

(1973) 11 PAT CK 0004
In the Patna High Court
Case No : Tax Case No. 19 of 1969

Commissioner of Wealth Tax

APPELLANT

Vs

Pannalal Rastogi

RESPONDENT

Date of Decision : 22-11-1973

Acts Referred:

Wealth Tax Act, 1957 — Section 3

Citation : (1974) 96 ITR 110

Hon'ble Judges : N.L. Untwalia, C.J.;Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : Shambhu Saran, for the Appellant; Chunni Lal and L.N. Rastogi, for the Respondent

Judgement

Untwalia, C.J.—The Income Tax Appellate Tribunal, Patna Bench, has drawn up a statement of the case and referred to this court u/s 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as "the Act"), the following question of law :

" Whether, on the facts and circumstances of the case, the correct status of the assessee is that of a Hindu undivided family ? "

2. For determination of this question the only facts which are necessary to be stated are these. Shri Pannalal Rastogi, the assessee in this case, on partition of his erstwhile joint family, received properties which constituted his wealth for the purpose of wealth-tax under the Act. At the time of partition and also of assessment, the assessee's family consisted of himself and his wife. There was no issue, either male or female. In these circumstances, the question for consideration before the Appellate Tribunal was whether for the purpose of Section 3 of the Act the assessee's status could be taken to be as a Hindu undivided family, as shown by him in his return, or whether his status was rightly taken to be as that of an individual by the Wealth-tax Officer, as affirmed by the Appellate Assistant Commissioner. The Tribunal followed the Bench decision of this court in Miscellaneous Judicial Case No. 193 of 1962 decided on 6th December, 1965, which decision is now reported in Panna Lal Rastogi Vs.

Commissioner of Income Tax, . This was the case of the same assessee in respect of an earlier period. Facts, as mentioned in paragraph 4 of the report, are identical. This court held that even though the family of the assessee at the time of partition consisted of himself and his wife, the assessment must be in respect of the ancestral property of the assessee in the status of a Hindu undivided family and not as an individual. Although the point was covered directly by a decision of this court, the Appellate Tribunal felt persuaded to make a second reference to this court on the same point, as perhaps the point, in its opinion, was not free from difficulty.

3. The learned standing counsel for the revenue submitted that the Bench decision of this court was contrary to the decisions of the Supreme Court in T.S. Srinivasan Vs. Commissioner of Income Tax, Madras, and another decision of the said court in N.V. Narendranath Vs. Commissioner of Wealth-tax, Andhra Pradesh, . Learned counsel also drew our attention to another Bench decision of this court in HANUMANMAL PERIWAL Vs. COMMISSIONER OF WEALTH-TAX, BIHAR and ORISSA., and to a decision of the Bombay High Court in Surjitlal Chhabda Vs. Commissioner of Income Tax, Bombay City-I, where the Bench decision of this court in the case of this assessee has not been followed. Mr. Chunni Lal, learned counsel for the assessee, submitted that the decision of this court in Panna Lal Rastogi v. Commissioner of Income Tax is correct and is binding on us. In this submission, no Supreme Court decision has laid down any principle which can, by necessary implication, be said to have overruled the ratio of the Bench decision of this court. Learned counsel for the assessee further submitted that on the other hand the Bench decision of this court in the case of Hanumanmal Periwai must be deemed to have been overruled by the Supreme Court in the case of N. V. Narendranath.

4. The point at issue is not free from difficulty. In such a situation, as at present advised, the decision of this court in Panna Lal Rastogi v. Commissioner of Income Tax is binding on us and I have got to follow it. It is well settled that the concept of a joint Hindu family is wider than that of a coparcenary. Coparcenary is a narrower unit. It is undoubtedly a joint family, but a joint Hindu family may exist even if there is no other male coparcener and there is only one male person. " Joint Hindu family " has been described thus :

" A joint Hindu family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters " (vide Section 212 at page 240 of Mulla's Hindu Law, thirteenth edition). This description or, if I may call it, definition of a joint Hindu family has been adopted by Shah J. (as he then was) in the case of Gowli Buddanna Vs. Commissioner of Income Tax, Mysore, Bangalore, . Ramaswami J, has referred to the same description of a joint Hindu family at page 193 in the case of N. V. Narendranath. It is, therefore, clear that a joint Hindu family is in existence if there are persons lineally descended -from a common ancestor, and the wives of male members and their unmarried daughters also are included in the expression " joint Hindu family ",

although they may not be coparceners. It has been repeatedly pointed out in various decisions, some of which will be adverted to by me later in this judgment, that a joint Hindu family does not cease to be in existence for the purposes of the Income Tax Act or the Wealth-tax Act by the death of a person, even though the death may be of the sole male member. Such a view has been taken, as it appears, because of two reasons, first, that so long as there is the possibility or potentiality of the birth or adoption of a person in the family the surviving member or members of the family which undoubtedly on such birth or adoption constitutes a joint Hindu family, a family which was in existence just before the death of a person, a family which may undoubtedly come into existence by birth of a person, should not be allowed to be ended by legal fiction for the interregnum. The second reason given in some of the decisions is that even the female members constituting the joint family before the death of a male member were entitled to maintenance, and in some cases, the property of the joint family was impressed with a charge for maintenance. I should have thought that the same principle will not apply in case of partition. If there is a severance of status and partition of an existing joint Hindu family, the family which is in existence just before partition disrupts, comes to an end ; new families spring up. It is not a question of continuance of the old joint family. The question in such a situation would be whether the new families in each branch can be said to be a joint Hindu family by applying the test given in the description or definition of the joint Hindu family in Mulla's Hindu Law adopted by the Supreme Court in the various decisions. I would think that if the new family which comes into existence on disruption of the old joint family does not fulfil the test embodied in the said description then even though such a family in future may have a chance or potentiality of becoming a joint Hindu family, but before it so becomes and after partition, on the theory of continuance of the old joint family, such a family cannot be treated as a joint Hindu family. It would thus be seen that if on the date of death of a person who was a member of a joint Hindu family, the surviving members are only the husband and the wife, then in case of death it will be termed as a joint Hindu family, because by death the family does not disrupt. The chance and potentiality of becoming a full-fledged joint Hindu family in future is very much there. But, suppose, there are two brothers forming a joint Hindu family being coparceners having their wives as members of the joint Hindu family and one of them having a son or daughter also but the other being childless, then on partition between the two brothers, the joint family consisting of them, which family included their wives and children, comes to an end. The two new families which come into existence are, in case of one brother, he, his wife and his son or daughter, in the case of the other brother, he and his wife alone. The family of the first brother fulfils the tests of the definition of the joint Hindu family, while the family of the other does not. When there is a son or a daughter, then both the father and the child are lineally descended from a common ancestor, namely, the grand-father of the child. But when the pair is issueless, the husband and the wife alone cannot fulfil that test, although the possibility and potentiality of the wife giving birth to a son or the spouse

adopting a child in future is there, but the new family which comes into existence on partition is not a joint Hindu family.

5. In the case of N. V. Narendranath, it has been clearly laid down by the Supreme Court that a family consisting of husband, wife and their two daughters at the time of partition is surely a Hindu undivided family for the purpose of taxation law. The Bench decision of this court in the case Hanumanmal Periwai is contrary to that decision. There is, therefore, no doubt that the decision in the case of Hanumanmal Periwai stands over ruled by the decision of the Supreme Court in N. V. Narendranath's case. But, in this case, we are not concerned with the family in which there was a daughter of the assessee on the date of partition. Here, on the date of partition, the family consisted of the husband and wife alone. If the point would have been *res integra*, on a careful consideration of the matter, I would have perhaps persuaded myself to take the view that the status of the assessee could not be that of a Hindu undivided family in this case. But, I shall presently show that the Bench decision of this court finds some support from the decision of the Supreme Court in the case of N, V. Narendranath. There are some matters in the decision of the Supreme Court in the case of T. S. Srinivasan which may throw a doubt on the correctness of the Bench decision of this court. In such a situation, as I have said above, it is just and proper to follow the Bench decision which is binding on us.

6. In *Attorney-General of Ceylon v. Ar. Arunachalam Chettiar* (No. 2), [1957] A.C. 540 : [1958] 34 ITR 42, 45 (P.C) following the earlier decisions of the Privy Council, the Judicial Committee has reiterated the view that a Hindu family cannot be finally brought to an end while it is possible in nature or law to add a male member to it. A few lines were quoted with approval from the judgment of Gratiaen J. of the Supreme Court of Ceylon at page 543, and they are to the following effect :

" To my mind it would make a mockery of the undivided family system if this temporary reduction of the coparcenary unit to a single individual were to convert what was previously joint property belonging to an undivided family into the separate property of the surviving coparcener."

7. It is to be noticed, however, that this was a case where the father, the sole surviving coparcener of a Hindu undivided family to which also a number of females belonged, had died. The continuity of the family was preserved after the father's death by the adoptions, and in such a situation it was held that there was no break in the status of the Hindu undivided family.

8. The decision of the Supreme Court in T. S. Srinivasan's case throws some doubt on the correctness of the Bench decision of this court. In the partition of a Hindu undivided family the assessee received certain shares in a private company and with these shares as nucleus he acquired house properties, shares and deposits. His first son was born on December 11, 1952. The accounting year in question was from 1st April, 1952, to 31st March, 1953. It was clear that the

son of the assessee, whose family at the time of partition consisted of himself and his wife, was in the womb of the wife, but actually it was born many months later, in December, 1952. Mr. A. V. Visvanatha Sastri, learned senior advocate for the assessee, who, if I may say so with utmost respect, was considered to be a lawyer having mastery in Hindu law, did not advance the argument that on partition the family consisting of the husband and the wife itself could be treated as a Hindu undivided family. The whole of the argument advanced before the Supreme Court and which was rejected was on the theory of the son's right as a coparcener from the date he is conceived in the womb : and in that connection at the end Sikri J. (as he then was), delivering the judgment on behalf of the court, said at page 40 :

" When the income and profits arose, they belonged to the assessee, as no Hindu undivided family was then in existence, This position cannot be displaced by the birth of the son, which brought into existence a Hindu undivided family."

9. The sentences extracted above would indicate that a new family coming into existence after the partition and disruption of the old joint family, if it consists only of the husband and the wife, cannot be characterised as a Hindu undivided family. But this case was distinguished by Ramaswami J. in the case of N. K. Narendranath, and Shah J. (as he then was), a member of the Bench in both the cases.

10. The same Bench which decided T. S. Srinivasan's case on November, 29, 1965, decided the case of Gowli Buddanna on January 10, 1966. One Buddappa, his wife, their two unmarried daughters and an adopted son, Buddanna were members of a Hindu undivided family. Buddappa died on July 9, 1952. In respect of the business dealings of the family, Buddappa was being assessed during his lifetime in the status of a manager of the Hindu undivided family. In such a situation a question arose as to whether the sole male surviving coparcener of a Hindu joint family, his widowed mother and sisters constituted a Hindu undivided family within the meaning of the Income Tax Act. The High Court held that it was so. On appeal, the Supreme Court affirmed the view of the High Court. The decision of the Privy Council in a case, Commissioner of Income Tax v. A.P. Swamy Gomedalli [1937] 5 ITR 416 (P.C.) which had gone from the decision of the Bombay High Court in The Commissioner of Income Tax Vs. Gomedalli Lakshminarayan, was not followed and that of the Board in Ar. Arunachalam Chettiar's (No. 2) case was followed. It would be noticed that this was a case of continuance of a Hindu undivided family on the death of one of the coparceners and not a case of partition,

11. The decision of the Bombay High Court in the case of Surjitlal Chhabda is clearly distinguishable. The learned Chief Justice of the Bombay High Court thought, as mentioned by him at page 477, that in view of the decision of the Supreme Court in N. V. Narendranath's case, the Patna case does not seem to have been correctly decided. With very great respect, I venture to say that there is nothing in the decision of the Supreme Court in N. V. Narendranath's case

which shakes the correctness of the Bench decision of this court; rather, the few lines which I have extracted below from that judgment itself lend support to that view. If at all the correctness of that decision is in doubt, it is so in view of the earlier decision of the Supreme Court in T. 5. Srinivasan's case. But that apart, the case before the Bombay High Court was not of a property in the hands of an assessee belonging to the joint family. The property, as said at page 479, was admittedly the self acquired property of the assessee before his declaration, and hence it was obvious that it was never a joint family property in its origin and, therefore, could not partake of the character of joint family property in his hands.

12. In N. V. Narendranath's case, however, Ramaswami J. has said at page 197 :

" Applying this test it is clear, though in the absence of male issue the dividing coparcener may be properly described in a sense as the owner of the properties, that upon the adoption of a son or birth of a son to him, it . would assume a different quality. It continues to be ancestral property in his hands as regards his male issue for their rights had already attached upon it and the partition only cuts off the claims of the dividing coparceners. The father and his male issue still remain joint. The same rule would apply even when a partition had been made before the birth of the male issue or before a son is adopted, for the share which is taken at a partition by one of the coparceners is taken by him as representing his branch. Again, the ownership of the dividing coparcener is such " that female members of the family may have a right to maintenance out of it and in some circumstances to a charge for maintenance upon it " : [see Arunachalam's (No. 2) case]. It is evident that these are the incidents which arise because the properties have been and have not ceased to be joint family properties. It is no doubt true that there was a partition between the assessee, his wife and minor daughters on the one hand and his father and brothers on the other hand. But the effect of partition did not affect the character of these properties which did not cease to be joint family properties in the hands of the appellant. "

13. Applying the principle of law enunciated by the Supreme Court in the above quotation, it would appear that the Bench decision of this court is correct. But the distinction becomes patent by the next sentence in the judgment of the Supreme Court at page 198, which runs thus :

" Our conclusion is that when a coparcener having a wife and two minor daughters and no son receives his share of the joint family properties on partition, such property in the hands of the coparcener belongs to the Hindu undivided family of himself, his wife and minor daughters and cannot be assessed as his individual property."

14. The ratio of the decision of the Supreme Court in Gowli Buddanna's case was applied to the case of partition also. The family consisted of the husband, the wife and two minor daughters. Whether in the absence of the daughters the same principle could have been applied to a case of partition is not very clear to me. In such a situation, as I have said above, it is legitimate and proper to follow

the earlier Bench decision of this court in Panna Lal Rastogi v. Commissioner of Income Tax, and following the said decision, I answer the question referred to this court in the affirmative in favour of the assessee and against the department. It is held that, on the facts and in the circumstances of this case, the correct status of the assessee is that of a Hindu undivided family for the assessment year in question, namely, 1961-62, for the purposes of Section 3 of the Act. There will be no order as to costs.

Nagendra Prasad Singh, J.

15. I agree.