

A **JOINT FAMILY OF UDAYAN CHINUBHAI ETC.**

v.

COMMISSIONER OF INCOME-TAX, GUJARAT

October, 14 1966

B [J. C. SHAH, V. RAMASWAMI AND V. BHARGAVA, JJ.]

Indian Income-tax Act (11 of 1922), s. 25A and s. 34— Order recording partition of Hindu undivided family—Power to reassess family as a unit thereafter—Whether exists.

C C. his wife, and his three sons were originally assessed to income-tax in the status of a Hindu undivided family. C filed a suit in 1948 in the High Court of Bombay for partition and separate possession of his share in the joint family estate. In 1950 the High Court passed a decree by consent declaring that as from October 15, 1947 the joint family stood dissolved, that all the members of the family had become separate in food, worship and estate from that date, and that each member of the family was entitled to a fifth share in the properties movable and immovable belonging to the family subject to the right of maintenance in favour of C's mother. Pursuant to the decree C took his share in the properties allotted to him, separately. The other properties remained undivided between C's wife and his three sons each holding a fourth share as tenant in common with the other co-sharers. In December 1952, C applied to the Income-tax Officer for an order recording the partition and requesting that assessment be made of the members of the family separately in accordance with the provisions of s. 23 read with s. 25A of the Income-tax Act, 1922. The Income-tax Officer by an order in January 1953 granted the application and for the period after the High Court's decree assessed all the members of the erstwhile family separately. Subsequently however a notice under s. 34 of the Act for the assessment years 1951-52, 1952-53, and 1953-54, for assessing the Hindu undivided family of four members, namely, C's wife and his sons, was issued on the ground that the income of the family had escaped assessment. The assessee's plea that they did not, in the years of assessment, constitute a Hindu undivided family and that they could not be so assessed after an order under s. 25A had once been passed was not accepted by the Income-tax Officer. The Appellate Assistant Commissioner reversed the Income-tax Officer's order but the Appellate Tribunal restored it. The High Court in reference held in favour of the Revenue. The assessee came to this Court in appeal.

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G HELD : (i) The Income-tax Officer has jurisdiction under s. 25A(1) to make an order recording that joint family property has been partitioned if he is satisfied that the property has been partitioned 'in definite portions'. The jurisdiction may be exercised by the Income-tax Officer even if there be partition between 'groups of members' of the family. A complete partition in definite portions among all the members of the family is not a condition of the exercise of that jurisdiction, nor does the expression 'group of members' refer only to a group consisting of a head of a branch and his sons who remain undivided. [1916 G-H]

H In the present case there was no doubt that C took possession of his share in the family estate which was allotted to him. The assessee constituted a group and between them and C there had been a partition in definite portions. The conditions for the passing of an order under s. 25A(1) were thus satisfied. [1918 A-B]

(ii) After the High Court had decreed the partition the original undivided family had no existence in fact or in point of law—personal or income-tax. Section 25A(3) did not help the Revenue for it only requires the Income-tax Officer to continue to assess a Hindu undivided family which has been divided under the personal law as long as no order under s. 25A(1) has been recorded. Once an order under s. 25A(1) has been recorded cl. (3) of s. 25A has no application. [1918 D]

(iii) It is true that an assessment year under the Income-tax Act is a self contained assessment period and a decision in the assessment year does not ordinarily operate as *res judicata*. But this rule does not apply in dealing with an order under s. 25A(1). Income from property of a Hindu undivided family 'hitherto' assessed as undivided may be assessed separately if an order under s. 25A(1) had been passed. When such an order is made the family ceases to be a Hindu undivided family. Thereafter that family cannot be assessed in the status of a Hindu undivided family unless the order is set aside by a competent authority. [1919 F-H]

(iv) Section 34 of the Indian Income-tax Act confers no general power of reviewing an order passed under s. 25A(1) which is in its very nature effective for all subsequent years. The only course for the Income-tax Officer, if he wants the order to be reconsidered is to move the Commissioner of Income-tax to take action under s. 33B of the Act to set aside the order under s. 25A. [1920 C-D]

Gordhandas T. Mangaldas v. Commissioner of Income-tax, Bombay, 11 I.T.R. 183 and *Commissioner of Income-tax, Delhi and Rajasthan v. Ganeshi Lal Sham Lal*, 61 I.T.R. 408, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 946 to 948 of 1965.

Appeals from the judgment and order dated September 15, 1964 of the Gujarat High Court in Income-tax Reference No. 19 of 1963.

A. K. Sen, O. P. Malhotra, O. C. Mathur, for the appellants.

S. T. Desai, S. K. Aiyar and R. N. Sachthey, for the respondent.

The Judgment of the Court was delivered by

Shah, J. Sir Chinubhai Madhavlal, Baronet, his wife Lady Tanumati and his three sons Udayan, Kirtidev and Achyut were originally assessed to income-tax in the status of a Hindu undivided family by the First Income-tax Officer, A-III Ward, Bombay. Sir Chinubhai filed suit No. 2176 of 1948 in the High Court of Judicature at Bombay for partition and separate possession of his share in the joint family estate. On March 8, 1950, the High Court of Bombay passed a decree by consent declaring that as from October 15, 1947 the joint family stood dissolved and that all the members of the family had become separate in food, worship and estate from that date and that each member of the family was entitled to a fifth share in the properties movable and immovable belonging to the family, subject to the right of maintenance in favour of the mother of Sir Chinubhai. In Sch. A Part I properties which

A were allotted to Sir Chinubhai were set out; in Parts II & III of
Sch. A properties which were collectively allotted to the share of
Udayan, Kirtidev, Achyut and Lady Tanumati were set out. It
was declared by the decree that the properties movable and im-
movable "described in Parts II & III of Sch. A shall absolutely
B belong to and vest in the four defendants" (the three sons and
Lady Tanumati) "in equal shares in full satisfaction of their res-
pective rights in the joint family properties subject, as regards the
properties described in Part II of Sch. A, to the provisions of the
Baronetcy Act". Schedules B, C & D set out the debts and liabi-
C lities of the joint family. Pursuant to the decree, Sir Chinubhai
took his share in the properties allotted to him, separately. The
other properties remained undivided between Udayan, Kirtidev,
Achyut and Lady Tanumati—each holding a fourth share as tenant-
in-common with the other co-sharers.

On December 3, 1952 Sir Chinubhai applied to the Income-
tax Officer, A-III Ward, Bombay for an order recording the parti-
D tion and requesting that assessments be made of the members of
the family separately in accordance with the provisions of s. 23
read with s. 25A of the Income-tax Act. The Income-tax Officer
by order dated January 6, 1953, granted the application. He
observed that pursuant to the decree of the High Court for partition
the properties of the "Hindu undivided family were distributed
between two groups—one consisting of Sir Chinubhai and the other
E consisting of his wife and his three sons", and since all the conditions
of s. 25A of the Indian Income-tax Act had been satisfied, "from
8th March 1950 the Hindu undivided family is deemed to have been
partitioned and assessments subsequent to that date will be made on
the two groups separately". The Income-tax Officer, Ahmedabad,
thereafter assessed Lady Tanumati and the sons of Sir Chinubhai
separately.

F The Income-tax Officer, Ahmedabad, however, initiated pro-
ceedings under s. 34 of the Indian income-tax Act, 1922, for the
assessment years 1951-52, 1952-53 and 1953-54 for assessing the
Hindu undivided family of the four members "Udayan, Kirtidev,
Achyut and Lady Tanumati"—who will hereinafter collectively
G be called "the assesseees" on the plea that the income of the family
had escaped assessment. The assesseees contended that they did
not in the years of assessment referred to in the notice constitute a
Hindu undivided family and the Income-tax Officer had no power,
after the order passed on January 6, 1953, to assess them in the
status of a Hindu undivided family. The Income-tax Officer re-
jected the contention.

H In appeal to the Appellate Assistant Commissioner the order
of assessment under s. 34 was set aside, The Appellate Assistant
Commissioner held that the decree passed by the High Court of

Bombay brought about a complete disruption and severance of the joint status of the original family, and merely because the assessee after severance had lived and traded together, they could not be assessed as a Hindu undivided family. He also held that after an order under s. 25A was passed by one Income-tax Officer, another Income-tax Officer had no power to modify it or to circumvent the same by seeking to assess the assessee as a Hindu undivided family.

In appeal by the Income-tax Officer, Ahmedabad, the Appellate Tribunal restored the order passed by the Income-tax Officer. In the view of the Tribunal, by the decree of the High Court there was severance of the joint status between the members of the joint Hindu family, but the partition was partial, and "it did not follow that as regards the remaining persons or the remaining properties which had not gone out of the fold of the Hindu undivided family the assessment in respect thereof could not be made in the status of a Hindu undivided family." The Tribunal rejected the view that once an order under s. 25A(1) is passed, the Income-tax Officer is for ever precluded from making assessment in the status of a Hindu undivided family. The Tribunal thereafter referred at the instance of the assessee the following question for the opinion of the High Court of Gujarat:

"Whether on the facts and in the circumstances of the case, the assessments made on the assessee as on a Hindu undivided family consisting of the three sons of Sir Chinubhai Madhavlal, viz.,

"Udayan, Kirtidev and Achyut and the wife of Sir Chinubhai Madhavlal, viz. Lady Tanumati, were correctly so made?"

The High Court answered the question in the affirmative. Against that order, these appeals have been preferred by the assessee.

An application under sub-s. (1) of s. 25A of the Income-tax Act, 1922, by a Hindu undivided family or any member thereof that a partition has taken place among the members of the family, invests the Income-tax Officer with authority to make an order recording that the joint family property has been partitioned, if he is satisfied on inquiry that the property of the family has been partitioned among the various members or groups of members "in definite portions". The jurisdiction may be exercised by the Income-tax Officer, even if there be partition between groups of members of the family. A complete partition in definite portions among all the members of the family is not a condition of the exercise of that jurisdiction. We do not agree with the plea raised by counsel for the Department that by the expression "group of members" it is intended to refer to a group consisting of a head of

A a branch and his sons who remain undivided. Section 25A(1) applies to families governed by the *Dayabhaga* school of Hindu law as well as the *Mitakshra* school of law: and if the interpretation suggested by counsel for the Revenue be correct, the expression "group of members" will be meaningless in relation to a Hindu family governed by the *Dayabhaga* school of Hindu law.

B But an order recording partition can be made only if the properties of the joint family are partitioned in "definite portions", that is, the properties are physically divided if they admit of such division, otherwise in such division as they admit of. In *Gordhandas T. Mangaldas v. Commissioner of Income-tax, Bombay*⁽¹⁾ the High Court of Bombay held that s. 25A contemplates a physical division of the joint family property: a mere division of interest in such property is not enough. Beaumont, C. J., in delivering the judgment of the Court observed at p. 195:

D "I think that the expression "definite portions" indicates a physical division in which a member takes a particular house in which he can go and live, or a piece of land which he can cultivate, or which he can sell or mortgage, or takes particular ornaments which he can wear or dispose of, and that the expression "definite portions" is not appropriate to describe an undivided share in property where all a particular member can claim is a proportion of the income, and a division of the corpus, but where he cannot claim any definite portion of the property. . . .

E No doubt the expression "division in definite portions" will have to be construed with regard to the nature of the property concerned. A business cannot be divided into parts in the same manner as a piece of land; division may only be possible in the books. Special cases will have to be dealt with by the Income-tax Officer when they arise.

F If he comes to the conclusion, that, having regard to the nature of the property, what has been done amounts to a division in definite portions, he will record his finding under sub-section (1); If he comes to the conclusion that it does not, then he will have to go on assessing the family under sub-section (3)."

G There is no doubt that Sir Chinubhai took possession of his share in the family estate which was allotted to him. Between Sir Chinubhai and the assesseees there was therefore partition of the joint family property in definite portions. The shares allotted to the assesseees were however not divided in definite portions *inter se*. It is true that Part II of Sch. A of the decree described the settled properties under the Baronetcy Act 8 of 1924

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 (1) 11 I.T.R. 183.

and those properties were not capable of physical division. However Part III described properties movable and immovable which were not subject to any such statutory restrictions and those properties were not divided among the assesseees. But the assesseees constituted a group and between them and Sir Chinubhai there had been partition in definite portions—the portion of the property allotted to Sir Chinubhai being completely separated from the property allotted to the assesseees.

Under the decree of the High Court of Bombay the assesseees did not continue to remain members of an undivided Hindu family. It was expressly provided by the decree that the assesseees were divided *inter se* and held the property allotted to them as tenants-in-common. The effect of the order recording a partition was to recognize for purposes of income-tax administration that the joint family status was severed, and the property was divided in definite portions between groups of members of the family. After the order was recorded the original Hindu undivided family had no existence in fact or in point of law—personal or income-tax. Section 25A(3) on which strong reliance was placed by counsel for the Revenue only requires the Income-tax Officer to continue to assess a Hindu undivided family which has been divided under the personal law so long as no order under s. 25A(1) has been recorded. Once an order under s. 25A(1) has been recorded, cl. (3) of s. 25A has no application. If the members of the family who constituted a group between whom and the other group there has been a partition in definite portions constitute a Hindu undivided family, that group may undoubtedly be assessed as a Hindu undivided family: they may be so assessed because of their relation *inter se* and not by virtue of s. 25A(3)

The order passed by the Income-tax Officer, Bombay, was apparently a valid order which he was competent to make. When as a result of that order, the property of the family was deemed for purposes of the Income-tax Act partitioned, it was not open to the Income-tax Officer, Ahmedabad, to ignore the order either for the year in which the partition of the joint family property was recorded, or for any subsequent year, and to assess the income in the hands of the assesseees as if the original Hindu undivided family continued to exist. An order assessing the assesseees as members of a Hindu undivided family could be made after an order under s. 25A had been recorded only if it was proved that under the personal law they formed a joint Hindu family; and of that there was no evidence.

The contention raised on behalf of the Department which appealed to the Income-tax Officer and the Tribunal that the original Hindu undivided family of Sir Chunubhai Madhavlal con-

A tinued to exist, notwithstanding the order of partition recorded under s. 25A(1), in our judgment, cannot be sustained. When the Income-tax Officer, Bombay, recorded an order that the property had been partitioned in definite portions, the family ceased to exist. It is true that among the assesseees the property had not been divided by metes and bounds, but they could still not be assessed as members of a Hindu undivided family because such a relation did not exist between them after severance of the joint family status of the family in which Sir Chunubhai was the *karta*. The Income-tax Officer, Ahmedabad, in substance sought to revise the previous order passed by the Income-tax Officer, Bombay, recording partition under s. 25A, and to revive the original family so as to make the income of the assesseees as well as of Sir Chinubhai liable to be assessed as if no partition had taken place and no partition of the joint family properties had been recorded under the Income-tax Act. That, the Income-tax Officer was plainly incompetent to do.

D Counsel for the Revenue sought to support the order passed by the Income-tax Officer, Ahmedabad, and confirmed by the Tribunal, on the ground that it was open to the Income-tax Officer, notwithstanding the order passed under s. 25A(1) in a previous year to ignore that order in proceedings for assessment relating to a subsequent year, and to hold that there was no severance in fact between the members of the family and to assess them as a Hindu undivided family, as if no partition had taken place. It was said that each assessment year is a self-contained unit and whatever view may have been taken in proceedings for assessment of an earlier year, it is open to the Income-tax Officer to arrive at an independent conclusion contrary to that decision in respect of another year, if the circumstances of the case so warrant. It is true that an assessment year under the Income-tax Act is a self-contained assessment period and a decision in the assessment year does not ordinarily operate as *res judicata* in respect of the matter decided in any subsequent year, for the assessing officer is not a court and he is not precluded from arriving at a conclusion inconsistent with his conclusion in another year. It is open to the Income-tax Officer, therefore, to depart from his decision in subsequent years, since the assessment is final and conclusive between the parties only in relation to the assessment for the particular year for which it is made. A decision reached in one year would be a cogent factor in the determination of a similar question in a following year, but ordinarily there is no bar against the investigation by the Income-tax Officer of the same facts on which a decision in respect of an earlier year was arrived at. But this rule, in our judgment, does not apply in dealing with an order under s. 25A(1). Income from property of a Hindu undivided family "hitherto" assessed as undivided may be assessed separately if an order under s. 25A(1) had been passed.

When such an order is made, the family ceases to be assessed as a Hindu undivided family. Thereafter that family cannot be assessed in the status of a Hindu undivided family unless the order is set aside by a competent authority. Under cl. (3) of s. 25A if no order has been made, notwithstanding the severance of the joint family status, the family continue to be liable to be assessed in the status of a Hindu undivided family, but once an order has been passed, the recognition of severance is granted by the Income-tax Department, and cl. (3) of s. 25A will have no application.

In *Commissioner of Income-tax, Delhi and Rajasthan v. Ganesh Lal Shyam Lal*,⁽¹⁾ the High Court of Punjab held that when an order recognising the total disruption of a Hindu family has been passed under s. 25A Indian Income tax Act 1922, and an order of assessment is made on the basis of such an order, it is not open to the Income-tax Officer to take proceedings for reassessment under s. 34 of the Act ignoring the earlier order under s. 25A of the Act on the ground that he has received information that the order under s. 25A was obtained by misrepresentation. The proper course for the Income tax Officer to adopt in such a case is to move the Commissioner of Income-tax to take action under s. 33B of the Act to set aside the order under s. 25A.

We agree with the High Court of Punjab that s. 34 of the Indian Income-tax Act confers no general power of reviewing an order passed under s. 25A(1), which is in its very nature effective for all subsequent years.

The answer to the question referred will be in the negative. The appellants will be entitled to their costs in this Court as well as in the High Court. One hearing fee.

G.C.

Appeal allowed.

(1) 61 I.T.R. 408.