
(1980) 10 DEL CK 0026

In the Delhi High Court

Case No : IT Reference No. 71 of 1971 & Income Tax R. No. 71 of 1971

Commissioner of Income Tax

APPELLANT

Vs

Gurpritt Singh

RESPONDENT

Date of Decision : 03-10-1980

Acts Referred:

Citation : (1983) 139 ITR 49 : (1981) 6 TAXMAN 141

Hon'ble Judges : S. Ranganathan, J;D.R. Khanna, J;D.K. Kapur, J

Bench : Full Bench

Judgement

Khanna, J. (Concurring)

1. In compliance with the directions of this court under s. 256(2) of the I.T. Act, 1961, the Income Tax Tribunal, Delhi Bench "C", has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the income from property and dividends is assessable in the hands of the assessed in his status as individual ?"

2. Earlier, the Tribunal had rejected the Commissioner's application moved under s. 256(1) of the Act for getting the same question referred to this court. It was held that no question of law had arisen from the main order of the Tribunal in the appeals assessment years 1962-63 and 1963-64, which Gurpritt Singh had filed before it.

3. The controversy, as the question framed itself points out pertains to the income from the property at 18-A, Aurangzeb Road, New Delhi, and dividends from shares which Gurpritt Singh, the assessed, has enjoyed. The ITO has held them to belong to him individually and, Therefore, in his present individual assessment for the two years added them in his individual incomes. The assessed's case, however, has been and this was accepted by the Tribunal, that both the income from the property and the dividends belong to his HUF, and,

Therefore, cannot be clubbed with his individual earnings.

4. The background of the facts in this respect is that a deed of gift was executed on January 11, 1956, by the assessed's father, Shri Arjun Singh. It was narrated in the gift deed that in consideration of natural love and affection for his son, Gurprit Singh, Arjun Singh was transferring absolutely by gift, all the property known as 18-A, Aurangzeb Road, New Delhi, to be owned and posed by the donee absolutely. The market value of the said property was computed in this deed at Rs. 90,000 and stamps duty was, accordingly, paid and the document was registered. It was also narrated that the possession of the property had been conveyed to the donee and the donor was, thence, on, shorn of all right, title or interest in the property conveyed, and that the donee would be its absolute owner in possession.

5. Earlier in December, 1954, Arjun Singh had similarly gifted a sum of Rs. 50,000, in cash, to Gurprit Singh. With that money, the latter purchased different shares. It is the dividend enjoyed from those shares which is the other subject-matter of controversy in this reference.

6. At the time of the said two gifts, Gurprit Singh was unmarried. In fact his marriage took place in the year 1961, and a son was born to him in the same year.

7. From the time of the said gifts till the birth of the son to him, Gurprit Singh got incomes from the property at 18-A, Aurangzeb Road, New Delhi, and the dividends earned on the said shares were declared and assessed in his individual hands.

8. Arjun Singh, who died in the year 1973, had been, during his lifetime, getting himself assessed sometimes in the status of an individual and sometimes in the status of a HUF. The former status was claimed and assessed up to years 1951-52. It was for the first time that, for the year 1952-53, a dispute was raised with regard to the status. He asserted that he should be assessed in the status of a HUF while the ITO assessed him as an individual. Against that decision, Arjun Singh preferred an appeal before the AAC who by an order dated September 13, 1965, accepted his plea that the proper status to be taken for the assessment was that of a HUF. Thereafter up to the assessment year 1961-62, Arjun Singh continued to be assessed in the status of a HUF.

9. In the meanwhile, on the birth of a son to Gurprit Singh in August, 1961, he, for the first time, claimed in the year 1962-63, that the income enjoyed by him from the property at 18-A Aurangzeb Road, New Delhi, and the dividends from the aforesaid shares should be taxed in the hands of his HUF consisting of himself and his minor son. The claim was, however, negatived by the ITO and he assessed him in the status of an individual on the ground that the properties were received by him from his father as gifts to be owned by him absolutely. Similar decision was given for the next year. Both these decisions were upheld, in appeals, by the AAC.

10. However, in second appeals, the Appellate Tribunal allowed the contention of Gurprit Singh and directed that the property and dividend incomes should be excluded from his individual hands. They were held as assessable in the status of a HUF, consisting of himself and his minor son.

11. It is in these circumstances that the Revenue has now obtained the present references under s. 256(2) of the I.T. Act, 1961, for the opinion of this court.

12. We have heard the parties and given our utmost consideration to all the circumstances. In my opinion, the facts of the present case amply bring out that Arjun Singh had gifted Rs. 50,000 and the property at 18-A, Aurangzeb Road, New Delhi, to Gurprit Singh absolutely. The latter was, at that time, unmarried and had no HUF of his own. The gift deed nowhere mentioned that it was still to be created in future. There has family been no evidence nor it was pleaded before the I.T. authorities that Gurprit Singh had imprinted the property and the shares with the character of the HUF during the present years.

13. As observed by the Supreme Court in the case of C.N. Arunachala Mudaliar Vs. C.A. Muruganatha Mudaliar and Another, , the question whether a property given by a Hindu, by way of gift or will, to his son, is self-acquired property or ancestral property in his hands, is primarily one of the intention of the donor or the testator to be gathered from the terms of the deed of gift or will. If there are no clear words describing the kind of interest intended to be given, the court would have to collect the intention from the language of the document taken along with the surrounding circumstances. In the present case, the gift deed did not at all mention that it was being executed for the benefit of the family of the donee. Rather, Gurprit Singh was made the absolute owner. The surrounding circumstances also altogether negative the intention that the gift was intended for his family, as there was no his family at all in existence. Gurprit Singh was an unmarried boy and was married severally years later. His conduct for a number of years in declaring the income as belonging to him individually next showed that he was treating them as belonging to him individually. After all the gifts could not have been made to a non-existent entity of Gurprit Singh's so-called HUF.

14. The Tribunal has proceeded on the assumption that the property was ancestral qua Arjun Singh. I find absolutely no material in this direction on record. Even at the time of the hearing of the reference, the assessed made no endeavor to plead, much less place any material that the property was ancestral.

15. Furthermore, the circumstances of the making of the gift by Arjun Singh in favor of Gurprit Singh entirely ruled out the possibility that the property and the amount of Rs. 50,000 belonged to the HUF of Arjun Singh. Had that been the position, Gurprit Singh as coparcener, would have been an equal co-share with Arjun Singh. There was no question of his accepting gifts of money and the property in which he himself had half the interest. The making of the gift by Arjun Singh and the acceptance of that gift by Gurprit Singh, was by themselves

acknowledgments by them that the money and the property belonged to Arjun Singh absolutely and he was competent to effect that gift. In this regard, there is no gainsaying in mentioning that under the Hindu law, Arjun Singh as karta of his family, could not at all have gifted an immovable property of the family. This gift was never challenged on this score. This circumstances and the acceptance of gift by Gurprit Singh thus acknowledged the right and competence of Arjun Singh it make the gift which in turn had the implication of admitting that Arjun Singh was the absolute owner of the property. Similarly, it has not been shown that the gift of the money, if it belonged to the family, was within reasonable limits.

16. On the execution of the gift deed, considerable amount of stamp duty was paid. In case Gurprit Singh was already a co-share in that property, there was no point in the family incurring unnecessary heavy expenditure.

17. When such has been the overwhelming evidence and circumstances on record, it was unwarranted to deduce from the minor circumstances that when the Arjun Singh had been for some time getting himself assessed as an individual and at other times in the status of a HUF, the property and the money belonged to the HUF. Much emphasis was sought to be laid on the assessment for the assessment year 1952-53, when his status was recognised by the AAC as that of a HUF. However, the order in this respect was made on September 13, 1965, long after the making of the gifts and the claim made by Gurprit Singh in the present assessments of his status as an HUF. The making of that belated order could not play the trick and eliminate the manner in which Arjun Singh and Gurprit Singh had been treating the gifted amount and the property in the years 1954 and 1956. Their contemporaneous conduct at the relevant time and their treatment of the property and money as belonging exclusively to Arjun Singh, called for being given much greater weight than the vague and sumiseful indirect circumstances. After all none knap better than Arjun Singh and Gurprit Singh, in the years 1954 and 1956, that the money and the property belonged to Arjun Singh and he was transferring them absolutely to Gurprit Singh.

18. It would also be relevant to mention here that if the gifted money and the property had belonged to the HUF of Arjun Singh, the dividend and property incomes would have been declared by that bigger HUF in its hands. None of this is shown to have been done. There was moreover no question of Gurprit Singh treating the dividend and the property incomes from the year 1956 to 1961 as belonging to him, individually. They would have rather belonged to the bigger of HUF of Arjun Singh in case it was held that the gifts were invalid being of HUF properties. Here, it may also be mentioned that this plea of inability of gifts which was sought to be raised for the first time before this court, was not raised at all before the I.T. authorities. Such new case, Therefore, cannot be allowed to be set up at this belated stage.

19. As observed by the Supreme Court in the case *The Commissioner of Income Tax, Bihar and Orissa, Patna Vs. S.P. Jain*, , although the High Courts and the

Supreme Court are reluctant to interfere with the findings of fact, this should not justify the acceptance of any ipse dixit irrespective of whether there be any material on record or not.

20. The result, Therefore, is that I answer the question in the affirmative and in favor of the Revenue. The Revenue will be entitled to costs.

Ranganathan, J. (Dissenting)

21. I have perused carefully the judgment proposed by my learned brother. With respect I myself unable to agree with the conclusion of my learned brother that the question referee should be answered in the affirmative and in favor of the Revenue. The main basis for the conclusion arrived at by my learned brother is that the property in question originally belonged to Arjun Singh in his individual capacity and that the finding of the Tribunal that the property was ancestral in the hands of Arjun Singh was based on no material. I may say at once that if this basic assumption is correct, that the property belonged to Arjun Singh individually, then I could have no quarrel with the conclusion arrived at by my learned brother because there is nothing to show that the gift made by Arjun Singh in favor of Gurprit Singh, the present assessed, was not made individually to the latter but was made to him as the karta of his own smaller HUF. I am, however, of opinion that there is clear evidence on record to show that the properties were joint family properties in the hands of Arjun Singh, that this was well established in the course of the Income Tax proceedings and that it is on this basis that the entire case proceeded before the authorities including the Tribunal. That is why I find myself unable to agree with the conclusion arrived at by my learned brother.

22. The statement of the case starts with these words :

"The assessed, Gurprit Singh, is the son of Arjun Singh and they constitute a joint Hindu family governed by the Mitakshara School of Hindu Law. The firm of assessed properties including the building at 18A, Aurangzeb Road, New Delhi, shares in various companies, cash, dividends and some contract business."

23. From the order of the Appellate Tribunal, it is seen that these facts have been taken by the Tribunal from the order of the AAC in the case of this very assessed for the assessment year 1961-62. For the assessment years presently under reference, namely, 1962-63, 1963-64, the AAC has only followed the order for 1961-62. Thus, it would appear that the facts mentioned in the statement of the case, above extracted, were the admitted facts on the basis of which both the AAC and the Appellate Tribunal disposed of the appeals. A perusal of the order of the Appellate Tribunal dated December 22, 1966, shows that there was no controversy before the Tribunal regarding the fact above mentioned, and no contention appears to have been raised that the properties constituted the individual properties of Arjun Singh. The arguments appear to have been that even though the properties gifted by Arjun Singh were properties belonging to the joint family, they should be treated as individual properties in the hands of

Gurprit Singh inasmuch as the deed of gift did not say anything about the purpose of the gift and was absolute in its terms and similarly the sum of Rs. 50,000 had been given by Arjun Singh to his son absolutely. It appears to me that the arguments before the Tribunal proceeded on the footing that the gift had been made of the joint family properties and that is why there is a reference to the powers of the karta of a joint family in gifting properties belonging to it. This also explains the arguments by the departmental representative before the Tribunal on the basis of coparcenary can alienate the family property so as to pass a good title to the donee. This also explains how the Tribunal came to distinguish the decision of the Supreme Court in the case of C.N. Arunachala Mudaliar Vs. C.A. Muruganatha Mudaliar and Another, . The Tribunal observed :

"It is clear, Therefore, that had the property, under consideration, been the self-acquired and separate property of Arjun Singh, it would be a question of the intention of the donor as to what rights he had proposed to confer on the donee. In point of law, however, the property was ancestral in the hands of Shri Arjun Singh in which he had moiety of interest."

24. My learned brother has criticised this finding of the Tribunal on two counts. In the first place, he has held that it was a pure assumption without evidence and, secondly, he has pointed out that it was nobody's case that the property was ancestral in the hands of Arjun Singh. While it is true that the Tribunal appears to have used the word "ancestral" in a somewhat loose sense when what they really meant was that the property was a joint family property in the hands of Arjun Singh, I find not only (as stated earlier) that the entire case before the Appellate Tribunal proceeded on the above footing but also that this was not a mere assumption based on no evidence but it was amply supported by the evidence in the case.

25. Unfortunately, the findings of the Tribunal had not been detailed and the parties have also not been careful to include in the statement of case, as enclosures, all the relevant documents. As already mentioned, the entire case proceeded on the basis of the order of the AAC for the assessment year 1961-62. But this order does not form part of the record. The Appellate Tribunal's order in the appeal has not been printed in the paper book. Further, the order of the Tribunal, as well as the statement of case, make it clear that the nature and character of the property in the hands of the Arjun Singh Was put in issue and decided by the AAC in the case of Arjun Singh for the assessment year 1952-53. That order has also not been placed on the record. The gift deed by Arjun Singh to Gurprit Singh has also not been included in the paper book. But these were all documents which were considered by the AAC as well as the Appellate Tribunal and, Therefore, though they have not been included in the paper book, we find it necessary to look at these documents. Except for the order of the AAC, in the case of the present assessed for the year 1961-62, copies of the other three documents have been supplied to us by the parties and we have looked into them.

26. We have adopted this course since the reference is already about eight years old and it was desirable to avoid unnecessary delay in having a formal decision issued to the Tribunal to include these papers in the reference and then disposing of the reference.

27. The factual position regarding the assessments of Arjun Singh and the nature of property in his hands is seen clearly from the order of the AAC for 1952-53 in his case which is dated September 13, 1965, and is referred in para. 3 of the statement of the case. It is seen that Arjun Singh had always been filing his returns in the status of HUF, except for one assessment year 1951-52. It was the department which was inconsistent. It accepted the status declared by him for the assessment years 1944-45, 1945-46, 1949-50 and 1950-51, but in the other years, the ITO recorded his status as an individual. In the assessment orders for 1944-45 and 1945-46 the ITO also refers to Arjun Singh as a Hindu joint family. The assessment orders do not show why in some of the years the status has been changed to individual. In the earlier of assessments, the matter appears to have been of very little consequence so that it was not put into issue and decided one way or the other. That question was raised only in 1952-53 for the first time and decided in favor of the said assessed.

28. Arjun Singh cannot, Therefore, be criticised or be found fault with for any inconsistency in this respect.

29. When the issue was raised by Arjun Singh for the first time in 1952-53 for being examined in detail, his claim was rejected by the ITO and also by the AAC who decided the appeal on October 29, 1956. The matter went up to the Tribunal and the Tribunal restored the appeal for fresh disposal, directing the AAC to examine the issue afresh. When the matter thus came back it is seen that the assessed not only filed detailed written arguments but also filed certain affidavits in support of his claim. Thereafter, the assessed as well as the various deponents were cross-examined and their statements were also recorded. It is in the light of this evidence that the AAC reheard the appeal and decided the question of the status of Arjun Singh. The case of Arjun Singh was that while he was still a student in 1917, his father had purchased in his name and for him 17 acres of land for Rs. 17,000 from which he was getting income. His father also gave him a sum of Rs. 50,000 after his marriage, for business. He invested this amount in 1921 with Lala Bishamber Nath Kapur for a contract with Bombay Development Department. He had six annas share in the profits. In addition to this he had also income from the agricultural lands given by his father. With this income he became a partner with S. B. Dharam Singh. Bungalows Nos. 18 and 20, situated at Aurangzeb Road, were received by him in lieu of the profits from the business. It was contended that from the surrounding circumstances it was clear that the property got by Arjun Singh from his father was received as joint but even if there were some doubts about this conclusion, the properties were impressed with joint family character when he, in his returns for the various assessment years 1944-45, etc., declared the properties to be joint family properties, it was

contended, relying on several decision, that the declaration in the returns was sufficient to impress the property with the character of joint family property. That apart, Arjun Singh also submitted a copy of an agreement dated May 8, 1946, between himself and his four brothers to show that there had been a complete partition of the joint family properties even within the lifetime of S. Gulab Singh, who was the eldest brother of the assessed. It is on the basis of these various facts that were placed before him that the proper status for assessment of Arjun Singh was that of a joint Hindu Family. In other words, the finding of the Tribunal that the properties in question constituted joint family properties in the hands of Arjun Singh was not its mere ipse dixit. On the contrary it was based on the findings that had been given in the case of Arjun Singh after the matter had been examined at great length by the AAC. In fact, the statement of the case starts with this position and points out that the question of the status of Arjun Singh had been decided in 1952-53 and that right up to the assessment year 1962-62, Arjun Singh continued to be assessed in the status of a HUF. Since this matter was not in issue before the Tribunal at all this aspect was not discussed at length and the Tribunal proceeded with this as a fundamental basis for deciding the case. The Department made no attempt, either before the Tribunal or at the state of asking for a reference, to contest this finding of the Tribunal that it the hands of Arjun Singh the properties constituted joint family properties. It is not anybody's case that the property at 18-A, Aurangzeb Road, or the sum of Rs. 50,000 received by Gurprit Singh by way of gift from his father, did not constitute part of the assets, the income from which had been assessed in the hands of the Arjun Singh as HUF and that these items represented his individual properties, whatever may be the position regarding the other assets the income from which had been assessed in his hands in the status of the-A, Aurangzeb Road, as well as the sum of Rs. 50,000 came out of the joint family funds of the joint family of Arjun Singh and Gurprit Singh

30. It is well-settled law that the court, in a reference, will not and cannot disturb or go behind any finding of fact given by the Tribunal even on the ground that there is no evidence to support it unless it has been first expressly challenged by a question raised in the reference application to the Tribunal (vide the cases listed in foot-note (7) at page 1160 of Vol. I of the Seventh Edition of Kanga and Palkivala on income tax). I have endeavored to point out that in the present case, far from disputing the above position, the department itself proceeded on the above footing for its case before the Tribunal. No question has been sought on behalf of the Commissioner to challenge the finding of the Tribunal that the property and funds gifted by Arjun Singh constituted joint family property in his hands. the Commissioner cannot, Therefore, now be permitted to agitate this question, this technical ground apart, I have also endeavored to point out that the Tribunal arrived at this conclusion not on the basis of mere surmises but on the basis of tangible, material which has been considered and accepted by the department itself in the case of Arjun Singh after careful investigation.

31. The gift deed dated January 11, 1950, by Arjun Singh to Gurprit Singh has to be considered in the context of the above evidence and finding. The document itself is very upheldful. It no doubt proceeds on the basis that Arjun Singh was gifting a certain property, belonging to him, to his son and the conveyance to the latter was absolute and without any manner of be correct to draw, from this document, the inference that the property gifted belonged to Arjun Singh in his individual capacity particularly in the context of the earlier claims and findings in the a case where the nature of a property is in doubt and there is no positive evidence, then reliance can be placed on the terms of a document such a this, for coming to the conclusion that it was the individual property of the donor view of the conduct of both the parties. But I am of opinion that the document alone cannot be conclusive that the properties in the hands of Arjun singh were joint family properties was arrived at after evidence had been led to show that he had received certain properties from his father, that the properties acquired by him with this nucleus had been treated as joint family properties and also partitioned between himself and his brother and further that he had also impressed them with the character of joint family properties by his unequivocal declarations in the returns for the purposes of Income Tax. I am unable to see how this mass of facts can be ignored merely because Arjun Singh purported to convey this property by way of gift to his son. In this context it is useful to remember that the gift deed was executed some time in 1956. That was a time when the ITO had refused to accept the claim of Arjun Singh in the assessment year 1953-53 that he should be assessed in the status of an HUF. In view of this finding, Arjun Singh was perhaps anxious to exclude this property income from his assessment. Since the ITO would not accept the position and though he had preferred an appeal, he might have though that the best way to exclude it from the assessment in future would be to proceed on the basis of the ITO's finding and to make a gift of the property to his son. By this method he would be able to claim for subsequent assessment years that the property no longer belonged to him even on the basis of the findings of the Department. This was perhaps the object with which the gift deed was executed on stamp paper and got registered. I am, Therefore, not able to place reliance on this document as revealing the real and true character of the property in the hands of Arjun Singh, more so because, had led ample evidence before the ITO to justify the plea that the properties belonged to the joint family.

32. Reference has also been made to the conduct of Gurprit Singh himself in accepting the gift and also in showing it as his individual property in the returns filed by him between 1956 and 1961. So far as the question of acceptance is concerned, this is not of much consequence because the intention of the parties was that Arjun Singh should cease to have any interest in the property and that it should thereafter belong to Gurprit Singh who had, Therefore, no objection to the purported gift made by Arjun Singh. So far as the second aspect is concerned, again no fault can be found with Arjun Singh because even a joint family property received by him was assessable in his hands only in the capacity

of individual as he was the sole coparcener in his branch of the joint family. This was the position prevailing at the relevant time in view of the decision of the Privy Council in the case of *Kalyanji Vithaldas v. CIT* [1937] 5 ITR 90 (See, however, the criticism of this view in *Kanga*, 7th Edn., Vol. 1p. 62). This would also appear to be the position after the decision of the Supreme Court in the case of *Surjit Lal Chhabda* [1975] 10 ITR 776 and by the Privy Council in *CIT v. Swamy Gomedalli* [1937] 5 ITR 416. Therefore, it was quite proper and correct for Gurprit Singh to have shown the income from the property in his individual returns till 1961, when a son was borne to him, it is clear from the statement of the case as well as the order of the Tribunal that as soon as a son was borne to him, Gurprit Singh claimed, in his assessment for 1962-63 and 1963-64, and this forms the subject-matter of the present reference. There is, Therefore, nothing in the conduct made by him if it is based on evidence.

33. If we start, then, with the position that in the hands of Arjun Singh the property and the fund of Rs. 50,000 constituted a joint family property, then the result, as held by the Tribunal, would follow. If the gift is treated as void, the bigger HUF will continue to be its owner. Or, if the gift is treated as effective, as viewed by the parties, it should be construed as a relinquishment by Arjun Singh of his interest in the property and fund. In either view the property cannot be treated as the individual property in the hands of Gurprit Singh. Since the property was joint family property, Arjun Singh cannot, by a purported gift, deprive the property of that character. The Tribunal, in my opinion, had rightly come to the conclusion that since the nucleus of the property and shares in the hands of Gurprit Singh was the joint family fund. The income from these cannot be included in the individual assessment of Gurprit Singh. I would, Therefore, answer the question referred to this court in the negative and in favor of the assessed. I would also direct, as a consequence, that the Revenue should pay the costs of the respondent.

34. [The matter came before KAPUR J., who delivered his opinion on October 3, 1980.]

35. M. L. Varma and S. Mukheree for the Commissioner.

36. G. C. Sharma, E. D. Helms and Anoop Sharma for the assessed.

Kapur, J. (Dissenting)

37. This reference has been placed before me on a difference of opinion between S. R. Ranganathan J. and D. R. Khanna J. I have had the advantage of considering the judgments proposed by them. I have also heard learned counsel and considered the subject-matter of the reference.

38. In the case referred to this court under s. 256(2) of the I.T. Act, 1962, the assessed, Gurprit Singh, was previously being assessed in the status of an individual. In the assessment years 1962-63 and 1963-64, he contended that he was wrongly assessed in the status of an individual; instead he should be

assessed as a HUF. This contention was not accepted by the ITO nor by the AAC. But, the Tribunal by an order dated December 23, 1966, partly accepted the assessed's contention. This had led to the reference of the case in which the following question has been referred :

"Whether. On the facts and in the circumstances of the case, the income from property and dividends is assessable in the hands of the assessed in his status as individual ?"

39. The answer to this question involves a reference to some other facts in order to ascertain whether the said income is to be assessed as individual income or the income of a HUF.

40. The statement of case was to the effect that the assessed. Gurprit Singh, and his father, Shri Arjun Singh, constituted a joint Hindu family governed by the Mitakshara School of Hindu law. This family owned, amongst other properties a building situated at 18-A Aurangzeb Road, New Delhi, shares in companies, cash and also contract business. On January 11, 1956, Shri Arjun Singh made a gift of the property situated at 18-A. Aurangzeb Road, New Delhi, which was valued for stamp duty at Rs. 90,000 to Shri Gurprit Singh and even before this in December, 1954, he had gifted a sum of Rs. 50,000 in cash to him. Gurprit Singh was assessed as an individual from 1957-58 to 1960-61. In August, 1961, his son, Inderdeep Singh, was borne and from 1961-62 he claimed that the income from the house property and shares acquired and the cash mentioned earlier should be taxed in the hands of the HUF, consisting of himself and his minor son. This contention was not accepted and again in the following years it was not accepted leading to the appeals to the Tribunal as narrated earlier.

41. When this matter came before the Division Bench, D. R. Khanna J., In his judgment, observed that the Tribunal had proceeded on the assumption that the property was ancestral qua Shri Arjun Singh where as there was no material on record for this view. It was also observed that if this property, i.e., house and cash, belonged to the HUF, consisting of Arjun Singh and Gurprit Singh, then the gift could not have been made, it was observed that under the Hindu law, Arjun Singh as karta could not have gifted immovable property of the family. Hence, the conclusion was that the property was the individual property of Arjun Singh and did not belong to any HUF previously. Thus, the conclusion of D. R. Khanna J., was that this property did not belonged to the HUF previously, and was now the assessed's individual property.

42. On the other hand. S. Ranganathan, J. agreed that if the property belonged to Arjun Singh individually, then it would continue to be the individual property of Gurprit Singh. But, he referred to the statement of case which sets out that Gurprit Singh was a member of a HUF of which his father was the karta and concluded that it was not open to the court to go against the statement of case.

43. I have carefully examined the statement of case in order to of the matter is that the Division Bench itself had directed that a copy of the order passed by the

AAC on September 13, 1965, should be placed on record. This order was passed in the assessment of the father. Arjun Singh, for the assessment year 1952-53, but it was passed many years later on September 13, 1965, after it had been remanded from the Tribunal. After the said remand, the AAC himself had made a remand order to the ITO. Thus, there was considerable delay in deciding the case of the father relating to the year 1952-53, the position of the father is illustrated from this very appellate order passed by the AAC. Originally, Arjun Singh belonged to District Sargodha (now in Pakistan). He was assessed in 1944-45, in the status of a HUF, but in 1951-52, his status was adopted as individual, in the year 1952-53, he took up the stand that he should be treated as a member of a HUF along with his son. The AAC examined the facts and came to the conclusion that the property belonging to Arjun Singh was self-acquired, but he had made a categorical declaration that he constituted a joint family with his minor son. It was held that it was open for Arjun Singh to put his self-acquired property into the joint stock of the HUF and having done so it became, S. Arjun Singh, S. Nar Charan Singh, S. Gulb Singh and S. Piara Singh, who had partitioned the property by the judgment dated May 8, 1946, and, Therefore, on the birth of a son to Arjun Singh, a joint family came into being. Thus, the conclusion of the AAC was that a HUF did exist even earlier and the property belonging to Arjun Singh was impressed with the characteristics of a joint family property by a declaration made by Arjun Singh. This is the way in which Arjun Singh's status as a HUF was accepted.

44. As it happens, the gift of Rs. 50,000 by cash was made by Arjun Singh to the present assessed in December, 1954, and the property at Aurangzeb Road, was gifted on January 11, 1956. By that time, Arjun Singh had not been assessed in the status of a HUF. So, there could be some doubt whether this property came to Gurprit Singh as the self-acquired property of the father or as the gift from the HUF. When it was settled by the AAC's order that Arjun Singh was holding this property as karta of the HUF, it would naturally follow that the property was part of the property of a joint Hindu Family which had been gifted to Gurprit Singh. It was not open to the Tribunal to take a different view, and. Therefore, by its order dated December 23, 1966, the Tribunal accepted the property in question to be apart of the assets of the joint Hindu family, of which Arjun Singh was the karta and of which Gurprit Singh was a member. There is considerable doubt whether the karta of a HUF can immovable property, and in some cases it has been held that such gift is void, but, in some other cases, it has been held that such a gift is voidable. A Full Bench of the Punjab and Haryana High Court held in COMMISSIONER OF GIFT-TAX, PATIALA Vs. TAJ NATH., , that a gift by the karta of a HUF was void and not merely voidable. It was held that it was void whether made to a coparcener or a stranger. But in the judgment a number of other cases have been referred to including another judgment of the Punjab High Court, S. RAGHBIR SINGH SANDHAWALIA Vs. COMMISSIONER OF Income Tax, PUNJAB, PEPSU AND HIMACHAL PRADESH, SIMLA., , in which the gift was made, in the presence of the other coparceners and Therefore, according to the Full Bench, it

was valid having been assented to by the other members. It would appear that the present gift would also be valid because Arjun Singh made the gift to his only other coparcener, Gurprit Singh, and, Therefore, there was an assent. In any case, whichever view is taken, it would follow that the property was a HUF property in the hands of Arjun Singh and, Therefore, continued to be a HUF property in the hands of his son, Gurprit Singh. Whether, the property came to Gurprit Singh under a void gift or a voidable gift makes not the slightest difference because the question posed is whether this property can be assessed in the hands of the assessed as an individual.

45. It is not possible to hold that the property can be assessed in the hands of the assessed as an individual, unless it is held that the property was not previously an asset of a joint Hindu family in the hands of Arjun Singh, in view of the fact that Arjun Singh's own assessment has resulted in the property in question being held to be that of the HUF, it would follow that by one process of reasoning can it be held to be the individual property in the hands of Gurprit Singh.

46. Taking the various alternatives, if the property was gifted by Arjun Singh to Gurprit Singh under a valid gift, which it would be. As the other coparcener had assented, then the property would continue to be impressed with the characteristics of the HUF property even if Gurprit Singh was unmarried at that time. As soon as he was married and a son was borne to him, the property would belong to a HUF consisting of the assessed and his son, this is because the grandson of Arjun Singh would acquire an interest in the property by birth. This is an undisputed principle of Hindu law.

47. If the property came to Gurprit Singh under an invalid gift, even then it could not be assessed in the hands of Gurprit Singh as a gift made to him, because it would not belong to Gurprit Singh at all. So, still, the answer to the question would have to be that the property cannot be assessed in the hands of Gurprit Singh as an individual.

48. Finally, if the property is treated as Gurprit Singh's individual property having been wrongfully transferred to him, it would still continue to belong to the original HUF because a wrongful transfer into the hands of one of the members of the HUF could not change the characteristics of the property. In whatever way you look at it, the property remains impressed with the treated as the individual property of Gurprit Singh.

49. In fact, the only ground on which the property could be treated as the individual property was previously the individual and self-acquired property of Arjun Singh. No doubt, the property was the self-acquired property Arjun Singh, but before he made the gift he had already impressed the property with the characteristics of HUF property by putting it into the joint stock of the HUF, consisting of himself (Arjun Singh) and his son, Gurprit Singh. This is the conclusion of the AAC in Arjun Singh's own case. It is on this basis that the

property has been treated as a HUF property and there is no escape from this conclusion.

50. There has been a reference to the Supreme Court's decision in C.N. Arunachala Mudaliar Vs. C.A. Muruganatha Mudaliar and Another, , in which the question before the court was whether the property gifted by the father to his son was ancestral property in the hands of the son. It was pointed out that this was a question on of construction of the terms on which the gift was made. It is noteworthy that the gifted property was the self-acquired property of the testator. No doubt, the question as to the nature of the interest to be acquired by the son in such gift would depend on the circumstances of the case. There are other cases dealing with similar points, for instance, Valliammai Achi Vs. Nagappa Chettiar and Others, , wherein a father disposed of the entire joint Hindu family property by a will and gave only a portion to his son, Pallaniappa, who adopted one Nagappa Chettiar. It was held by the Supreme Courts that once it was established that the property was joint HUF property, it must be held that the characteristics of the property could not be changed by the father by making a will and the grandson acquired an interest by adoption in the said property, which remained joint family property. The Supreme Court observed as follows (at p, 1156) :

"We are, Therefore, of opinion that merely because Pallanippa"s father made the will and Pallaniappa, probably as a dutiful son, took out probate and carried out the wishes of his father the nature of the property could not change and it will be joint family property in the hands of Pallaniappa so far as his male issues are concerned."

51. The circumstances of that case are more or less similar to those that exist in the present case. Even if Arjun Singh made an invalid gift of the property which Gurprit Singh took as a dutiful son, nevertheless the son of Gurprit Singh would acquire an interest by birth in the said property which would, Therefore, continue to be a HUF property and does not become the individual property of Gurprit Singh.

52. In the circumstances, I concur with S. Ranganathan J., that the answer to the question referred has to be in the negative and in favor of the assessed. I would, however, leave the parties to bear their own costs.