

(1949) 03 BOM CK 0039

In the Bombay High Court

Case No : Income-tax Ref. No. 29 of 1948

Commissioner of Income Tax

APPELLANT

Vs

S.N. Bhayya

RESPONDENT

Date of Decision : 25-03-1949

Acts Referred:

Income Tax Act, 1922 — Section 9, 9(1)

Citation : AIR 1950 Bom 26

Hon'ble Judges : Chagla, C.J.;Tendolkar, J

Bench : Division Bench

Advocate : G.N. Joshi, for the Appellant; Jamsedhji Kanga, for the Respondent

Judgement

Chagla, C.J.—The assessee Mr. Bhayya was assessed for the assessment year 1914-45 as a Hindu undivided family. He was under an obligation to pay a sum of Rs. 500 per month to his mother as maintenance, and this obligation was crystallized by a decree of the Court which gave to the widow a charge on the joint family properties in respect of this maintenance. Having paid this maintenance pursuant to the decree, the assessee claimed the payment as a permissible allowance u/s 9(1)(iv), Income Tax Act. The Tribunal took the view that this was a permissible deduction, and the Commissioner of Income Tax has come before us on a reference.

2. In a very recent decision reported in Prince Khanderao Gaekwar v. Commissioner, I.T. 50 Bom.L.R. 368: AIR 1949 Bom. 17 we laid down that the test to be applied u/s 9(1)(iv) was whether the property was subject to a valid and legal charge which could be enforced in a Court of law under which the assessee was bound to pay a certain amount recurring annually. Now, in this case it is not disputed that this is an annual charge not being a capital charge and the assessee is bound to pay under a decree of the Court. But an ingenious argument has been urged by Mr. Joshi on behalf of the Commissioner that the distinguishing feature in this case is that the liability to pay the charge is upon the Hindu undivided family to a member of the family and, therefore, Section

9(1)(iv) has no operation. A Hindu undivided family can be assessed to tax under the Income Tax Act as a unit and the assessee has been so assessed in the year of assessment. It is perfectly true that a Hindu widow, although she is not a member of the coparcenary, is a member of the joint and undivided Hindu family in her capacity as the widow of a coparcener. It is also true that a Hindu widow is entitled to receive maintenance out of the income and property of the joint undivided family. Now, the argument of Mr. Joshi is put in this way; he says that the assessee is the Hindu undivided family, that the charge is in favour of a member of the Hindu undivided family; and according to him, there cannot be a charge in favour of the assessee himself which could come within the ambit of Section 9(1), Sub-clause (iv). Mr. Joshi looks upon the Hindu widow in this case as being the assessee herself being a member of the Hindu undivided family. Now the fallacy underlying this argument is this. It is true, as I have stated earlier, that the widow is a member of the Hindu undivided family ; but she has no proprietary interest whatsoever in the property or income of the Hindu undivided family. It could never be said of a Hindu widow until recent legislation came into force that she had any share in any property belonging to a joint Hindu family. Her only right consisted of receiving maintenance out of the income and property and, therefore, the assessee who is the Hindu undivided family whose income is liable to tax is entirely a different entity from the widow who has no interest in its property or income but is only interested in recovering maintenance out of it; and, therefore, it is erroneous to suggest that the charge in favour of the widow is a charge in favour of the assessee himself.

3. Mr. Joshi has relied on a decision of this Court which was delivered before Section 9(1)(iv) was incorporated in the Act, and that is a decision reported in *Commissioner of Income Tax, Bombay v. Makanji* 39 Bom. L. R. 907: AIR 1937 Bom. 479. In that case Sir John Beaumont held that in computing the income of a Hindu undivided family for purposes of Income Tax, moneys paid to the widow of a deceased coparcener of the family as maintenance and residence allowance cannot be deducted, even though the amount of such allowance has been fixed by a decree of the Court and has been made a charge on properties belonging to the family. The question that the Court was considering there was whether the income had been diverted before it reached the hands of the assessee and the Court held that there was no such diversion. The income had been received by the assessee and the payment had been made out of that income and, therefore, no exemption could be claimed. As I have stated earlier, no question arose with regard to the exemption u/s 9(1)(iv) of the Act.

4. Mr. Joshi has also relied on a decision of the Privy Council reported in *Commissioner of Income Tax v. Bhagwati* 49 Bom. L. R. 678: A. I. R. 1947 P. C. 143, and that decision lays down two propositions which, with great respect, are unexceptional, and those two propositions are that the widow of a deceased coparcener is a member of a joint Hindu family and she is entitled to receive maintenance out of the property and income belonging to the joint family. On that the Privy Council held that she was entitled to claim exemption u/s 14(1).

But the question we have really to consider is whether looking to the plain language of Section 9(1)(iv) the Legislature intended to make any exception in respect of an assessee who happens to be a Hindu undivided family. The deduction which is permitted u/s 9 is permitted to all assesseees and the only condition that has to be satisfied is that there is an annual charge which is valid and legal and which can be enforced against the owner of the property. It is not disputed in this case that the assessee is the owner of the property on which the charge has been fixed. It is not disputed that it is an annual charge, nor is it disputed that it is a valid and legal charge, and I see no reason why any exception should be grafted on this section to the effect for which Mr. Joshi is contending. I am therefore of the opinion that the deduction has been properly claimed by the assessee u/s 9(1)(iv) of the Act.

5. We must, therefore, answer the question submitted to us in the affirmative.

6. Commissioner to pay the costs.

Tendolkar, J.

7. I. agree.