

THE OFFICIAL TRUSTEE OF WEST BENGAL
FOR THE TRUST OF CHITRA DASSI

v.

C.I.T WEST BENGAL, CALCUTTA

December 4, 1973

[A.N. RAY, C.J. H. R. KHANNA K. K. MATHEW, A. ALAGIRISWAMI
AND P. N. BHAGWATI, JJ.]

Income-tax Act (11 of 1922), s. 3—'Individual', if includes a Hindu deity

On the question whether a Hindu deity is an 'individual' within the meaning of that word under the provisions of the Income tax Act, 1922.

HELD: A Hindu deity falls within the meaning of the word 'individual' in s. 3 and can be treated as a unit of assessment. It would naturally be taxed through its shebait who are in possession and management of its property. [587—C]

As a result of the decision of the Bombay High Court in *C.I.T. v. Ahmedabad Mill Owners, Association*, 7 I.T.R. 369 that 'individual' in s. 3 of the Income tax Act, 1922, must mean a human being, the Income-tax (Amendment) Act, 1939, amended the words "association of individuals" in the section into "association of persons", but the word 'individual', being the first of the six assessable units mentioned in the section, was retained and was not amended into 'person'. It was not changed into "person" because the word 'person' is of wider import and includes any company or association or body of individuals whether incorporated or not. So, a word had to be chosen which would not carry with it the wider import of the word 'person' and the word 'individual' was retained. After the amendment, it was pointed out by this Court in *Commissioner of Income tax v. Sodra Devi* (32 I.T.R. 615) that the word 'individual' not only means a human being, but also includes a corporation created by a statute. A Hindu deity is a juristic person capable of holding property. As it can hold property and be in receipt of income and can also sue and be sued in a court of law there is no reason why its income should be held to be outside the ambit of taxation since it can be brought within it without straining the language of the statutory provision. [586E—H; 587B—C]

Jugendra Nath Naskar v. Comr. of Income-tax (1969) 74, I.T.R. 33 (S.C.), followed.

Commissioner of Income tax v. Salem District Urban Bank Ltd. 8 I.T.R. 269, *Comr. of Income-tax v. Bar Council*, 12, I.T.R. 1, *Sir Currimbhoy Ebrahim Baronetcy Trust v. Comr. of Income-tax*, 5, I.T.C. 484, referred to.

I.T.C. v. Jugendra Nath, A.I.R. 1965 Cal. 570 and *Sri Sridhar v. I.T. Officer*, A.I.R. 1966 Cal. 494, approved.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2358—2366 of 1968 & 1174, 1288—1299 of 1971.

From the judgment and Order dated the 4th January, 1966 of the Calcutta High Court in Income Tax Reference No. 25 of 1968.

Purshotham Chatterjee, P. K. Chakravarthy and Prodyot Kumar Chakravarthy, for the appellant.

V. S. Desai, S. K. Aiyer and R. N. Sachthy, for the respondent.

The Judgment of the Court was delivered by

ALAGIRISWAMI, J. The question that arises for decision in these appeals is whether a Hindu deity is an "individual" within the meaning of that word under the provisions of the Indian Income-tax Act, 1922. It arises out of the judgment of the High Court of Calcutta in a number of references under section 66(1) of the Act. The facts necessary for the decision, in a short compass, are these : In the year 1820 one Smt.

Chitra Dassi executed an Ekrarnama making a gift of a piece of land for religious purposes. In 1842 she executed a will referring to the fact that she had earlier made the property debutter and directed her four sons, the executors, to perform the daily service of Sri Radhagobindjee. She died in 1855. In 1876 a suit was filed in the Calcutta High Court praying that the trust should be administered by the court and a scheme prepared. Subsequently, there were a number of applications made from time to time and a number of orders were also made on them. In 1929 a scheme of administration was framed and a little later the Official Trustee of Bengal was appointed to be the trustee of the said debutter estate. After the official trustee took possession of the properties he was assessed in respect of the income of the debutter estate in the status of an "individual" under section 41 of the Act. In respect of the assessment years 1939-40 to 1942-43 a reference was made under section 66(2) of the Act. A Bench of the Calcutta High Court held that upon a proper construction of the relevant documents and the scheme sanctioned and orders passed by the High Court the property should be held to be a religious trust. The matter again went up to the High Court in respect of the assessment years 1943-44 to 1951-52. Three questions finally came to be considered by the High Court :

Q.1 Whether upon a proper construction of the relevant documents executed by Smt. Chitra Dassi and the relevant schemes sanctioned and orders passed by the High Court, there was a trust in favour of the Deity or whether there was a dedication of the properties to the Deity ?

Q.2 Alternatively, if the dedication to the Thakur constitute trust, is it a religious trust which did not enure to the benefit of the public ?

Q.3 Is the Thakur Radha Gobinda Jew liable to assessment under the Indian Income-tax Act ?

On question No. 1 the High Court held that upon a proper construction of the relevant documents executed by Chitra Dassi and the relevant Schemes sanctioned and orders passed by the High Court there was a dedication of the properties to the deity, but that there was no trust in the technical sense, that is to say, as understood in the English law. In respect of the first part of the 2nd question both parties before the High Court agreed that in that question the word "trust" did not mean a trust in the technical or the English sense. The High Court pointed out that it has been held that a dedication is a trust in the general sense within the meaning of the expression as used in sections 4, 40 and 41 of the Income-tax Act and the word "trust" can be applied to Hindu endowments. On the second part of the question it was held that the endowment is a private religious trust and the documents creating it or confirming it grant no benefit to the members of the public, that an order made by the Calcutta High Court by which

A certain directions were given for feeding the poor, was the only instance in which a benefit enured to the public. As regards the 3rd question the High Court elaborately discussed whether the deity could be held to be an "individual" and held that the deity was liable to assessment under the Income-tax Act.

B Before this Court the only point argued was whether the High Court was right in coming to the conclusion that the deity is an "individual". When the High Court dealt with this question it did not have the benefit of the decision of this Court in *Jogendra Nath Naskar v. Commr. of Income-tax* (1969-74 ITR 33) wherein it was held that a Hindu deity falls within the meaning of the word "individual" in section 3 and can be treated as a unit of assessment. Mr. Chatterjee arguing for the appellant urged that that decision was wrong and should be reconsidered. We find ourselves in entire agreement with the decision of this Court referred to above. We shall, however, state our reasons within a short compass.

C It was conceded before us on behalf of the appellant that if the word used had been a "person" instead of an "individual" the deity would be a person because a person will include a juristic person. That a Hindu deity is a juristic person is a well established proposition and has been so for a long time. In *Maharaneeb Shibessouree Debia v. Mothooranath Acharjo* (1869 13 MIA 270) it was observed :

E "The Talook itself, with which these Jimmas were connected by tenure, was dedicated to the religious services of the Idol. The rents constituted, therefore, in legal contemplation, its property. The Sabait had not the legal property, but only the title of Manager of a religious endowment."

F In *Prosunno Kumari Debyu v. Golab Chand Baboo* (1875 LR 2 IA, 145) the above observations were cited with approval. In *Manohar Ganesh v. Lakhmiram* (1887 ILR 12 Bom. 247) a Division Bench of the Bombay High Court observed :

G "The Hindu law, like the Roman law and those derived from it, recognises, not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called foundations.....it is consistent with the grants having been made to the juridical person symbolized or personified in the idol....."

H The Madras High Court in *Vidyapurna Tirtha Swami v. Vidyavidhi Tirtha Swami* (1904 ILR 27 Mad. 435) expressed the view :

"It is to give due effect to such a sentiment, widespread and deeprooted as it has always been, with reference to something not capable of holding property as a natural person, that the laws of most countries have sanctioned the creation of a fictitious person in the matter, as is implied

in the felicitous observation made in the work already cited :
 'Perhaps the oldest of all juristic persons is the God, here
 or the saint.'

In *Pramatha Nath Mullick v. Pradyumna Kumar Mullick* (1925 LR
 52 IA 245 ; AIR 1925 PC 139) the Privy Council observed :

"A Hindi idol is, according to long established authority founded upon the religious customs of the Hindus, and the recognition thereof by courts of law, a 'juristic entity'. It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities ; for this doctrine, thus simply stated, is firmly established."

The authorities thus amply establish that a Hindu deity is a juristic person capable of holding property.

Reference was made to the decision in *C. I. T. v. Ahmedabad Mill Owners' Association* (7 ITR 369) where Beaumont, C. J. held :

"Individual" where first used, must mean human being, because it is used as something distinct from a joint family, firm and company. The whole expression seems to me to mean "every human being, Hindu undivided family, company, firm and other association of human beings."

Though in consequence of this decision the Income-tax (Amendment) Act, 1939 amended the words "association of individuals" into "association of persons", the word "individual" being first of the six assessable units mentioned in section 3 was retained and was not amended into "person". It could not be changed into "person" for the obvious reason that the word "person" is of wider import and includes any company or association or body of individuals, whether incorporated or not. So a word had to be chosen, which would not carry with it the wider import of the word "person" and the word "individual" appears to have been chosen. In *Commissioner of Income-tax v. Sodra Devi* (32 ITR 615) it was pointed out that the word "individual" not only means a human being but also includes a corporation created by a statute, e. g. a University, or a Bar Council or the trustees of a Baronetcy trust, incorporated by a Baronetcy Act (See the decisions in *Commissioner of Income-tax v. Salem District Urban Bank Ltd.* 8 ITR 269 ; *Commissioner of Income-tax v. Bar Council*, 12 ITR 1 ; and *Sir Currimbhoy Ebrahim Baronetcy Trust v. Commissioner of Income-tax*, 5 ITC 484). But Dass J. observed :

".....there is no difficulty whatsoever in my opinion, in giving the word 'individual' its natural meaning, that is, that the word means either a male or a female."

But the court in that case was not concerned with the problem whether the word "individual" can refer to a juridical entity. Mukharji J. of

A the Calcutta High Court in *I. T. Commr. v. Jogendra Nath* (AIR 1965 Cal. 570) held that a Hindu deity can be either an individual or a person or both. The same High Court in *Sri Sridhar v. I. T. Officer* (AIR 1966 Cal. 494) held that a Hindu idol is a juristic entity who is given the status of a human being capable of having property and it can be called an "individual".

B We are of opinion that as a Hindu deity can hold property and be in receipt of income and can also sue and be sued in a court of law there is no reason why its income should be held to be outside the ambit of taxation if it can be brought within it without straining the language of the statutory provision. It would naturally be taxed through its shebait who are in possession and management of its property.

C We may, however, mention that the problem whether the Hindu deity is an individual is not likely to arise after the enactment of Income-tax Act, 1961 which in clause 31 of section 2 defines a "person" as including (i) an individual, (ii) a Hindu undivided family, (iii) a company, (iv) a firm, (v) an association of persons or a body of individuals, whether incorporated or not, (vi) a local authority, and (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

The appeals are dismissed with costs.

V.P.S

Appeals dismissed.