
(1997) 12 MAD CK 0156

In the Madras High Court

Case No : Tax Case No"s. 1164 to 1179 and 449 to 450 of 1985 and 968 to 970 of 1986 17 December 1997 A.Y. 1967-68 to 1979-80

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

K. SELVARAJ

RESPONDENT

Date of Decision : 17-12-1997

Acts Referred:

Citation : (1998) 148 CTR 230

Hon'ble Judges : P. Thangavel, J;N.V. Balsubramanian, J;N.V. Balasubramanian, J

Bench : Full Bench

Advocate : C.V. Rajan, for the Revenue R. Janakiraman, for the Assessee, for the Appellant;

Judgement

N.V. Balsubramanian, J:

An interesting question of law arises in all the tax cases regarding the status of the assessee to be adopted with reference to the compensation amount received on the abolition of impartible estate under the provisions of the Madras Estate (Abolition & Conversion into Ryotwari) Act, 1948 (hereinafter referred to as 'the Estates Abolition Act'). The common question of law referred in the above tax cases, for our consideration reads as under :

"Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the income derived by the assessee from out of the compensation received under the Madras Estates (Abolition & Conversion into Ryotwari) Act, 1948 should be assessed in the hands of the assessee as HUF and not in the status of 'Individual'?"

2. The tax case references arise both under the provisions of the Income Tax Act, 1961 and under the provisions of the Wealth Tax Act, 1957. Tax case Nos. 449 and 450 of 1985 arise under the provisions of the Income Tax Act for the assessment years 1978-79 and 1979-80 and the tax case Nos. 1164 to 1179 of

1985 arise both under the Income Tax Act and under the Wealth Tax Act; in so far as Income Tax Act assessments are concerned, the assessment years concerned are 1967-68 to 1974-75 and 1976-77 and as regards the Wealth Tax Act the assessment years concerned are 1969-70 to 1975-76. The tax case Nos. 968 to 970 of 1986 relate to the assessment years 1977-78 and 1978-79 under the Income Tax Act. The issue raised in all the cases is common.

3. The assessee and his father were the owners of the impartible estate who succeeded each other according to the law of primogeniture. The estate in question was owned by the ancestors of the assessee for the past 200 years and the entire estate was abolished in the year 1951 under the provisions of the Estates Abolition Act. Before it was abolished, the estate consisted of 3 villages in Tirunelveli District and according to the custom of the family the owners succeeded each other in accordance with the law of primogeniture applicable to the impartible estates. At the time of abolition of the estate, there was a notification of abolition of estate on 1-10-1961, and at the time, the assessee was the minor and the only son of K.R. Appaswamy Naidu who was the last Inam holder. The assessee who was a minor was entitled to a share in the compensation received under the provisions of the Estates Abolition Act and the compensation received was invested and the interest thereon was also reinvested. The assessee got married in the year 1963 and had a son in the year 1968 and a daughter in the year 1970. The question that arises is whether the interest income derived from the investment and the dividends from certain shares are eligible to be assessed in the hands of the assessee in the status of individual or in the status of HUF. In so far as the wealth-tax assessment proceedings are concerned, a similar question arises with reference to the corpus of the properties. The Income Tax Officer in the original assessment proceedings for the assessment years 1967-68 to 1974-75 assessed the income from the properties in the status of individual. It appears there was a declaration u/s 15(1) of the voluntary disclosure of income under the Wealth Tax Act which necessitated the reopening of the assessments. The assessee seems to have claimed the status of an HUF. It is not necessary to trace the assessment details with reference to each of the assessment years both under the Wealth Tax Act and under the Income Tax Act. The Income Tax Officer was of the view that on the basis of the decision of the Supreme Court in the case of Commissioner of Wealth Tax, Andhra Pradesh Vs. Raja Velugoti Sarvagna Kumar Krishna Yachendra Bahadur and Others, , the assessee was the absolute owner of the amount of compensation received and, therefore, the compensation received by the assessee should be treated as an individual asset of the assessee and consequently, any income arising out of the investment made from the compensation should also be regarded as individual income of the assessee. The assessing officer completed the assessment both under the Income Tax Act in the status of individual as regard the income from the investment, and in the same status under the Wealth Tax Act as regards the corpus. The assessee carried the matter by way of appeals before the Appellate Assistant

Commissioner and Appellate Assistant Commissioner found that under the provisions of section 46(6) of the Estates Abolition Act, the compensation amount would be divided between the shares as if there was a partition on the notified date and the compensation amount is treated as a joint family property and the share of each share is determined as if there was a partition between them on the notified date. The Appellate Assistant Commissioner, therefore, held that the half of the share received by the assessee in the partition became the joint family property in the hands of the assessee inasmuch as he has married and got a son and a daughter. The Appellate Assistant Commissioner strongly placed reliance on the decision of this court in the case of V.S. Subramania Iyer and Another Vs. Sangili Veerappa Balasubramania Pandian alias Kutti Raja and Others, in holding that on the abolition of the estate, the Estates Abolition Act treats the property as a joint family property and since the assessee received the property in the partition, the status of the assessee should be taken as that of an HUF. The Appellate Assistant Commissioner distinguished the decision of the Supreme Court in the case of CWT v. Rajah V.S.K. Krishna Yachendra Bahadur (supra) on the ground that the issue before the Supreme Court was the determination of right of maintenance holder in the allotment of compensation to them and, therefore, the decision of the Supreme Court is distinguishable. In this view of the matter, he held that the compensation amount and the interest received on the investment should be assessed in the hands of an HUF in which the assessee is the Kartha and allowed the appeals both under the Income Tax Act and Wealth Tax Act.

The revenue carried the matter by way of appeals to the Tribunal. The appeal preferred by the revenue for the assessment year 1978-79 under the Income Tax Act came up for consideration before the Tribunal and the Tribunal held that the compensation was ancestral in nature and the compensation amount was received on partition and therefore, as soon as the son was born, the son acquired the right by birth because the property was ancestral property. According to the Tribunal, the property in the hands was ancestral property as it was not acquired by the own efforts of the assessee and the assessee received the compensation by virtue of birth in the family and therefore, the amount received on partition albeit a statutory partition should be regarded as joint family property as soon as the son was born. This view of the Tribunal was followed in other appeals under the Income Tax Act in ITA Nos. 783 and 784/Mds/1983/ and ITA Nos. 785 to 791 (Mds)/1983 and ITA No. 341/Mds/1984 and in appeals under Wealth Tax Act in Wealth Tax Act Nos. 329 to 335/Mds/1983. The Tribunal gave further reasoning that in any event the assessee has returned the compensation amount received as joint family property which meant that the assessee had in any event treated the property as joint family property and therefore, the property was the joint family property and the income derived from the property and consequential interest belongs to the joint family consisting of the assessee, his wife and his children. The Tribunal also placed reliance on the decision of the Supreme Court in the case of N.V. Narendranath

Vs. Commissioner of Wealth-tax, Andhra Pradesh, and held that since the property was obtained on partition, the property should be treated as the joint family property. In the subsequent appeal also, the Tribunal accepted the claim of the assessee that the property should be treated as ancestral in character and the assessee should be assessed in the status of HUF. In this view of the matter, the Tribunal upheld the view of the Commissioner (Appeals) holding that the share of the compensation as well as the interest thereon received by the assessee should be assessed in the status of HUF and not in the status of an individual. The revenue sought for and obtained a statement of case both under the provisions of the Income Tax Act and the Wealth Tax Act and the Tribunal has stated the case and referred the question of law set out earlier.

4. Mr. C.V. Rajan, learned counsel for the revenue, submitted that the compensation received by the assessee on the abolition of the estate under the Estates Abolition Act was the share of the assessee and it represents the absolute property of the assessee and the assessee had no pre-existing right over the impartible estate. He submitted that by virtue of the Estate Abolition Act, a new statutory right was created in favour of the assessee and therefore, the compensation received under the provisions of the Estates Abolition Act was a right conferred on him by the statute and therefore, the property should be regarded as an absolute property. He also submitted that the compensation amount had the same character of the impartible estate on the abolition of the estate and vesting of the estate with the government and the property received by the assessee was absolute property. He strongly placed reliance on the decision of the Supreme Court in the case of CWT v. Raja V.S.K. Krishna Yachendra Baradur (supra) and the decisions of the Andhra Pradesh High Court in the cases of P.V.G. Raju Vs. Commissioner of Wealth-tax, and Commissioner of Expenditure Tax, Andhra Pradesh, Hyderabad Vs. S.R.Y. Sivarama Prasad Bahadur, . The further submission of the learned counsel was that since the property was held by the assessee as absolute property, the marriage in the year 1963 or the birth of the son in 1968 would not convert the property into joint family property. The learned counsel further contended that even if it is assumed that the assessee had voluntarily thrown his absolute right into the joint family, the assessee had not claimed the status of joint family in the original returns filed by him and it is only after the voluntary disclosure made by him under the voluntary disclosure scheme, the assessment were reopened and only in the reassessment proceedings, the assessee claimed that the property should be treated as joint family property. The learned counsel, therefore, submitted that in so far as all the assessment years are concerned, the claim of the assessee was made for the first time in the year 1976 and under the provisions of section 64(2) of the Income Tax Act, the property would continue to be treated as absolute property of the assessee and the Tribunal was not correct in holding that the property or the income from that property as the joint family property.

5. Mr. R. Janakiraman, learned counsel for the assessee, on the other hand, submitted the character of the property was throughout joint family property. He

submitted that on the basis of the decision of the Supreme Court in *CWT v. Rajah V.S.K. Krishna Yachendra Bahadur* (supra), though the properties were absolute properties in his hands but the character of the property throughout was the joint family property. According to the learned counsel, the assessee received the property from the ancestral source, the property is a joint family property in character and therefore, the Tribunal was correct in law in holding that the assessee should be assessed in the status of HUF. He also submitted that even assuming that the property was held by him as his absolute property and when the Hindu Succession Act came into force, on the enactment of the Hindu succession Act with effect from, 17-6-1956, the custom with regard to the impartibility of the estate had lost and the property became the joint family property. In this connection, he placed reliance on the decisions (i) *CIT v. Maharaja Chintamani Saran Nath Sah Deo* (1985) 157 ITR 358 (ii) *Controller of Estate Duty Vs. B.K. Tiwari*, , (iii) *Pratapsingji N. Desai v. CIT* (1983) 139 ITR 77 and (iv) *Commissioner of Income Tax Vs. U.C. Mahatab, Maharaja of Burdwan*, .

He further submitted that since the character of the property was joint family property, the decision of the Supreme Court relied upon by the Revenue in *Surjit Lal Chhabda v. CIT* (1976) 101 ITR 776 is not applicable to the facts of the case. He also placed reliance on the decision of this court in *Subramania Iyer v. Sangili Veerappan Balasubramanian Pandian* (supra) and submitted that under the Estates Abolition Act, the property is treated as joint family property and on the basis of the decision of this court in *Subramania Iyer's* case, the property is the joint family property and therefore, there was no infirmity in the order of the Tribunal.

6. We have carefully considered the submissions of the learned counsel for the respective parties. It is necessary to consider the nature of the impartible estate, the rights of a holder in the estate and also other members of the family in the estate. There are several decisions on this topic and the law on this subject has been summarised in the decision of AIR 1932 216 (Privy Council) at page 222 and the following passage of the said judgment has been quoted with approval by the Supreme Court in *Thyagasundaradoss v. S. Pandia* AIR 1965 SC 1780 as under:

"Impartibility is essentially a creature of custom. In the case of ordinary joint family property, the members of the family have (1) right of partition; (2) the right of restraint in alienations by the head of the family except for necessity, (3) the right of maintenance; and (4) the right of survivorship. The first of these rights cannot exist in the case of an impartible estate, though ancestral, from the very nature of the estate. The second is incompatible with the custom of impartibility, as laid down in *Sartaj Kuari v. Deoraj Kuari*, 15 Ind App 5 (PC) and the First Pittapur case, *Raja Rao Venkata Surya Mahipati Ramakrishna Rao Bahadur v. Court of Wards*, 26 Ind App 83 (PC); and so also the third as held in the Second Pittapur case, *Sri Raja Rao Venkata Mahipati Gangadara Rama Rao Bahadur v. Raja of Pattapur*, 45 I. A. 148 : AIR 1918 PC 81. To this extent the

general law of the Mitakshara has been superseded by custom, and the impartible estate though ancestral is clothed with the incidents of self-acquired and separate property. But, the right of survivorship is not inconsistent with the custom of impartibility. This rights, therefore, still remains, and this is what was held in *Bajinath Prasad Singh v. Taj Bali Singh*, 48 I. A. 195 : AIR 1921 PC 62. To this extent the Estate still retains its character of joint family property, and its devolution is governed by the general Mitakshara law applicable to such property. Though the other rights which a coparcener acquired by birth in joint family property no longer exist, the birth-right of the senior member to take by survivorship still remains. Nor is this right a mere spes successionis similar to that of a reversioner succeeding on the death of a Hindu widow to her husband's estate. It is a right which is capable of being renounced and surrendered. Such being their Lordships view, it follows that in order to establish that a family governed by the Mitakshara in which there is an ancestral impartible estate has ceased to be joint, it is necessary to prove an intention, express or implied, on the part of the junior members of the family to renounce their right of succession of the estate".

7. In (1941) 9 ITR 695 (Privy Council) , Sir George Rankin speaking for the Board, held that when a family governed by the Mitakshara, by custom the rule of primogeniture controls the devolution of impartible property, the custom of impartibility does not touch the succession since the right of survivorship is not inconsistent with the custom; hence the estate retains its character of joint family property and devolves by the general law upon the person who, being in fact and in law joint in respect of the estate who is also the senior member in the line. Hence, according to the Privy Council a holder of the estate receiving income from house property cannot be said to be the owner of such property and it is the joint family that is the owner and, therefore, he cannot be assessed as an individual in respect of such income. The above passage was approved by the Supreme Court in the case of *Dattatraya alias Prakash and Others Vs. Krishna Rao alias Lala Saheb Baxi through Lrs. and Others*, . The above passage of the Board clearly shows that it is the joint family that is the owner of the house property and the holder is not the owner though he has full right of enjoyment of the property. It is probably to neutralise the effect of the decision of the Privy Council, clause (a) of sub-section (4) of section 9 of the Indian Income Tax Act, 1922 was introduced in the year 1948 deeming the holder of the impartible estate as an individual owner of the properties comprised in the estate. The decision of the Supreme Court in *Thyagasundaradoss's* case, cited supra, gives a clue that the impartible estate, though ancestral is clothed with the incidents of the self-acquired and separate properties, and the right of survivorship alone is retained and to the extent the estate still retains the character of joint family property. Therefore, it cannot be stated that the impartible estate has lost all the characteristics of the joint family property, though the holder of the estate has the right to hold the impartible estate. It is in the light of the above position of law, the effect of the provisions of the Estates Abolition Act and the

compensation received has to be seen.

8. The effect of the abolition of the estate on the enactment of the Estates Abolition Act was the subject-matter of consideration before this court in Sri Ravu Janardhana Krishna Ranga Rao Bahadur Vs. The State of Madras and Others, and this court held as under:

"Mr. Rajah Aiyar was unable to cite any authority for the position that the custom of impartibility with all its incidents will cease to apply once the estate is converted into money. On the other hand, when proceedings under the Land Acquisition Act have been taken to acquire a part of an impartible estate, the proceeds have been regarded as money belonging to a person not cable of alienating the land acquired (see `Spl. Dy. Collector, Ramnad v. Rajah of Ramnad, 58 Mad 442). It is difficult to follow the argument that the nature of an estate in any immovable property is changed once it is converted into money."

The above decision clearly establishes that the compensation amount payable under the provisions of the Estates Abolition Act still retains the character of the impartible estate. The question what is the effect of section 45 of the Estates Abolition Act as regards an impartible estate was the subject-matter of consideration before a Division Bench of this court in V.S. Subramania Iyer and Another Vs. Sangili Veerappa Balasubramania Pandian alias Kutti Raja and Others, and the learned Judge. Mv. S. Ramachandra Iyer, J. (as his Lordship then was) speaking for the Bench observed that whatever may be the right of the principal land holder or the sons in the impartible estate before the date of the notification, the compensation amount should be treated as one owned by it consisting of members of the joint family and the share of each of the sharers should be determined as if there had been a partition between them on the notified date. In other words, according to the learned judge, two results follow from the statutory provision; (i) the compensation amount is joint family property of the sharers and (2) there had been a partition of the asset on the date of notification between them. Learned judge further observed as under :

"The statute which gives right to compensation amount treats it as if there has been a partition of that property on the date of the notification. The statute creates a legal fiction for the purpose of compensation those persons, who, but for the Act would not be entitled to certain rights in the impartible estate. So far as the principal landholder was concerned, his estate was taken over. So far as the sons and grandsons are concerned, their chance of succession to the estate and their rights to maintenance have disappeared. In providing compensation for those persons, the statute creates a fiction by treating the compensation amount as joint family property. While the fiction could not be extended so as to hold that there was a partition in the family of the sharers, its operation could not be belittled either, by holding that it has not done what it purported to achieve. Therefore, so far as the compensation amount is concerned, the sharers should be deemed to have been divided, but in regard to their other coparcenary properties, they would continue to be as before, that is undivided."

Hence, the judgment of the Division Bench of this court in Subramania Iyer's case (supra) clearly establishes that the compensation amount is treated as one of joint family property between the sharers and there is a partition among the sharers with reference to the compensation amount. That apart, this court, in that case, further went into the question who will be eligible to get the amount received as compensation on the demise of the holder of the estate. In Subramania Iyer's case (supra) on the date of introduction of the Estates Abolition Act, the principal land holder had three sons, two by his first wife and one by his second wife besides his two wives. Subsequently, another son was born to him by his second wife. He had two illegitimate sons through a continuously kept concubine. The court held that 1/5th share to which the deceased became entitled to u/s 45(6) of the Act should be held to be a divided property in his hands and the person entitled to take it on his death would be his undivided sons (born subsequent to the notification) and his two widows and also two illegitimate sons, other sons being treated as divided in respect of that item of property and the first three sons have no interest in the said 1/5th share of the deceased zamindar. The above decision makes it clear that the compensation obtained by the deceased holder of the estate was the divided property and the divided sons cannot claim any share in that property and the real nature of the property was divided property and hence, for that reason, this court held that three sons who obtained compensation u/s 45 of the Estates Abolition Act were not entitled to any amount on the death of the principal land holder of the estate. This decision throws light on the character of the property that the holder was holding and it clearly shows that it was divided property which presupposes that it was a joint family property.

9. The Supreme Court in the case of CWT v. Rajah V.S.K. Krishna Yachendra Bahadur (supra) held that the compensation paid to the sons can be regarded as absolute property and their exclusive property. The contention of the learned counsel for revenue is that the compensation paid to the sons is the absolute and exclusive property of the assessee and therefore, it cannot be regarded as joint family property. But, this contention over looked the important fact that prior to the Estates Abolition Act, the joint family was the owner of the estate and under the Estates Abolition Act, the property is treated as joint family property and the Act also deems that there was a partition of the joint family properties and the original nature of the property was the joint family property. Therefore, though it may be true that when the compensation was received by the son, it was absolute property, but neither the original nature of the property, viz., joint family property nor the fact that it was obtained on partition from an ancestral source has not altered.

10. The decision relied upon by the learned counsel for the revenue in P.V.G. Raju v. CWT (supra) no doubt supports the case of the revenue. The Andhra Pradesh High Court held that the amount of compensation received by the sharers u/s 45(6) of the Estate Abolition Act is their absolute property and cannot be treated as joint family property in his hands. The Andhra Pradesh High Court in that case

has expressly dissented from the decision of the Division Bench of this court in Subramania Iyer's case, cited supra. The decision in Subramania Iyer's case is binding on us. Further, the Andhra Pradesh High Court proceeds on the basis that the compensation amount is a self-acquired property and we are not able to agree with the view taken by the Andhra Pradesh High Court that the compensation amount can be treated as self-acquired property. In Mayne's Hindu Law and Usage (13th Edn.), learned author noticed a decision of the Privy Council in Muttayan Chetty v. Sangili (1883) 9 IA 128 (Mad), wherein it was held that the inherited property was not self-acquired property. Similarly, the property which a son takes in a partition will be his separate property as regards those from whom he has severed but will be ancestral property as regards his own male issue. The above proposition is settled by decisions in Neelamma v. Perumal Pillai AIR 1953 TC 518 : ILR 1953 TC 1021, Davaluri Ramaiah Vs. Bodepudi Venkata Subbaiah, and Pachiammal Vs. Veerappa Thevar and Others, . Therefore, when the assessee received compensation, the source of the compensation was ancestral. It may be separate property as regards the persons from whom he is statutorily divided, but it would be a joint family property as regards his male issues. The decision of the Andhra Pradesh High Court has not taken this aspect into consideration, but on the other hand, in the decision in Subramania Iyer's case, cited supra, this court has taken this aspect into consideration and held that two results follow from the statutory provision viz., (i) the compensation amount is joint family property and (ii) there had been a partition in the joint family properties.

11. The next decision that was relied upon by the learned counsel for the revenue is CEPT v. S.R.Y. Sivarama Prasad Bahadur (supra) wherein the learned Judge held that in earlier cases Andhra Pradesh High Court had taken a view that the property cannot be regarded as joint family property, but as an absolute property of the sharers. Learned counsel also stressed that the decision of the Andhra Pradesh High Court in S.R.Y. Sivarama Prasad Bahadur's case cited supra, was approved by the Supreme Court in Commissioner of Wealth Tax, Andhra Pradesh Vs. Raja Velugoti Sarvagna Kumar Krishna Yachendra Bahadur and Others, . Learned counsel for the revenue, therefore, submitted that earlier decision of this court in Subramania Iyer's case cited supra, cannot be regarded as a good law. However, this contention overlooked the fact that the Supreme Court in CWT v. Raja V.S.K. Krishna Yachendra Bahadur (supra) was dealing with a case of the holder of the estate and the Revenue sought to assess the compensation amount received by the divided member in the hands of the holder. The Supreme Court, in that context, held that the compensation amount paid to the son is the absolute property and it is his exclusive property. Therefore, the decision has to be read in the context in which the case was decided. The question what was the nature of the property initially and what would be the character of the property on a statutory partition arises before us in the instant case and in this situation, we have to decide the question whether the property can be regarded as a joint family property in the hands of the sharer.

12. The decision relied upon by the learned counsel for the assessee is a decision of a Full Bench of this court in *The Additional Commissioner of Income tax, Madras-I Vs. P.L. Karuppan Chettiar*, wherein this court held that under the Hindu law, the property of a male Hindu devolved on his death on his sons and grandsons as the grandsons also have an interest in the property and however, by reason of operation of the Hindu Succession Act, 1956, the son's son gets excluded and the son alone inherits the property to the exclusion of his son and no interest would accrue to the grandson of the original holder in the property left by him on his death. The submission of the learned counsel for the assessee is that there is a close parallel between the instant case and the decision of the Full Bench that though the character of the property in the hands of his father was joint family property, by reason of the operation of section 8 of the Hindu Succession Act, the property has become the absolute property of the son. He, therefore, submitted that when the original character of the property was the joint family property, it is open to the son to treat the property as joint family property at any time he likes and therefore, the assessee has treated the property as the joint family property. He also relied upon a decision of the Supreme Court in *CWT v. Chander Sen* (1987) 161 ITR 370 and submitted that though the property was originally a joint family property, it became an absolute property by virtue of section 8 of the Hindu Succession Act.

13. The next decision that was relied upon by the learned counsel for the assessee is the decision of Patna High Court in *CIT v. Maharaja Chinatamani Saran Nath Sah Deo* (supra) wherein the Patna High Court held that, after the introduction of Hindu Succession Act, 1956, section 4 of the Act would prevail over the custom and the custom as regards the impartible estate ceased to be in operation upon the enactment of the Hindu Succession Act and the property would become joint family property.

14. We are of the view that a study of various decisions clearly shows that in the impartible estate the joint family was the owner and the estate retains the character of joint family atleast to the extent of right of survivorship and the property, though joint family property, is clothed with the incidents of self-acquired property. On the enactment of Estates Abolition Act certain statutory rights flow in favour of the members of the family. The members of the family prior to the Estates Abolition Act have no right in praesenti over the property belonging to the impartible Estate. But, the Estates Abolition Act treats the property as joint family property and the Act also deems that there was a partition in the joint family for the allotment and the property was allotted to the sharers existing on the notified date. In other words, the statute deems that there was not only a division of status, but there was also a division of properties as regards the property which was the subject-matter of Estates Abolition Act. Just before the Estates Abolition Act, the character of the property was joint family property though clothed with incidents of self-acquired property, and after the Estates Abolition Act the same right continues and when the assessee received the compensation by virtue of the provisions of section 45 of the Estates

Abolition Act, it must be deemed that he received the property on partition. No doubt, it is true, it was a statutory partition, but it was still a partition in the sense that there was a division of status among the members of the family and the division of the property in so far as the compensation amount is concerned. The property was not received by virtue of self-acquisition, but the assessee received it only by virtue of right of being a member in the family. In other words, the source of the property was ancestral and it was not derived by his self-acquisition. Since the source was ancestral, it is a divided property in his hands though he has absolute dominion over the property in question. It is only in this context, the Supreme Court and the Andhra Pradesh High Court have held that it was his absolute property and when a son was born, his son also took an interest in the property by virtue of his birth.

15. That apart, even assuming that the property was an impartible estate in his hands, when the compensation amount was received, it ceased to be impartible estate on the enactment of Hindu Succession Act. The decision of the Gujarat High Court in *Paratap Sinhji N. Desai v. CIT* (supra), the decisions of Punjab High Court in *Hans Raj Basant Ram Vs. Dhanwant Singh Balwant Singh*, and *Taro Vs. Darshan Singh and Others*, and a decision of Patna High Court in *CIT v. Maharaja Cintanmani Saran Nath Sah Deo* (supra) are all authorities for the proposition that after the enactment of the Hindu Succession Act, the impartible estate's character is lost over the estate and the property would become joint family property.

16. Further, when the assessee expressed his intention to treat his property as joint family property right from the date he obtained the compensation, it would take effect from the date of the birth of his son as the composition of the family has changed and from the year 1968, the property would become joint family property.

17. Even assuming that the contention of the learned counsel for the revenue that the assessee expressed his intention only in the return filed in 1976 is accepted, it has to be taken that the intention was not from the date when the return was filed, but with reference to the income of the particular assessment years, viz., 1967-68 and 1968-69. Therefore, the decision of the Supreme Court in *Surjit Lal Chhabda v. CIT* (supra) which deals with a case of throwing of the self-acquired property into family property where the family consisted of himself, his wife and his unmarried daughter has no application as the character of the property was not ancestral property, but it was a separate property. After the enactment of the Hindu Succession Act, the assessee was deemed to be holding the property as joint family property in his hands and when he got married, the assessee would be deemed to be holding the property as the joint family property.

18. Viewed from any angle, the order of the Tribunal holding that the income derived by the assessee out of the compensation received under the Madras Estates (Abolition & Conversion into Ryotwari) Act, 1948 and the compensation

received should be assessed in the hands of the HUF is in order and there is no legal infirmity in the view taken by the Tribunal. Accordingly, we answer the common question of law in all the tax cases in the affirmative and against the Revenue. However, in the circumstances of the case, there will be no order as to costs.