

The case before us is a case where the assessee is obliged to pay all the debts which have been allotted to him. But as was pointed out by Hidayatullah, J. the obligation to apply the income to discharge a debt will not amount to diversion of the income at source even before the amounts became the assessee's income.

The principle laid down in the case of Sitaldas Tirathdas (supra) was explained by this Court in Moti Lal Chhadami Lal Jain v. Commissioner of Income-Tax (190 ITR 1) where it was held:-

> "Where the obligation flows out of an antecedent and independent title in the former (such as, for example, the rights of dependants to maintenance or of coparceners on partition, or rights under a statutory provision or an obligation imposed by a third party and the like), it effectively slices away a part of the corpus of the right of the latter to receive the entire income and so it would be a case of diversion. On the other hand, where the obligation is self-imposed or gratuitous (as here), it is only a case of an application of income."

These observations were made while reiterating and explaining the principle laid down in the case of Sitaldas Tirathdas (supra) . The illustrations given in that passage indicate that in certain situations diversion of income at source may take. place by an overriding title depending on the facts of the case. In Sitaldas's case. the assessee, an HUF, had granted a lease to a company of a plot of land for which the company agreed to pay rent of Rs.21,000.00 out of which Rs.10,000.00 was to be paid to a college run by a trust. It was held even though the amount was to be paid under the lease agreement to the college, no diversion of income at source had taken place. The entire rental income of Rs.21,000.00 had to be assessed as income of the HUF.

The second question in that case was in respect of a trust created by the HUF for charitable purpose. The Karta himself was to be the first trustee. The High Court was of the view that a valid trust had not been created. On a review of the facts, this Court held that a valid trust had come into existence. Consequently, the income of the trust could not be included in the income of the family.

This decision does not come to the aid of the respondent's contention in anyway.If a valid charitable trust is created, the income of the trust cannot be treated as the income of the settlor. The properties held by the Karta as trustee cannot be treated as properties of the HUF. This is not a case of

diversion of income by overriding title, but transfer of the income-yielding property itself to the trustee. The Karta became a trustee of the charitable trust set up by the family.

The basic principle to be borne in mind in this type of cases is that when a person pays his debts or maintains his wife or children or anybody else whom he is obliged to maintain, the expenditure incurred in such cases will be application of the assessee's income and not diversion of the income at source. If he does not pay what he should have paid and is compelled by a Court order to pay, it will still not be a case of diversion of income at source, Even if a charge is created on the properties of the assessee for enforcing payment, the position in law will not change. This was made clear in the case of The Commissioners of Inland Revenue v. Paterson (supra). It must also be borne in mind that in Raja Bejoy Singh Dudhuria's Case (supra), the charge on the properties inherited by the Raja was created to secure payment of maintenance of his step-mother. Lord Macmillan quoted with approval the observation of Rankin, C.J.:-

> "The learned Chief Justice in his judgment, which was concurred in by his colleagues, Ghose, and Buckland, JJ., deals with the case on the footing that, by the decree of the court, the appellant's step-
>
> mother had a charge not only on his zamindary property from which his agricultural income was derived, but also on all his other sources of income included in the assessment. He rejects the suggestion that the appellant's liability to his step-mother was of the same kind as his liability to provide for his wives and daughter, and states that the position is the same as if the appellant "had received his various properties, securities and businesses under a bequest from his father upon the terms that these assets were charged with an annuity for the maintenance of the widow," The case was not one of "a charge created by the Raja for the payment of debts which he has voluntarily incurred," Their Lordships agree that this is the correct approach to the question."

This decision clearly indicates that payment made for maintenance of wife and daughter out of the income of an assessee will not be diversion of income at source nor will a charge created by an assessee for payment of voluntarily incurred debts will have the effect of diverting the assessee's income at source.

For the reasons aforesaid, we are of the view that these appeals must succeed. All the three questions are answered in the affirmative and in favour of the revenue and against the assessee. There would be no order as to costs.