

(1985) 10 PAT CK 0008

In the Patna High Court

Case No : Taxation Case No's. 164 and 165 of 1976

Commissioner of Gift Tax

APPELLANT

Vs

Maharaja Kumar Kamal Singh

RESPONDENT

Date of Decision : 14-10-1985

Acts Referred:

Gift Tax Act, 1958 — Section 23(5)

Citation : (1986) 52 CTR 24 : (1986) 162 ITR 352 : (1987) 30 TAXMAN 40

Hon'ble Judges : Uday Sinha, J; Nazir Ahmad, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and S.K. Sharan, for the Appellant; K.N. Jain, Rameshwar Prasad No. 2 and B.P. Gupta, for the Respondent

Judgement

Nazir Ahmad, J.—A consolidated statement of the case has been submitted by the Income Tax Appellate Tribunal, Patna Bench, Patna (hereinafter referred to as " the Tribunal "), u/s 26(1) of the Gift-tax Act, 1958 (hereinafter referred to as " the Act "), referring the following common question of law for the opinion of this court :

" Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that the assessments as made in the status of an individual were not tenable in law and in cancelling them ? "

2. The relevant facts of the case can be culled out from the statement of the case. The assessment years involved are 1964-65 and 1965-66. For both these years returns had been filed declaring taxable gifts at Rs. 7,086 and Rs. 4,970 for the two years respectively. The Gift-tax Officer assessed the value of the taxable gifts at Rs. 2,13,971 for the assessment year 1964-65 and determined the tax payable by the assessee at Rs. 44,529. In the assessment year 1965-66, the Gift-tax Officer determined the value of the taxable gifts at Rs. 1,06,520 and determined the tax payable by the assessee at Rs. 5,503.

3. The assessee filed returns for both the assessment years in the status of a

Hindu undivided family. The Gift-tax Officer, however, completed the assessments in the status of an individual for both the assessment years without discussion in the assessment orders regarding the reasons for the same. The assessee is the holder of an impartible estate known as Dumraon Estate. The assessee, Maharaja Kumar Kamal Singh, had made gifts of shares and house property and the value of gifts was determined by the Gift-tax Officer. The assessment orders of the Gift-tax Officer for the two assessment years in question have been annexed and marked as annexures A and A-1 forming part of the statement of the case.

4. The assessee appealed before the Appellate Assistant Commissioner and the Appellate Assistant Commissioner upheld the assessment orders of the Gift-tax Officer and dismissed the appeals of the assessee in both the assessment years. The orders of the Appellate Assistant Commissioner have been annexed and marked as annexures B and B-1 forming part of the statement of the case.

5. The Gift-tax Officer did not state in his assessment orders whether the assessee had filed returns in the status of a Hindu undivided family and without mentioning this fact assessed the assessee in the status of an individual for both the assessment years 1964-65 and 1965-66. Even before the Appellate Assistant Commissioner, the status taken as individual of Maharaja Kumar Kamal Singh was not challenged. However, when the matter came up before the Tribunal at the instance of the assessee, an additional ground was taken that the assessment of the assessee should not have been made in the status of an individual because the transferor was not an individual but the Hindu undivided family of which Maharaja Kumar Kamal Singh is the karta.

6. The Tribunal admitted this additional ground. Before the Tribunal reliance was placed on the case of the assessee himself in Commissioner of Income Tax, Bihar and Orissa Vs. Maharaj Kumar Kamal Singh, . In this case, it was observed that the assessee was assessed as an individual and he was the holder of an impartible estate but the impartible estate belonged to the Hindu undivided family of which the holder is a member and subject to any custom to the contrary, on the death of the holder of an impartible estate, the estate devolved by survivorship. On this basis it was submitted that the gift and transfers of the portions of that joint family property which were under consideration were made by the assessee in his capacity as the karta of the joint Hindu family and not as an individual. It was further pleaded that the assessee in his capacity as the karta of the joint family was a person different from the assessee in his individual capacity. It was further urged that the assessee had not made any gift or transfer and so the assessments were liable to be cancelled.

7. The Tribunal accepted this argument of the assessee and held that the properties gifted and transferred in the years under consideration belonged to the Hindu undivided family of which the assessee was a member and he made those gifts and transfers in his capacity as the manager or karta of the joint Hindu family. The Tribunal further held that Sections 27(ii) of the Income Tax Act,

1961, enacted a legal fiction by which the holder of an impartible estate was deemed to be the individual owner of all the properties comprised in the estate. However, that fiction was held to be limited for the purposes of Sections 22 to 28 of the Income Tax Act. Similar provision was made in Section 4(6) of the Wealth-tax Act and that was also limited to the purpose of the Wealth-tax Act, 1957.

8. The Tribunal considered the argument regarding the identity of the individual and the Hindu undivided family and held that the assessee in his capacity as individual, on whom the impugned assessments had been made, is a person different from the manager of the Hindu undivided family of which the assessee was a member who made the gifts and transfers under consideration. On this basis, the Tribunal came to the conclusion that the assessee in this case did not make any gift or transfer and so the assessments made on him were not justified. The Tribunal did not consider the other contentions raised, though they made mention about them. The Tribunal, therefore, cancelled the two assessment orders under consideration. Under those circumstances, the aforesaid common question of law has been referred to this court for its opinion.

9. The facts are not disputed. The assessee, Maharaja Kumar Kamal Singh, filed returns before the Gift-tax Officer in the status of a Hindu undivided family. The Gift-tax Officer without mentioning about the returns filed in the status of the Hindu undivided family assessed the assessee, Maharaja Kumar Kamal Singh, in the status of an individual. Before the Appellate Assistant Commissioner, admittedly, no plea was taken by the assessee, Maharaja Kumar Kamal Singh, that he should have been assessed in the status of a Hindu undivided family and not in the status of an individual. However, before the Tribunal, for the first time, the additional ground was taken that Maharaja Kumar Kamal Singh should have been assessed in the status of a Hindu undivided family and not in the status of an individual and the Tribunal, without deciding the other contentions of the assessee, only held that the assessee should have been assessed in the status of a Hindu undivided family and so he cancelled the assessment orders of the Gift-tax Officer assessing the assessee in the status of an individual.

10. Under such circumstances, the only legal position which has to be considered is whether the Tribunal was justified in cancelling the assessments and not holding that the assessee should be assessed in the status of a Hindu undivided family.

11. This court has already held in Taxation Cases Nos. 48 to 50 of 1976, Commissioner of Income Tax Vs. Maharaja Chintamani Saran Nath Sah Deo, , disposed of on October 17, 1984, that the impartible estate by custom becomes Hindu undivided family property after the coming into force of the Hindu Succession Act, 1956, in view of Sections 4 and 5 of that Act. Under such circumstances, Mr. B. P. Rajgarhia, the learned advocate for the Revenue, conceded before us that the Tribunal was correct in holding that the gifts were made by Maharaja Kumar Kamal Singh in the status of a Hindu undivided family as the karta of a Hindu undivided family. The only dispute raised by Mr. B. P.

Rajgarhia, on behalf of the Revenue, is that once the Tribunal came to a finding that Maharaja Kumar Kamal Singh made gifts in the status of a Hindu undivided family, then, as returns had been filed by Maharaja Kumar Kamal Singh in the status of a Hindu undivided family before the Gift-tax Officer, the Tribunal should have directed the assessment in the status of a Hindu undivided family and the Tribunal was not justified in cancelling the assessments.

12. Mr. K. N. Jain has referred to Section 2(iii) according to which " assessee " means a person by whom gift-tax or any other sum of money is payable under this Act, and, on this basis, Mr. K. N. Jain has submitted that the assessee made the gift in the status of a Hindu undivided family and so the gift-tax was payable by the assessee as Hindu undivided family and not as an individual. He has also referred to Section 2(xviii) of the Act which shows that " person " includes a Hindu undivided family or a company or an association or a body of individuals or persons, whether incorporated or not. He has also referred to Section 3 of the Act which lays down that subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from April, 1, 1958, a tax (hereinafter referred to as gift-tax) in respect of the gifts, if any, made by a person during the previous year (other than gifts made before April 1, 1957,) at the rate or rates specified in the Schedule, On this basis, he has submitted that the gift-tax has to be charged from the Hindu undivided family and not from the individual as the gift was made by the Hindu undivided family.

13. Mr. K. N. Jain has also referred to Section 13 of the Act which lays down that every person who during a previous year has made any taxable gifts or is assessable in respect of the taxable gifts made by any other person under this Act, shall, before the thirtieth day of June of the corresponding assessment year, furnish to the Gift-tax Officer a return in the prescribed form and verified in the prescribed manner. He has also referred to Section 14A of the Act which lays down that the return made u/s 13 of the Act shall be signed and verified in the case of an individual, by the individual himself, and in the case of a Hindu undivided family, by the karta. On this basis, he has submitted that although the returns were filed by the karta before the Gift-tax Officer, on behalf of the Hindu undivided family, the Gift-tax Officer did not act on the basis of the returns in the status of a Hindu undivided family but he took the status as individual and so when the Tribunal found that the gifts were made by Maharaja Kumar Kamal Singh in the status of a Hindu undivided family, he could not be assessed in the status of an individual and so the Tribunal was justified in cancelling the assessments.

14. On the other hand, Mr. B. P. Rajgarhia has submitted that Maharaja Kumar Kamal Singh had filed returns in the status of a Hindu undivided family although the Gift-tax Officer made assessments in the status of an individual and so when the Tribunal found that the status of the assessee should be taken as Hindu undivided family, the Tribunal should have ordered the assessment of the assessee in the status of a Hindu undivided family as, Maharaja Kumar Kamal

Singh was, before 1956, the holder of an impartible estate known as Dumraon Estate and was assessable in the status of an individual, but the same person became assessable in the status of a Hindu undivided family after the Hindu Succession Act, 1956, came into force, and so the same person who was assessed as individual, can also be assessed as Hindu undivided family as he was the karta of the Hindu undivided family.

15. Both parties have relied on various decisions. Mr. B. P. Rajgarhia has placed reliance on the case of CHIRANJI LAL Vs. COMMISSIONER OF Income Tax, U. P., . In this case, the third question referred by the Tribunal was whether the Tribunal could direct the authorities below to change the status of the assessee from " individual " to Hindu undivided family and the Allahabad High Court held that Section 33(4) of the Indian Income Tax Act, 1922 (hereinafter referred to as "the 1922 Act"), gives the Tribunal very wide powers to " pass such orders as it thinks fit ". It was also held that the Tribunal certainly had the necessary jurisdiction to do this provided there is material on the record to determine the correct status in which a party should be assessed. It has also been held in this decision that it cannot be said that if the Tribunal comes to the conclusion that the status is that of a " Hindu undivided family ", it should not have powers to correct the status and so it was held that the Tribunal has jurisdiction to direct the status of an assessee to be changed and to determine the correct status. Thus, this decision supports the view that if an assessee is assessed in the status of an individual and if the materials show that the assessee should be assessed in the status of a Hindu undivided family, then the Tribunal should change the status.

16. Mr. B. P. Rajgarhia has also relied on the case of CHANDMULL PANNALAL Vs. COMMISSIONER OF Income Tax, WEST BENGAL., . This is a decision of the Calcutta High Court. In this case, the Income Tax Officer assessed " Messrs Chandmull Pannalal, proprietor : Pannalal Juniwal " in the status of an individual. An appeal was preferred to the Appellate Assistant Commissioner by Chandmull Pannalal and the grounds of appeal were verified as Pannalal, the karta of the Hindu undivided family. A second appeal to the Appellate Tribunal was also preferred in the same manner and the Appellate Tribunal dismissed the appeal on the ground that, as the assessment had been made on Chandmull Pannalal in the status of an individual, the appeal filed by Chandmull Pannalal, the Hindu undivided family, was not maintainable. In those circumstances, it was held by the Calcutta High Court that the objection taken by the Appellate Tribunal was of a highly technical nature and was more one of form than of substance, and that as Pannalal Juniwal had been from the very beginning contending that the assessment of the business should be made as a Hindu undivided family, and as he was the person in charge of the business either as individual proprietor or as a member of the Hindu undivided family, he was competent to verify the memorandum of appeal in either capacity, and the appeal to the Appellate Tribunal was competent. Thus, in this case, the question of status was not decided and so this decision is not helpful to the Revenue.

17. Mr. B. P. Rajgarhia has also placed reliance on the case of MANGAT RAM HAZARI MAL AND ANOTHER Vs. COMMISSIONER OF Income Tax, PUNJAB., , where it has been held that the Tribunal, u/s 33(4) of the 1922 Act, has the power to alter the status of an assessee and determine the correct status in which the assessee is to be assessed provided there is material on record justifying such action. In this case, three individuals and a firm consisting of four partners formed themselves into a partnership and applied for registration as a firm u/s 26A of the 1922 Act. Registration was refused on the ground that one of the partners was a firm and the partnership was assessed as an unregistered firm by the Income Tax Officer and this assessment was upheld by the Appellate Assistant Commissioner. On further appeal, the Tribunal took the view that the partnership was not a " firm " at all and assessed it in the status of " an association of persons ". It was contended that the Tribunal had no power to uphold the assessment changing the status of the assessee but could only annul the assessment or remand the case to the Income Tax Officer to make a fresh assessment on the assessee in the status of an "association of persons ", and, in those circumstances, it was held by the Punjab and Haryana High Court that (i) the assessee was " an association of persons " and not a "firm"; (ii) the Tribunal had power to uphold the assessment changing the status of the assessee into that of an association of persons as the question whether the assessee should be assessed as an unregistered "firm" or as " an association of persons " was raised before the Income Tax Officer and the Appellate Assistant Commissioner and before the Tribunal also.

18. Mr. B. P. Rajgarhia has also relied on the case of Commissioner of Income Tax, U.P.,Lucknow Vs. Kanpur Coal Syndicate, , which is a decision of their Lordships of the Supreme Court. It appears from this decision that Section 3 of the 1922 Act gives impliedly an option to assess the total income of either an association of persons or the members of the association individually, but it does not specify the particular officer who can exercise the option. It is in the first instance for the Income Tax Officer to exercise that option. This is part of the process of assessment and, in these circumstances, it has been held by their Lordships of the Supreme Court that where the Income Tax Officer assesses the association of persons instead of the members individually, an appeal lies u/s 30 to the Appellate Assistant Commissioner, who, under Clause (b) of Section 31(3) of the 1922 Act, has power to set aside the assessment and direct the Income Tax Officer to assess the members individually and, in that connection, it was observed that the Appellate Assistant Commissioner has plenary powers in disposing of an appeal and the scope of his powers is conterminous with that of the Income Tax Officer and he can do what the Income Tax Officer can do and can also direct him to do what he has failed to do. It has also been held in this decision that the Appellate Tribunal has ample power u/s 33(4) of the 1922 Act to set aside an assessment made on an association of persons and direct the Income Tax Officer to assess the members individually or to direct amendment of the assessment already made on the members. In view of the decision of their

Lordships of the Supreme Court, it has to be held that the Tribunal had power to set aside the assessment made on the individual or direct the Income Tax Officer to assess the Hindu undivided family or to direct amendment of the assessment already made on the individual.

19. Mr. K. N. Jain has relied on the case of Commissioner of Income Tax Andhra Pradesh Vs. K. Adinarayan Murty, , which is a decision of their Lordships of the Supreme Court. In this case, the respondent was a Hindu undivided family. Subsequent to the original assessment, the Income Tax Officer had information that the respondent had done some procurement business and earned large profits which had escaped assessment for the assessment year 1949-50 and since for the assessment year 1954-55, the Income Tax Officer had taken the status of the respondent to be that of an " individual ", he issued a notice u/s 34 of the 1922 Act on March 22, 1957, to reopen the assessment for the assessment year 1949-50 in the status of an "individual", having taken the sanction of the Commissioner to make the reassessment in that status. The respondent, however, filed a return in the status of a " Hindu undivided family ", and during the pendency of the proceedings, the Appellate Assistant Commissioner in an appeal against the assessment for the year 1954-55 held that the status of the respondent, was that of a Hindu undivided family. Thereafter, the Income Tax Officer issued a fresh notice u/s 34 on February 12, 1958, to reassess the income of the respondent for the year 1949-50 as a " Hindu undivided family ". A second return was duly filed pursuant to the second notice and the Income Tax Officer made an assessment on August 16, 1958. Both the notices were, however, in identical terms. The question was whether the assessment made pursuant to the second notice and the second return, ignoring the first return filed pursuant to the first notice, was valid and, in those circumstances, it was held by their Lordships of the Supreme Court that since the correct status of the respondent was that of a " Hindu undivided family ", the first notice issued in the status of an individual was illegal and without jurisdiction and the Income Tax Officer could not have validly acted on the return filed by the respondent pursuant to that notice, notwithstanding that it was made in the status of a Hindu undivided family, and any assessment made on such a return would have been invalid. It was also held that the Income Tax Officer was entitled to ignore that return as non est in law and the second notice issued on February 12, 1958, was valid and the return filed in response to that notice and the assessment thereon were valid. It was also held in this decision that under the scheme of the 1922 Act, the " individual " and the " Hindu undivided family " are treated as separate units of assessment and if a notice u/s 34 of the 1922 Act is wrongly issued to the assessee in the status of an individual and not in the correct status of a Hindu undivided family, the notice is illegal and all proceedings taken under that notice are ultra vires and without jurisdiction. These observations were made in connection with the notice u/s 34 of the 1922 Act and if a notice u/s 34 is issued to the individual when the assessee is a Hindu undivided family, the notice has to be held as invalid as no assessment u/s 34

can be made without any notice. This decision will not be applicable to the facts of the present case before us.

20. In the case before us, the same person, namely, Maharaja Kumar Kamal Singh, is the karta of the Hindu undivided family who was assessed as individual by the Gift-tax Officer when the return was filed by him in the status of a Hindu undivided family. It cannot be doubted that Maharaja Kumar Kamal Singh is the holder of an impartible estate and previously the holder of an impartible estate used to be assessed as individual but, he, for the first time, claimed before the Tribunal that his status should be taken as Hindu undivided family. Hence, there is difference in the facts of the case.

21. Mr. K. N. Jain has also relied on the case of Commissioner of Wealth-tax Vs. Riddhikaran and Others, , where it was held that where, in response to notices u/s 14(2) of the Wealth-tax Act, 1957, to file returns of wealth, the assessees filed returns in the status of kartas of undivided families, the Wealth-tax Officer is not competent to assess them in the status of individuals without serving them with notices to file fresh returns as individuals. If this decision is taken into consideration, then the assessments made by the Gift-tax Officer were not proper and the assessment in the status of an individual should have been set aside for making a fresh assessment in the status of a Hindu undivided family on the basis of the return filed in the status of a Hindu undivided family.

22. Mr. K. N. Jain has also relied on the case of Pannabai v. CIT [1985] 53 ITR 608, which is a Full Bench decision of the Andhra Pradesh High Court. In this case, K was a partner in a firm. He died intestate leaving behind him his wife, P, and six minor children. P entered into an agreement with the other partners and was allotted the share in the firm held by K. P claimed that she was assessable only on 1/7th of the share from the firm because all the seven heirs of K were entitled to the income from the firm. The Income Tax Officer negated the claim and assessed the entire share income in her hands. The Appellate Assistant Commissioner upheld this order. On further appeal, the Tribunal held that the correct status of the assessee was a " body of individuals ", and in those circumstances, the Full Bench of the Andhra Pradesh High Court held that neither before the Appellate Assistant Commissioner nor before the Tribunal was it claimed by the Revenue that there could be an assessment in the status of " body of individuals" and that the Tribunal having held that P could not be assessed as an individual on the income derived from the firm was incompetent to modify or alter the status to that of " body of individuals" without notice to that body of individuals which is mandatorily required u/s 139(2) and that the Tribunal should have annulled the assessment with liberty to the Income Tax Officer to assess the income in the status of body of individuals, if permitted by law, after issuing notice to that body of individuals to submit a return as required u/s 139(2). In this case, the individual could not be treated as body of individuals which is not the fact before us. When in the case of Commissioner of Income Tax, U.P., Lucknow Vs. Kanpur Coal Syndicate, , the Supreme Court held

that the Appellate Tribunal has ample power u/s 33(4) of the 1922 Act to set aside the assessment made on an association of persons and direct the Income Tax Officer to assess the members individually or to direct amendment of the assessment already made on the members, it clearly shows that the individual members are included in the association of persons but the Supreme Court has not stated that vice versa if the individuals were assessed, then the Tribunal had the power to set aside the individual assessment and direct the association of persons to be assessed.

23. In this connection, reference may be made to the case of Commissioner of Income Tax, Assam, Tripura, Manipur and Nagaland Vs. Rameshwarlal Sanwarmal, . In this case, for the assessment year 1955-56, a notice u/s 22(2) of the 1922 Act was issued to S in his individual status. He submitted a return on behalf of his Hindu undivided family. On February 29, 1960, the Income Tax Officer passed an ex parte assessment on S as an individual. S, thereupon, filed an application u/s 27 to cancel the ex parte assessment and in December, 1960, the Income Tax Officer set aside that order. Thereafter, on February 6, 1961, the Income Tax Officer made an assessment on the Hindu undivided family on the basis of the return submitted by S. In those circumstances, their Lordships of the Supreme Court held that the return submitted by S was in his capacity as karta of his family. He filed no return in his status as individual and the ex parte order which was set aside u/s 27 was the assessment made on him in the status of an individual. There was no assessment on the family. The assessment made on the Hindu undivided family was not, therefore, an assessment u/s 27. That assessment was clearly barred by time and limitation was not saved by the second proviso to Section 34(3) of the 1922 Act. It was also held by their Lordships of the Supreme Court that the same person can be taxed both as an individual as well as the karta of his family. The two capacities are totally different and the individual and the Hindu undivided family are totally different units of taxation and they are two different assessees. Thus, it cannot be doubted that the individual and the Hindu undivided family are two different assessees and they are two different units of taxation, but, in this decision, it was also held that the assessment was made after setting aside the assessment u/s 27 against the Hindu undivided family and this case is not covered by the second proviso to Section 34(3) of the 1922 Act.

24. Under such circumstances, it is necessary to look to the second proviso to Section 34(3) of the 1922 Act, which lays down that nothing contained in Section 34 limiting the time within which any action may be taken or any order, assessment or reassessment may be made, shall apply to a reassessment made u/s 27 or to an assessment or reassessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order u/s 31, Section 33, Section 33A, Section 33B, Section 66 or Section 66A. Thus, it is evident that the reassessment u/s 27 can be made in the same status as previously made and if the status changes, then the advantage of this proviso cannot be taken. Section 27 of the 1922 Act lays down that where an

assessee within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income Tax Officer that he was prevented by sufficient cause from making the return as required u/s 22, or that he did not receive the notice issued under Sub-section (4) of Section 22, or Sub-section (2) of Section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying with the terms of the last-mentioned notices, the Income Tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of Section 23. Thus, Section 27 clearly shows that the assessment has to be made in the same status as the original assessment was made. However, this decision also goes to show that if the second proviso to Section 34(3) of the 1922 Act applies, then no limitation will be applicable in that case. I find that a provision similar to the second proviso to Section 34(3) of the 1922 Act is to be found in Section 16(2) of the G.T. Act which lays down that nothing contained in this section limiting the time within which any proceedings for assessment or reassessment may be commenced shall apply to an assessment or reassessment to be made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order u/s 22, Section 23, Section 24, Section 26 or Section 28. Section 16(1) of the Act lays down a period of limitation which is eight years in cases covered by Section 16(1)(a) and four years in cases covered by Section 16(1)(b) of the Act from the end of the relevant assessment year for service of notice. Section 16A was inserted by the Taxation Laws (Amendment) Act, 1975, and it came into force with effect from October 1, 1975, and so Section 16A of the Act has to be ignored.

25. Now, it cannot be doubted that if the Tribunal had directed the Income Tax Officer to make a fresh assessment against the Hindu undivided family, then the case could have been covered by Section 16(2) of the Act. Taking the aforesaid circumstances into consideration, let us look to the case of Commissioner of Income Tax, Bombay Vs. Onkarmal Meghraj (H.U.F.), , which is a decision of the Supreme Court. In this case, N, M and H and their sons were partners in a firm. Up to the assessment year 1938-39, they were assessed to tax as individuals. From 1939-40 to 1941-42, they were assessed as three Hindu undivided families, on the basis of a settlement between them and the Department. Thereafter, they were to be assessed as individuals but the Income Tax Officer persisted in assessing them as three Hindu undivided families. They filed their returns for the assessment year 1944-45 separately as individuals. The Income Tax Officer again assessed their incomes in the status of three Hindu undivided families of which N, M and H were kartas, declaring the cases of the individuals as cases of "no assessment". On appeal, the Appellate Assistant Commissioner, on March 9, 1954, set aside the assessments on the Hindu undivided families and gave directions to make assessments on each individual partner. Pursuant to the directions, the Income Tax Officer issued notices of reassessment u/s 34 of the 1922 Act to the individual partners, N, M and H, and their sons, in April, 1954, and made assessments on them on January 31, 1955, The question was

whether the assessments made pursuant to the directions of the Appellate Assistant Commissioner were barred by limitation. In those circumstances, it was held by their Lordships of the Supreme Court that the second proviso to Section 34(3) of the 1922 Act could be availed of at any time in the cases of N, M and H and the reassessments made on them were not barred by limitation. It was also held that since the sons of N, M and H had already filed their returns as individuals and there was no failure to disclose material facts, Section 34(1)(a) could not apply and the notices should be deemed to have been issued u/s 34(1)(b) of the 1922 Act. It was also held in this decision that in relation to the appeals before the Appellate Assistant Commissioner, they were not assessees and they were not intimately connected with the assessees, i.e., the Hindu undivided families, as there was no Hindu undivided family, and, therefore, the second proviso to Section 34(3) was not applicable to their cases and that the assessment year being 1944-45, the notices issued u/s 34 in April, 1954, were beyond the period of four years specified u/s 34(1)(b) and so the assessments on the sons of N, M and H were barred by limitation. It has also been held in this decision that only a limited retrospective effect has been given to the amendment made in 1953 to Section 34(3) of the 1922 Act, and the amendment does not enable the Income Tax Officer to take action where the period mentioned therein had expired before April 1, 1952. Thus, it is evident that in a case where the kartas of the Hindu undivided families were assessed in the status of Hindu undivided family but subsequently they were to be assessed as individuals, the assessments could be made in view of the second proviso to Section 34(3) of the 1922 Act.

26. I have already mentioned in paragraph 20 that in this case the same person, namely, Maharaja Kumar Kanial Singh, is the karta of the Hindu undivided family who was assessed as individual by the Gift-tax Officer when the return was filed by him in the status of a Hindu undivided family. It cannot be doubted that Maharaja Kumar Kamal Singh is the holder of an impartible estate and previously the holder of an impartible estate used to be assessed as individual but, he, for the first time, claimed before the Tribunal that his status should be taken as Hindu undivided family. If these facts are borne in mind, then the decision of the Allahabad High Court in *CHIRANJI LAL Vs. COMMISSIONER OF Income Tax, U. P.*, discussed at pp. 356, 357 and the decision of the Punjab and Haryana High Court in *MANGAT RAM HAZARI MAL AND ANOTHER Vs. COMMISSIONER OF Income Tax, PUNJAB.*, discussed at pp. 357, 358 and of the Supreme Court in *Commissioner of Income Tax, U.P., Lucknow Vs. Kanpur Coal Syndicate*, discussed at p. 358 of this judgment clearly go to show that the Tribunal has ample power u/s 33(4) of the 1922 Act to set aside an assessment made on the individual and direct the Income Tax Officer to assess the Hindu undivided family. The same power as is mentioned in Section 33(4) of the 1922 Act has been given to the Tribunal u/s 254(1) of the Income Tax Act, 1961, and similar power has been given to the Tribunal u/s 23(5) of the G. T. Act. Thus, the Tribunal was competent to set aside the assessment against the individual instead of cancelling the same

and the Tribunal should have directed the Gift-tax Officer to make the assessment on Maharaja Kumar Kamal Singh in the status of a Hindu undivided family.

27. In view of my discussions above, I hold that the Tribunal was correct in holding that the assessments as made in the status of individual were not tenable in law but the Tribunal was not justified in cancelling the assessments. The Tribunal instead of cancelling the assessments should have set aside the assessments and directed the Gift-tax Officer to make the assessments against Maharaja Kumar Kamal Singh in the status of a Hindu undivided family according to law. The question is accordingly answered partly in favour of the assessee and partly in favour of the Revenue. As both parties have partly succeeded, there will be no order as to costs. Let a copy of this judgment be sent under the seal of this court and the signature of the Registrar to the Assistant Registrar of the Income Tax Appellate Tribunal, Patna, and the Tribunal shall pass necessary orders to dispose of the case conformably to this judgment.

Uday Sinha, J.

28. I agree.