Dr. R.K. Kartha vs Income-Tax Officer on 17 March, 1992

Equivalent citations: [1992]43ITD550(MAD)

ORDER

S. Kannan, Accountant Member

1. These two appeals by the assessee are directed against the common order dated 27-12-1990 of the CIT (Appeals) I, Cochin, in Appeal Nos. ITA 6/Inv/CIT/90-91 and ITA 7/ Inv/CIT/90-91, respectively relating to the assessment years 1982-83 and 1983-84.

2. The issues that arise for consideration in this case are better appreciated against the backdrop of the relevant factual data. There was a joint family called "Cheranalloor Swaroopam", a Nair taravad. The assessee, it is common ground, was a member of the joint family. It is also common ground that the joint family owned various properties, Including three temples (Paramara Bhagwati temple, Sasta temple and Sri Chakram temple) and the properties belonging to the said temples. The management of the estate of the family (including the three temples and the properties belonging to them) was taken over by the Government of Cochin by Proclamation V/1117(ME) dated 28-11-1941 issued by the Maharaja of Cochin. The properties comprised in the estate of the joint family were initially managed by the Diwan Peshkar of the erstwhile Cochin State. On the formation of the State of Kerala, the properties, excepting the temples and the properties belonging to them, were managed by the District Collector, Ernakulam. As for the temples and the properties belonging to them, by a Notification issued by the Government of Kerala on 17-11-1961, the Secretary, Haindava Seva Sangam (a registered charitable society) was appointed to manage the affairs of the three temples and the properties appertaining thereto.

As provided in Proclamation V/1117(ME), a majority of the adult members of the joint family made a request to the Government of Kerala seeking restoration of the management of the estate of the joint family, and by order dated 6-1-1966 the Government of Kerala directed that the whole estate including the three temples be handed over to the joint family, w.e.f. 1-2-1966. Thereupon, some disputes arose as to the restoration of the management of the two temples in question to the joint family. The vicissitudes of these disputes need not detain us here. Suffice it to note that one, C.N. Narayanan Kartha, who at the relevant point of time was the Karanavan of the family, filed OP 6510/71 before the High Court of Kerala; and that by their order dated 30-8-1973 the High Court directed the Government of Kerala to restore to the joint family the possession of the two temples and the properties appertaining thereto. It is common ground that the State Government complied with the aforesaid order of the High Court.

Going back a little in chronology, we may note the fact that in 1970 five children of one Krishnan Kartha, who was a prior karanavan and who died on 22-8-1962, filed a partition suit bearing OS 134/70 before the Addl. Subordinate Judge, Ernakulam. The defendants, who numbered 91, included C.N. Narayanan Kartha (defendantNo. 1) and Dr. Radhakrishnan Kartha, assessee before us (defendant No. 8). The properties in respect of which the claim for partition was made were

detailed in Schedules A, B and C to the plaint. By his order dated 23-10-1973, the Subordinate Judge held first that all the properties in question were partible; and secondly, that the members of the joint family are entitled to have the joint family properties partitioned as, detailed in paragraph 29 of the judgment. The learned Sub-Judge also granted leave for the parties to apply for passing of a final decree and to take out commissions for effecting the partition.

It would appear that aggrieved by the said preliminary decree, some of the parties to the dispute moved the High Court, which confirmed the preliminary decree.

It is common ground that in respect of the said suit for partition final decree proceedings are still pending before the Sub-Court.

3. As pointed out earlier, Paramara temple and the properties appertaining to it form part of the estate of the joint family. In 1965 or thereabout, it would appear, the assessee before us took on oral pattam 75 cents of land from C.N. Narayanan Kartha, who, at the relevant point of time, was the karanavan of the taravad. The said piece of land formed part of the Paramara temple complex near the Ernakulam North Railway Station. Early in 1971 a lease deed was executed and got registered on 11-3-1971 as Document No. 424 of 1971. Under the said document, the assessee got lease rights in respect of the aforesaid piece of land admeasuring 75 cents for a period of 99 years on an annual Pattam of Rs. 200.

On the restoration by the Government of Kerala of the management of the said temple to the joint family in compliance with the order and judgment dated 30-8-1973 of the High Court of Kerala in OP 6510 of 1971, the said Narayanan Kartha executed in favour of the assessee before us a fresh lease deed on 28-12-1973, which was registered as Document No. 458 of 1974. Under the said deed the period of currency of the lease was fixed at 20 years, with the assessee or his legal heirs having the right to terminate the agreement or to renew it on the same terms for further periods. The recital portion of this document adverts to the fact that the proprietorship and possession of the said temple together with the properties appertaining to it stood vested with the said Narayanan Kartha by virtue of the order and judgment dated 30-8-1973 of the High Court in OP 6510/71.

In 1974, 30 members (including some minors of the taravad) filed before the First Addl. Subordinate Judge, Ernakulam another partition suit bearing O.S. No. 284/1974. The 67 defendants named in the plaint included C.N. Narayanan Kartha (D.1) and the assessee before us(D.7). The said suit, it is common ground, came to be filed on the footing that certain properties of the joint family including the temple properties were not included in the plaint schedules relating to the earlier partition suit -OS 134 of 1970. The material prayers in the plaint were: (i) partition of A-Schedule properties by metes and bounds as per the preliminary decree passed in OS 134/70; (ii) settling of a scheme for administration of the temples and the properties appertaining thereto; (iii) rendering of accounts; and (iv) declaration to the effect that document No. 458/74 executed by C.N. Narayanan Kartha (D.1) in favour of the assessee before us (D.7) and other documents created thereafter were not binding on the family and family properties. By his order dated 10-2-1978, the learned Sub-Judge ruled that the A-Schedule properties were partible and that they should be partitioned by metes and bounds in accordance with the preliminary decree in OS 134/70 and in the proportion

mentioned in the judgment. The learned Sub-Judge also ruled that a scheme for the management of the temples was also to be framed at the final decree stage, and that document No. 458 of 1974 and the consequential documents would not be binding on the family and family properties. The learned Judge also, inter alia, permanently restrained defendant Nos. 1 and 7 from alienating inter se the temple properties.

To make the picture complete, it may here be stated that the appeal taken before the High Court by the affected parties against the aforesaid preliminary decree was dismissed by the High Court.

It is common ground that the final decree proceedings relating to the said partition suit (OS No. 284 of 1974) are still pending.

4. Acting on the basis of document No. 458 of 1984 (referred to supra) or otherwise, the assessee before us filed, in 1979, an application bearing OA 357/79 before the Special Tahsildar, Land Tribunal, Ernakulam, seeking a purchase certificate in respect of the land admeasuring 75 cents which forms part of the Paramara temple complex. And the said functionary issued Certificate No. 337 dated 13-9-1979 to the assessee. The said certificate was signed by the said functionary on 11-10-1979.

The Schedule to the said certificate makes it clear not only that the said piece of land (admeasuring 75 cents) is 'Purayidam', but also the further fact it is comprised in Survey Nos. 133, 134/1, 135/3, 135/4 and 135/5. Under column 7 meant for furnishing the details of the price and the date on which it was to be paid, the certificate contains the notation "Saujanyam", and under column 8 (remarks) C.N. Narayanan Kartha is shown as the "Janmi".

5. We may now notice some material facts in which the controversy before us has had its genesis. On the said piece of land (admeasuring 75 cents) the assessee put up a three storeyed structure designed to be let as shops/ offices. Before the lower authorities this superstructure has been described as a shopping complex. The superstructure comprised 64 units with an aggregate area of 1441.76 sq. mtrs. The superstructure was put up at a total cost of Rs. 15,80,400. The construction of the suprerstructure was spread over the period 1977 to 1981. We shall presently be noticing the mode and mechanics of funding of the construction of the said superstructure. For the nonce, however, it would suffice to note that the assessee was taking Pakidi from the prospective tenants and that a few of the units were let even by 1979. Clearly, the assessee was renting office/ shops as and when the construction of the lower storey had been completed.

6. We may now notice the vicissitudes of the assessee's assessments to tax under the Incom e-tax Act, 1961.

For the assessment year 1982-83 the assessee filed his return of income, disclosing an income of Rs. 50,593 under the head 'Income from house property', and loss of Rs. 11,225 under the head 'profits and gains of profession' (assessee is a dpctor). The said return was filed in the status of Individual. The property income related to the shopping complex referred to supra. The assessee had computed the income taxable under the head 'Income from house property' at Rs.

50,593 in the manner detailed below:

	G.L.V.		Rs. 1,88,483.00
Less :	Municipal tax		Rs. 44,396.00
	Balance		Rs. 1,44,087.00
Less :	l/6th for repairs		
	6% collection charges	Rs. 24,015	
		Rs. 8,645	
	Electricity charges borne by the owner	Rs. 13,955	
	Interest on borrowings (loan utilised for construction)	Rs. 45,797	Rs. 92,412.00
			Rs. 51,675.99
	Water charges borne by the owner		Rs. 1,082.00
			Rs. 50,593.00

For the assessment year 1983-84 the assessee filed, once again in the status of Individual, his return of income disclosing an income of Rs. 1,02,612 under the head 'Income from property, and a loss of Rs. 1,43,039 under the head 'Profits and gains of profession'. The assessee had computed the income chargeable to tax under the head 'Income from property' in the manner detailed below :

	Income from house property		Rs. 2,55,900.00
Less :	Municipal tax		Rs. 44,396.00
	Balance		Rs. 2,11,504.00
Less :	l/6th for repairs	Rs. 35,250	
	6% collection charges	Rs. 12,690	
	Electricity charges borne by the owner	Rs. 13,955	
	Interest on borrowings (loan utilised for construction)	Rs. 45,797	Rs. 1,07,692.00
			Rs. 1,03,812.00
Less :	Water charges borne by the owner		Rs. 1,200.00
			Rs. 1,02,612.00

7. The return for the assessment year 1982-83 was accompanied by a note dated 25-8-1982, which reads as under:

> The income earning assets (shop buildings) are constructed on the Parama temple ground. The assessee got the Pattam right over the said land as per the Pattam deed No. 424 of 1971 executed by Shri Narayanan Kartha, the Karanavar of Cheranalloor Swaroopam in favour of Radhakrishna Kartha (the assessee) for an annual Pattam of Rs. 200 p.a. A true copy of the said deed is herewith enclosed. As per the said deed,

an obligation is created on the assessee for the proper maintenance and upkeep of the temple including the conduct of pooja etc. As an obligation is created, the expenditure incurred by the assessee for the temples is an allowable expenditure (It is an outgoing from the receipts). According to the custom prevailing for the last so many years, the temple should conduct festival in every year.

For the reasons stated above, the expenditure met by the assessee for the conduct of pooja, Thalapoli etc. should be allowed as a deduction. During the year under reference the assessee sold some portion of the lease hold land for a sum of Rs. 1,62,000. The details of such sales are as under:

(a) P.M. Radhakrishnan, Kushour	Rs. 40,000.00
(b) A.K. Mathew	Rs. 97,000.00
(c) Thorns, son of Mathew	Rs. 25,000.00
	Rs. 1,62,000.00

As the entire amounts were utilised for the purpose of temple (landlord) no capital gain is assessable at the hands of the assessee in respect of the said sales.

The return of income for the assessment year 1983-84 was accompanied by a covering letter dated 24-9-1983, which reads as under:

During the year under reference the assessee's income from property is calculated at Rs. 1,02,612. Out of which a sum of Rs. 1,45,039 is claimed as deduction representing the expenditure over income pertaining to the Paramara temple. At the time of leasing out of the properties surrounding to the Paramara temple by the 'Karanavar' of the family, the stipulation was that the maintenance of the temple such as pooja and other religious ceremony should be conducted by the lessee, i.e., the present assessee. Even though the assessee has got ownership still an obligation is created and the obligation will have to be fulfilled by the assessee. As per the Income and Expenditure accounts of the Paramara temple there had been an expenditure over income amounting to Rs. 1,45,039.48. It is submitted that the said expenditure will have to be met out of the rent collection. This aspect may be considered while completing the assessment.

The assessee was sickly for some time and he was hospitalised for a pretty long period. Even now he has not recouped his health. The doctors have advised to take complete rest and not to indulge in any complicated matters. In these circumstances there would be possibilities of omissions and commissions. If there is any thing, please excuse me for the same and I may not be penalised.

8. While the Assessing Officer was making necessary inquiries for the purpose of completing the

assessments, the assessee filed what is styled 'petition filed by the assessee for not proceeding with the assessment of income-tax'. This petition dated 13-2-1985 reads as follows:

> The Income-tax Officer proposes to assess the petitioner on the ground, that, he is receiving rent frombuildings situate in Survey Nos. 134 and 135 of Erankulam Village. It is submitted that the rent of the building is received by the petitioner for Paramara group of temples, which is a religious institution. The temples are managed by the petitioner, income derived from the rent of the building is collected by the petitioner and used for religious ceremonies like Thalapoli and other daily needs of the temples. On that ground alone, the, petitioner is not liable to be taxed. The property in which the buildings were situate, belongs to Cheranalloor Swaroopam which is a joint Hindu family. The assets of the said joint Hindu family were managed by the District Collector, by a royal proclamation issued by the erstwhile Cochin State as proclamation No. 1117. There was a condition in the said proclamation that if 2/3 of the members of the Swaroopam requires, the Government was bound to surrender the assets of the Swaroopam and management of the temples, and as such, when demanded by the members of the Swaroopam the Government handed the immovable properties and movable properties to the Karanavan of the Swaroopam in the year 1971. But the temples and properties attached to the temples were surrendered by District Collector only by the decision of the Hon'ble High Court in O.P. 6510/71.
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> The petitioner was appointed as administrator of the temples and its properties.
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> The members of the Swaroopam filed petition suit as OS 134/70 & 264/ 74 in the Sub-Court Ernakulam for a preliminary decree for partitioning the movable (sic) properties of the Swaroopam including the property in which the buildings at present situate and also for framing a scheme decree for the management of the temples. The above suits were decreed. There were 104 members in the Swaroopam. Now they have applied for final decree, for division of both movable (sic) properties belonging to the Swaroopam and including the property in which the temples and other buildings are situate, by metes and bounds, and also for accounting and for framing a scheme decree for the temples, and its properties and the buildings. Hence, the income that is derived from the buildings, after the expenses of the temples, to be divided among the members of Swaroopam, and the petitioner has to be accounted. The final partition proceedings in OS 284/74 is pending now in the Sub-Court.
>
> Hence, unless a final proceedings in OS 284/74 is adjudicated by the sub-Court, it is not fair and just to take proceedings for making assessment of income-tax against the petitioner. The petitioner is not liable to be taxed, and the proceedings initiated by the Income-tax Officer for assessing the petitioner is quite illegal and against the provisions of the Income-tax Act. Hence it is prayed that this petitioner, be preliminary heard, and pass appropriate orders, on the grounds stated above.

None of the aforesaid contentions found favour with the Assessing Officer, who proceeded to make assessments in the hands of the assessee in the status of individual determining the taxable income of the assessee for the assessment years 1982-83 and 1983-84 as detailed below:

Heads of Income	Assessment year	
	1982-83	1983-84
(1) Income from property	Rs. 1,34,265	Rs. 1,33,326
(2) Profits and gains of profession	nil	Rs. 6,000

Heads of Income	Assessment year	
	1982-83	1983-84
(3) Capital gains on sale of shops/offices in the shopping complex	Rs. 28,864	Rs. 91.500

In this regard the following considerations weighed with him:

(i) Assessee is the individual owner of the 75 cents of land appertaining to the Paramara temple and also the three storeyed superstructure constructed thereon by the assessee.

(ii) The assessee had taken loans from banks in his individual capacity and utilised them for constructing the shopping complex.

(iii) The assessee has not accepted the decision of the Sub-Court in OS 284/74. He still has got a right of appeal to the High Court and Supreme Court.

9. The first appellate authority declined to interfere in the matter for both the years.

10. Thereupon the assessee moved the Tribunal. On an examination of the facts of the case, the learned Judicial Member took the line that the entirety of rental income and the capital gains could not be assessed in the hands of the assessee. The assessee is liable to tax only on the income in proportion to his share as determined by the Sub-Court. On his part, the learned Accountant Member took the line that the matter needed to be restored to the Assessing Officer for fresh consideration and decision on the issue relating to the ownership of the shopping complex put up by the assessee. In this regard the following considerations weighed with the learned Accountant Member:

(i) Though the ITO had held that the superstructure belonged to the assessee, yet he had not brought on record all the material necessary for adjudicating the said issue. The controversy was centered on the ownership of the shopping complex put up by the assessee on the land in question.

(ii) The legal position in India is that while the land may belong to one person the superstructure may belong to another. It is, therefore, necessary to ascertain whether the cost of construction of the superstructure was financed from out of the assessee's own funds or from the funds belonging to the said joint family.

(iii) Further it is well settled that even though a suit for partition is filed and a preliminary decree passed, there would be no partition unless and until final decree is passed effecting the division of family properties and allotting specific items of properties to each of the members of the family. This is because division of family property by metes and bounds is one of the fundamental requirements of Section 171(1) of the Income-tax Act, 1961, which is a special provision.

11. In view of the aforesaid difference of opinion between the two Members, the following points of difference were referred for decision of the Third Member:

(1) Whether, on the facts and in the circumstances of the case, the assessee is assessable only to the income in proportion to his share determined by the Sub-Court that could be assessed in his hands and nothing more?

(2) Whether, on the facts and in the circumstances of the case, the matter is to be restored to the file of the Income-tax Officer on the ground that the lower authorities have not brought on record any material to decide the ownership of the building?

This was on 28-7-1987.

12. The Third Member examined the matter in detail and in depth and by his order dated 30-8-1987 concurred with the opinion of the Accountant Member. The matter was accordingly remitted to the Assessing Officer for fresh consideration and decision.

13. Thereupon, the Assessing Officer examined the matter afresh and in the light of the directions given by the ITAT and gave the following findings:

(A) The piece of land admeasuring 75 cents is covered by three Survey numbers, namely. Survey Nos. 133, 134/1 and 135/3, 4 and 5. It was on this piece of land that the shopping complex in question was constructed.

(B) The construction work on the shopping centre was started in 1977 and completed before 31-3-1981. Corporation Tax was paid for the year 1982 onwards. Some of the shops were let from the year 1979 onwards.

(C) It was the assessee who constructed the building as is evidenced by the fact that it was the assessee who made the necessary application to the Corporation of Cochin for sanction, and the sanction order was issued in his name.

(D) The total cost of construction was Rs. 15,80,400 which, according to the assessee, was funded as follows:

(i) Advance (Pakidi) received from tenants		Rs. 12,62,400
(i) From Gosri Chit Funds		Rs. 1,11,000
(iii) Loan from Bank of Cochin		Rs. 75,000
(iv) Accumulated savings of Kanikka collections		Rs. 1,00,000
(v) Sale of gold bonds		Rs. 32,000
Total . . .		Rs. 15,80,400

(E) The Assessing Officer found that the factum of the assessee's having received an aggregate sum of Rs. 12,62,400 as and by way of advance (Pakidi) was duly supported by the agreements entered into by the assessee with the respective tenants. From a perusal of the rental agreements between the assessee on the one hand, and the tenants of the shops/offices in the shopping complex on the other, the Income-tax Officer found that both the pakidi and the monthly rent were being received by the assessee in his individual capacity. In this regard, the Income-tax Officer found that, significantly, as respects the advance received by the assessee, in some of the rental agreements, a charge is created on the personal properties of the assessee. Further the agreements clearly stipulated that the monthly rent was payable to the assessee's wife, Smt. G. Rukmini.

(F) As regards the amount (Rs. 1,11,000) alleged to have been received from Gosri Chit Funds, the Income-tax Officer found that the evidence produced by the assessee went to show that the assessee had received from the said Chit Funds an aggregate sum of Rs. 29,242 only. As for the balance of Rs. 81,738, there was no proof. The Income-tax Officer found that the assessee had participated in the chits in his individual capacity.

(G) As for the loan (Rs. 75,000) taken from the Bank of Cochin, the Income-tax Officer found that the assessee had, in his capacity as a Doctor (that is to say, in his individual capacity), applied for a loan of Rs. 2,54,000 for the purpose of constructing a properly equipped nursing home. For this purpose, besides executing necessary promissory notes in his individual capacity, the assessee had put up as and by way of security (a) the aforesaid piece of land admeasuring 75 cents and (b) a piece or parcel of land admeasuring about 2 acres and belonging to one Lazer M. Farara of Varapuzha. The said Farara had also stood as personal surety.

The bank sanctioned the loan and released two instalments, one on 19-1-1977 (Rs. 50,000) and the other on 16-2-1977 (Rs. 25,000). No further instalment was released, because the bank discovered that the assessee, instead of utilising the loan for the stated purpose of contructing the nursing home, had diverted the first two instalments to finance the construction of the shopping centre in question. Further, when the assessee defaulted in repaying the loan together with interest, the bank had taken legal steps for recovery of the amounts due not against the joint family but against the assessee in his individual capacity.

(H) As for the assessee's allegation that he had invested a sum of Rs. 1 lakh from out of the accumulated savings from Kanikka collections, the Income-tax Officer found that the assessee did not produce any evidence at all in support of the said allegation. Hence the Income-tax Officer treated the said sum of Rs. 1 lakh "as invested out of the assessee's own funds from undisclosed sources".

(I) That left the sum of Rs. 32,000 from the alleged sale of Gold bonds. Here the Income-tax Officer found that the sale took place after the building was completed. He, therefore, held that the investment to the extent of Rs. 32,000 was also not proved.

(J) The loan from the bank, the advances (Pakidi) from the tenants, the money from the Gosri Chit Funds - all these having been obtained by the assessee in his individual capacity, the Income-tax Officer concluded that the funds for putting up the shopping complex in question came from the assessee in his individual capacity and not from the coffers of the joint family of which he was a member.

(K) There was yet another consideration which weighed with the Income-tax Officer when he came to the conclusion that the shopping complex belonged to the assessee. The Income-tax Officer found that right from 1982 the assessee was selling, from time to time, shops/offices in the said shopping complex and that in the recital portion of the relevant sale deeds, the assessee had unequivocally represented that he was the owner of the building and that he had right to deal with it including the right to dispose them. Further, the assessee had clearly given the assurance that in the event of any loss to the purchaser due to defective title, existence of prior charges and the like, his individual properties will bear a charge.

(L) The main plank of the assessee's case was that the piece of land (admeasuring 75 cents) in question belonged to the joint family. In this regard, the assessee relied on the Court Decree in O.S. No. 284 of 1974. The Income-tax Officer negatived the contention by pointing out that the piece of land in question did not form part of the Plaint Schedule 'A' properties which, according to the Decree, were to be partitioned by metes and bounds. As for the temples and the properties appurtenant thereto, the plaintiffs prayer was for a scheme-decree. However, the Court did not formulate any scheme and postponed the matter to the final decree stage. According to the Income-tax Officer, therefore, the assessee could not be heard to say that the temple property including the piece of land in question was to be partitioned among the members of the family.

(M) The assessee had advanced another argument in support of his contention that the shopping complex and, therefore, the rental income and the capital gain belonged to the joint family; and that was that he had embarked on the venture of constructing the shopping complex with the consent of the other members of the family. The Income-tax Officer rejected this contention. First, because in response to a specific query in this regard from him (the ITO), some of the members of the family had denied having given the assessee their consent to the venture in question. Secondly, the assessee had not produced any evidence to show that the rental income and the sale proceeds of certain units in the shopping complex were distributed amongst the members of the joint family.

(N) In any event, the land in question may belong to the joint family; yet, the shopping complex building, built as it was with the assessee's own funds, belongs to him.

14. In view of the foregoing, therefore, in the assessments for the assessment years 1982-83 and 1983-84, now before us, the Income-tax Officer brought to charge, in the hands of the assessee, in the status of an Individual, not only the rental income from the shopping complex but also the capital gain arising on the sale of certain units in the said complex.

15. Predictably, the assessee took up the matter in appeal before the CIT (Appeals). On an examination of the findings given by the Income-tax Officer, the CIT (Appeals) agreed with them and upheld "the Assessing Officer's action in bringing to tax the rental income derived by the appellant from the shopping complex as well as the capital gains resulting from the sale of certain shop rooms during the two years under appeal". Accordingly, he dismissed the two appeals filed by the assessee.

16. It is in these circumstances that the assessee is now before us.

17. Shri Chakkappen Kalliath, the learned counsel for the assessee, took us through the entire gamut of the facts of this case starting right from the 1941 Proclamation of the Maharaja of Cochin. He contended that the assessee filed returns of income for the two assessment years now before us in the status of an Individual under the mistaken belief that that was the legal consequence of the document No. 458/1974 executed by C.N. Narayanan Kartha in favour of the assessee. It was, therefore, that in the said returns the assessee showed not only loss from his profession but also the rental income from the shopping complex. Later on, he realised his mistake and submitted a detailed petition dated 13-12-1985 before the Assessing Officer requesting him not to bring to charge the income including capital gains attributable to the temple properties in his (assessee's) hands in the status of an individual. In the said petition the assessee had rightly placed reliance on the preliminary decrees passed not only in OS 134/70 but also in OS 284/74 in support of his contention that the rental income from the shopping complex, which had been put up on the land belonging to the temple, and the capital gains arising on the sale of units from the said complex should be brought to tax only in the hands of the members of the joint family taken together and in the status of tenants-in-common. In other words, the assessee's claim was that only the share in the said income which the assessee was lawfully entitled to could be brought to tax in his hands in the capacity of an individual. These contentions were, however, rejected without any justification.

18. He then drew our attention to the fact that the preliminary decrees in OS 134/70 and OS 284/74 were unsuccessfully challenged before the High Court, with the result they stood undisturbed. True, the final decree proceedings are still pending. Even so, since the aggrieved parties had not taken up the matter in further appeal, by virtue of the provisions of Section 97 of the Civil Procedure Code, they were precluded from disputing the correctness in any appeal which may be preferred from the final decree. According to Shri Kalliath, the legal consequence is that by virtue of the said preliminary decrees all the members of the family including the assessee shed their character as joint tenants and became tenants-in-common in respect of all the joint family properties including the temple properties, which comprised, inter alia, the piece of land (admeasuring 75 cents) on which the superstructure was built. Further, the same result had ensued by operation of law namely, the Kerala Joint Hindu Family System (Abolition) Act, 1975.

In this connection Shri Kalliath sought to contend that the temples and the properties appurtenant thereto, in respect of which a scheme-decree was to be passed at the time of the final decree in OS 284/74, were not partible and that consequently the piece of land on which the shopping complex was constructed could not lawfully be regarded as that of the assessee. In any event, as pointed out earlier, all the members of the family were tenants-in-common as respects all the joint family properties.

19. Shri Kalliath next contended that the assessee, acting as the administrator of the Paramara temple had effected improvements to the temple and the temple properties by utilising joint family funds. This is yet another reason why the land in question could not be regarded as that of the assessee.

20. Shri Kalliath then drew our attention to the fact that in OS 284/74 the petitioners had, inter alia, made a specific prayer for a declaration that document No. 458/74 executed in favour of the 7th defendant (the assessee before us) and other documents created thereafter are not binding on the family and the family properties. And on this issue the preliminary decree was passed in the following terms :

> A scheme shall also be framed at the final decree stage for the management of the Paramara and Sastha temples...it is declared that document No. 458/74 (Ext. Al) and the consequential documents are not binding on the family and family properties...
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> Thus, there was no question of the piece of land in question being "purchased by the assessee.

21. Turning next to the finding of the lower authorities that the superstructure, namely the shopping complex, belonged to the assessee in his individual capacity, Shri Kalliath strongly objected to the said finding. In this regard he made the following points:

> (i) The advances (Pakidi) and the capital gain in question was realised by the assessee not in his individual capacity but in his capacity as the administrator of the temple properties appurtenant thereto. For a fact, having regard to the clear terms of the

preliminary decree in OS 284/74 the assessee could not have lawfully realised the said sums on his own account.

(ii) In accordance with the clear terms of the preliminary decree in OS 284/74 the assessee was obligated to render accounts to the other members of the family in respect of not only the income from the temples but also the income including capital gains from the properties appurtenant to the temple.

(iii) For purposes of obtaining loans from the Bank of Cochin, the assessee had deposited the title deeds of the properties belonging to the joint family. It should, therefore, follow that the loan was taken on family account.

(iv) The municipal assessments in respect of the shopping complex have all along been made not in the name of the assessee but in the name of the administrator of the temple property.

(v) Much has been made by the lower authorities of the fact that not only in the rental agreements but also in the sale deeds the assessee had represented that he was owner of the shopping complex. Nothing turns on this fact. If the tenants/purchasers of units in the shopping complex accepted the said representation as a fact, that is a matter which concerns only themselves. The Department cannot rely on the said representation to hold that the assessee is in fact owner of the superstructure.

(vi) The Department had issued certain garnishee orders with a view to recovering the tax levied on the assessee for the two assessment years in question on the basis of the assessments as originally completed. Thereupon, eight members of the joint family had filed OP 1000/87 before the High Court of Kerala naming the income-tax authorities also as respondents. By judgment dated February 27, 1987 the learned Single Judge disposed of the petition observing, inter alia, as follows:

The petitioners may, therefore, file petitions before the respondent setting forth their right to a share in the rents covered by the notices under Section 223(3). If such claims are filed the respondent will adjudicate on them after issuing notice to and hearing the petitioners and affording them all opportunities to prove their case. This will be done as expeditiously as possible. The petitioners may, if so advised, file their claim petitions before the respondent within a period of two weeks from today and if such petitions are filed the respondent will adjudicate on them within a period of six weeks of receipt thereof after notice to and hearing the petitioners. The respondent will take into account the two decrees for partition in O.S. Nos. 134 of 1970 and 284 of 1974, Sub-Court, Ernakulam as also the impact of the Kerala Joint Family System (Abolition) Act, 1975 in regard to the rights claimed by the petitioners. The respondent will also keep in mind that any action of Dr. R.K. Kartha in derogation of these rights will not be binding on the petitioners.

Pursuant to the said judgment, five members of the family on 26-3-1990 filed suitable common petition before the Assistant Commissioner, Investigation Circle-I, Ernakulam objecting to the attachment of the rent of the shopping complex towards taxes imposed in the name of the assessee in his individual capacity. In the said petition the petitioners have clearly contended that the temple and the properties appurtenant thereto belonged not to the assessee in his individual capacity, but to the joint family. This would show that right through the case of the joint family had been that the superstructure also belonged to the joint family.

(vii) One of the points that weighed with the lower authorities was that, contrary to the assessee's allegation in this regard, some of the members of the joint family had unequivocally stated that they had not given their consent for the assessee's putting up the shopping complex in question. Shri Kalliath stated that it was a fact that the other members of the joint family did not give any consent to the assessee for putting up the superstructure in question. The only conclusion that can be drawn from this fact is that the assessee had put up the superstructure unauthorisedly and that consequently the superstructure belonged to the joint family.

22. In view of the foregoing, therefore, contended Shri Kalliath, the assessee was entitled to succeed.

23. On his part, Shri C. Abraham, the learned Departmental Representative, strongly supported the impugned orders of the lower authorities. In this regard he made the following points:

(i) The land in question (admeasuring 75 cents) was initially the subject-matter of an oral Pattam between the assessee and C.N. Narayanan Kartha, the karanavan. Subsequently, on 11-3-1971 a written lease deed was executed between the said parties and registered as document No. 424/71. This was followed by another lease deed dated 28-12-1973, which was registered as document No. 458/74. Then there was the purchase certificate No. 357/79 obtained by the assessee under the provisions of the Kerala Land Reforms Act. It was on this basis that the assessee was representing that the assessee was owner of the property. This he was doing not only vis-a-vis the tenants/purchasers, but also vis-a-vis the Department. This will be clear from the fact that for the assessment year 1981-82 also the assessee filed his return of income in the status of an individual which return was accepted by the Department. The assessee, therefore, cannot be permitted to contend that the rent/capital gain in question does not belong to him.

(ii) In the first round of the proceedings the Accountant Member, Income-tax Appellate Tribunal, Cochin Bench had validly raised the question as to the ownership of the superstructure. Even assuming that, not only by reason of the preliminary decree in OS 284/74 but also by operation of the Kerala Joint Family System (Abolition) Act, 1975, the members of the joint family including the assessee stood possessed of the family properties as tenants-in-common, the assessee was not in any manner barred from putting up the shopping complex on the piece of land in

> question. In India, it is well settled, the land may belong to one party and the superstructure to the other. The source of the fund utilised for acquiring or constructing the property determines the ownership of the property. Here, the lower authorities have conclusively proved that the construction of the shopping complex was funded not out of funds of the family but funds belonging to the assessee. Thus, neither the advances (Pakidi) nor the loan taken by the assessee in his individual capacity, nor the amounts obtained by the assessee from Gosri Chit Funds could be regarded as flown from the coffers of the joint family.

As regards the assessee's allegation that he had invested a sum of Rs. 1 lakh out of accumulated savings of Kanikka collections, the position was that there was absolutely no evidence to support the said contention. For a fact, admittedly no accounts were at all maintained for the income and expenditure of the temple.

The sum of Rs. 32,000 representing sale proceeds of gold bonds cannot avail the assessee, because the gold bonds were sold long after the shopping complex was constructed.

Thus, the lower authorities were justified in finding that the cost of construction of the shopping complex was met not by the joint family but by the assessee himself.

(iii) The fact that the other members of the joint family did not give their consent to the assessee's putting up the shopping complex on the land in question is not conclusive of the matter whether the superstructure belongs to the assessee. In this regard, the learned Departmental Representative referred to and relied upon the decision in Jadunath Naik v. Bipra Charan Naik AIR 1974 Ori. 145. At page 146 of the report the Court had observed that non-consent by the other members of the family would not make any difference.

(iv) Besides relying on the cases relied upon by the CIT (Appeals), he was also relying upon the Calcutta case of Keshardeo Chamria, In re [1937] 5 ITR 246, which was approved by the Privy Council in Keshardeo Charnria v. CIT [1939] 7 ITR 394.

In view of the foregoing, therefore, contended Shri Abraham, the impugned order of the CIT (Appeals) does not invite any interference.

24. In his reply, Shri Kalliath, the learned counsel for the assessee, contended that under Section 4 of the Kerala Joint Hindu Family System (Abolition) Act, 1975, the members of a joint family who are theretofore joint tenants became tenants-in-common as if partition had taken place. Therefore, not only the land in question but also the superstructure is held by the members of the family as tenants-in-common. Consequently, there was no question of bringing to tax in the hands of the assessee in his individual capacity the entirety of the rent/capital gains. For a fact, the assessee having put up the shopping complex on the land held by the members of the joint family as tenants, without the consent of the other members of the family, the superstructure also would lawfully belong to the other members of the joint family as tenants-in-common. He, therefore, reiterated that the assessee is entitled to succeed.

25. We have looked into the facts of the case. We have heard the rival submissions.

26. The piece of land admeasuring 75 cents and the superstructure (shopping complex) put up by the assessee thereon are at the centre of the controversy in the case before us. And the issue in particular is whether the superstructure also belonged to the members of the erstwhile joint family as tenants-in-common.

27. To resolve the said issue, it is necessary at the outset to notice a maxim of considerable antiquity, namely, quic quid plantatur solo solo credit -whatever is attached to the soild belongs to the soil. According to this maxim, if 'A' builds on 'B's' land, the building becomes the property of 'B'. This maxim, which is at the root of the English law as to fixtures, it is well settled, has not been accepted as an absolute rule of law of this country - see:

Narayan Das Khettry v. Jatindra Nath Roy Chowdhry AIR 1927 PC 135;

Bishan Das v. State of Punjab AIR 1961 SC 1570;

Atmakur Venkatasubbiah Chetty v. Thirupurasundari Ammal AIR 1965 Mad. 185;

Mohammed Adbul Kadar v. District Collector of AIR 1972 Mad. 56.

28. In the light of the foregoing legal position obtaining in this country, the following two questions, as we see it, need to be asked and answered in this case:

(1) Does the piece of land (admeasuring 75 cents) belong to all the members of the erstwhile joint family as tenants-in-common, or to the assessee in his individual capacity?

(2) If the land belongs to the former, does the superstructure (shopping complex) also belong to the former, or is it the individual property of the assessee?

29. The first question does not present any difficulty. Not only by virtue of the preliminary decrees in O.S. No. 134/70 and O.S. No. 284 of 1974 but also by operation of the statute, namely, the Kerala Joint Hindu Family System (Abolition) Act, 1975, all the members of the erstwhile joint family who had previously been joint tenants in respect of the properties of the joint family, became tenants-in-common. It should, therefore, follow that the piece of land in question is not the individual property of the assessee.

30. It may here be recalled that in the course of his arguments, Mr. Kalliath had contended, inter alia, that the temples and the properties appurtenant thereto were not partible. He did not, however, lead any evidence in support of his contention. But this need not detain us here because, even if, sailing with him on this point, we hold that the temples and the properties appurtenant thereto are not partible, the same conclusion will ensure, namely, that they are not the individual property of the assessee before us.

31. This brings us on to the second question which is centered on the ownership of the superstructure (shopping complex). As pointed out at the outset, the maxim 'whatever is affixed to the soil belongs to the soil' is not applicable to India. One of the basic consequences of the said legal position is that the fact that the piece of land (admeasuring 75 cents) on which the superstructure had been erected belongs to the members of the erstwhile joint family as tenants-in-common will not per se lead to the conclusion that the superstructure also belongs to them as tenants-in-common. This would mean that this question will have to be answered with reference to other principles.

32. In cases of the type under consideration, the best, and indeed the infallible test of ownership of a particular property is the source of the funds that had been utilised to acquire or construct the property. In the case before us, the assessee's contention is that the superstructure belongs to the members of the erstwhile joint family who are tenants-in-common in respect of the family properties. It is well-settled that the plea that a property belongs to a joint family will succeed only if the requirements of the doctrine of detriment to the family funds are fully satisfied. We must at once point out that no evidence was at all produced to show that the construction of the superstructure (shopping complex) entailed any detriment to the joint family funds. It is common ground that the assessee had identified five different sources of funds. Of these, only two, namely, the alleged accumulated savings out of Kanikka collections and the sale proceeds of Gold Bonds are relatable to the joint family funds. Even here, neither before the Assessing Officer, nor before the CIT (Appeals), nor even before us, was any evidence produced by the assessee to show that he could have accumulated as much as Rs. 1 lakh out of Kanikka collections. For a fact the admitted position is that no accounts whatsoever were kept for temple collections.

33. A related aspect or two may here be highlighted. It may be recalled that, pursuant to Proclamation V of 1117 (ME) of the Maharaja of Cochin, the management of the estate of the Cheranelloor Swaroopam was assumed by the State of Cochin. Subsequently, on the formation of the State of Kerala, by Government Notification dated 17/4/1961, Hamidava Seva Sangham was appointed to manage the affairs of two of the three temples, one of which was the Paramara temple. The said Sangham would certainly have maintained accounts for the temple collections. A reference to the said accounts would have enabled the assessee to show that having regard to the magnitude of the collections and the net amount available after defraying expenses relating to the management and maintenance of the temple, a sum of Rs. 1 lakh would have been available with the assessee when he was administering the temple. No such evidence is produced.

34. Secondly, we also have Document No. 458 of 1974 executed by C.N. Narayanan Kartha in favour of the assessee. This document is styled 'Deed of Lease and Power of Attorney Articles of Agreement'. After reciting the fact that the proprietorship and possession of the Paramara Temple together with properties appurtenant thereto had been vested with the said Narayanan Kartha by virtue of the judgment of the High Court in O.P. No. 6510/71 read with Government of Kerala G.O.M.S. 896/13 of 9-11-1973, the document proceeds to appoint the assessee the administrator of the temple and the temple properties. What is significant is that the document stipulates that from the net income of the temple and the temple properties, the administrator would pay the said Narayanan Kartha a sum of Rs. 300 per year as and by way of annual rent. This stipulation is

significant in that it clearly indicates that even according to the said Narayanan Kartha the net income in those years was not high. Otherwise the said Narayanan Kartha would not have fixed the annual rent at Rs. 300.

The said document was entered into on 28-12-1973. The construction of the superstructure (shopping complex) was started in 1977. We are, therefore, clear in our mind that the assessee's contention that he had saved as much as Rs. 1 lakh from out of Kanikka collections is baseless and is fit to be rejected as such. The said sum could only represent the assessee's income from undisclosed sources. This indeed was the finding of the lower authorities and we agree with them. This would mean that as respects the said sum of Rs. 1 lakh, no detriment to the joint family funds has been proved.

35. As regards the sale proceeds (Rs. 32,000) of Gold Bonds, it is clear that the Gold Bonds were purchased from the gold ornaments belonging to the temple. Even here, the requirement of the doctrine of detriment to joint family funds has not been satisfied. The lower authorities had ignored the said sum because the Gold Bonds were sold long after the construction of the superstructure (shopping complex) was complete. There is, as we see it, the further consideration that, as respects the said sum of Rs. 32,000, a debtor-creditor relationship had come into being between the assessee, on the one hand, and the members of the joint family, on the other. In any event, the sum of Rs. 32,000 formed such an insignificant part of the total cost of construction of Rs. 15,80,400 that it would be difficult to import the doctrine of detriment to the family funds.

36. That leaves three sources of funding the construction of the building, namely, (a) Advances (Pakidi) collected by the assessee from the tenants, (b) the sums received by the assessee from Gosri Chit Funds, and (c) the loan taken by him from the Bank of Cochin.

37. To consider first the advance rent collected by the assessee from the tenants. It is a matter of record that the assessee collected an aggregate sum of Rs. 12,62,400 on this count. The rental agreements do not contain any stipulation as to payment by the assessee of interest on the advance rent collected. Thus, it is an interest-free advance.

Secondly, under the agreements the assessee has undertaken "to return the same (advance rent) at six months' notice of vacating the room". In some of the agreements a charge has been created on the personal properties of the assessee for advance rent received by him from the tenants; while the rest do not contain such a stipulation.

Thirdly, the rental agreements do not contain any representation to the effect that assessee was acting for and on behalf of the other members of the erstwhile joint family collectively and in the status of tenants-in-common.

Fourthly, in some agreements it has been clearly stipulated that the rent should be paid to the assessee's wife, Smt. Rukmini who is authorised to issue receipt therefor.

38. On these facts, the lower authorities have concluded that the advance rent was collected by the assessee on his own account. Mr. Kalliath, on the contrary, contends that the representations made by the assessee, or for that matter the representations omitted to be made by the assessee to the tenants are all matters between the assessee and the tenants. They cannot lead to the conclusion that the assessee did not collect the advance rent for and on behalf of the members of the joint family who are tenants-in-common.

39. Mr. Kalliath's arguments, as we see it, beg the question and hence do not advance the case of the assessee. Let us look at the matter this way. Some of the rental agreements, it is a matter of record, do not create a charge on the personal properties of the assessee. They are also silent on what will happen if the assessee fails, wilfully or otherwise, to return the advance rent to the tenant "at six months' notice of vacating the room". Can the , in such circumstances, set up, in his individual capacity, the defence that the liability is not his exclusively, but that of all the members of the family taken collectively and in the status of tenants-in-common? To succeed, what is the nature and, extent of the proof that he is required to adduce?

Let us, again, assume that one of the members of the family lays claim to the advance rent collected on the ground that the superstructure belongs to the members of the family as tenants-in-common. To succeed, what is the nature and extent of the evidence that he is required to adduce?

In either case, as we see it, it is necessary for the claimants to show that the superstructure was put up with the aid and assistance of joint family funds, or that there was a prior agreement among the members of the family that the superstructure was to be built for and on behalf of the family members taken collectively and in the status of tenants-in-common.

In the case before us, no such evidence is forthcoming. And it is here that the factors relied upon by the lower authorities come into play and tilt the scale in favour of the conclusion that the assessee received the advance rents on his own account. Thus, absent any evidence to prove that the superstructure belongs to the family members, the stipulation contained in some of the agreements as to a charge being created on the personal properties of the assessee, and the stipulation as to the payment of rent to the assessee's wife who will issue a receipt therefor, become significant enough to warrant the conclusion that the advance rent was collected by the assessee on his own account. In other words, there was no detriment to the family funds.

40. One of the contentions of Shri Kalliath was that the assessee being obligated, in pursuance of the preliminary decree in OS 284/74, to render accounts to the other members of the erswhile joint family, neither the rental income from the shopping complex, nor the capital gain arising on the sale of some units thereof could be said to belong to the assessee. We are unable to agree. For more reasons than one. First, the compte rendu contemplated by the preliminary decree was naturally relatable to the plaint schedule properties. Of course it would also relate to properties proved to have been acquired with the help of the income accruing or arising from the plaint schedule properties. But - this is the second point - it would not cover properties acquired by the assessee with the aid and assistance of his individual efforts, his individual funds. Here, the superstructure has been found to have been put up by the assessee on his own account. Thirdly, the alacrity with

which the assessee seeks to hang on to the compte rendu terms of the preliminary decree is in stark contrast to the total failure on his part either to render past accounts to, or to distribute the rental income and the capital gain in question amongst the family members.

41. Similarly, the Court declaration to the effect that "document No. 458/ 74 (Ex. LA-1) and the consequential documents are not binding on the family and family properties" will have to be confined to the piece of land admeasuring 75 cents on which the superstructure was built by the assessee and to other properties of the joint family which the assessee might have alienated. But the declaration cannot, as we see it, be extended to the superstructure because, as pointed out earlier, the assessee has failed to show that it was funded by the joint family from out of its funds. The available evidence points to the contrary.

42. As for the loan taken by the assessee from Bank of Cochin, the available evidence go to show that the assessee had obtained the loan in his capacity as a Doctor, that is to say, in his individual capacity. Here again there is no detriment to the Joint family funds.

43. One of the points urged by Mr. Kalliath was that because the assessee had created an equitable mortgage by depositing the title deeds of joint family property, the loan taken by the assessee from the bank must be regarded as one taken by the joint family. We are unable to agree. It is a matter of record that the assessee in the first instance approached the bank for a loan for constructing a properly equipped nursing home. For this purpose, he had executed promissory notes naturally in his individual capacity. What was more, he had provided collateral security not only in the form of Mr. Farara's personal surety but also the land admeasuring 2 acres belonging to the said Farara.

44. Further, the mere fact that the title deeds of a property or two of the joint family were deposited with the bank for the purposes of obtaining the loan cannot lead to the conclusion that there was any detriment to the family.

45. In view of the foregoing, therefore, we have no hesitation in rejecting the related arguments of Mr. Kaliath.

46. As for the amounts obtained by the assessee from Gosri Chit Funds, there is nothing to indicate that they were obtained to the detriment of the joint family funds.

47. One of the contentions urged by Mr. Kalliath, it may be recalled, was that the superstructure having been constructed without the consent of the other members of the family, the superstructure also belongs to them in their capacity as tenants-in-common. Mr. Kalliath, however, did not cite any authority for the said proposition. The legal position, however, is to the contrary. In the Madras case of A.L.P.R. Periakaruppan Chetti v. R.M.A.R. Arunuchalam Chetti AIR 1927 Mad. 676 the issue was centered on a building put up by a member of a HUF with his self-acquisition on ancestral land. The Madias High Court held:

> When a person builds with his self-acquisition on land which is ancestral and in which a person subsequently gets an interest by birth, and when it cannot be said that

> the builder built with knowledge of another person's rights in the land and wittiout his consent or against his will, the proper rule on partition is to allot the building and site to the person who built the superstructure and taking into consideration the value of the site to give the share of its value or equivalent joint property to the other coparcener. I can find no decisions which compel me to hold that the coparcener' claiming a share is entitled under such circumstances to the value of the building also or to require its demolition.

48. We then have the Orissa case of Jadunath Naik (supra). In that case three branches of a family had equal rights in certain ancestral land. A member belonging to one of the branches constructed two rows of residential houses on the ancestral land, so however that the structures occupied an area in excess of his share. The structure had been constructed openly with his own money and obviously to the knowledge of all the other co-sharers. Despite such knowledge, they let him spend his own money exclusively on the said construction. In a suit for partition by metes and bounds, the learned lower appellate court, taking all the facts into consideration, directed that the houses should be allotted to the plaintiff who had constructed them and that the defendants should be adequately compensated taking into account not only the value of the ancestral land on which the houses were situate, but also the value of the remaining ancestral land. Dismissing the appeal filed by the defendants, the High Court observed:

> In a partition of joint property amongst co-owners, one of the usual principles of equity which is enforced by the Courts is to respect present possession of the parties, and where a co-owner has built upon land in excess of his legitimate share at considerable cost, such excess share, containing the construction is allotted to him, compensating the other co-owners in other allotment.
>
> While applying the said principle of equity, the High Court of Orissa found that the said principle was, inter alia, enunciated by the Madras High Court in the case of A.L.P.R. Periakaruppan Chetti (supra).

49. As we see it, the said principle is squarely applicable to the facts of the case before us. Vis-a-vis the other members of the erstwhile joint family, the assessee is not a stranger so as to be treated as a tress-passer. He was also one of the members of the erstwhile family. He cannot also be regarded as having secretly put up the structure on the piece of land in question. What is more, there is nothing on record to show that the other members of the family had at any point of time sought an injunction against the construction by the assessee of the said superstructure.

50. In view of the foregomg, therefore, we hold that, the assessee having put up the structure on the land in question out: of his own money openly and to the knowledge of the other members of the family, and the other members of the family not having at any point of time sought an injunction against the said construction, the superstructure belongs to the assessee. We also hold that, in the facts and circumstances of the case, the lower authorities were justified in bringing to tax in the hands of the assessee in his individual capacity not only the rental income but also the capital gains in question. We, therefore, decline to interfere in the matter.

51. In the result, both the appeals are dismissed.