

(1986) 04 PAT CK 0024

In the Patna High Court

Case No : Taxation Case No. 109 of 1971

Deo Narayan Bhadani and Others

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 17-04-1986

Acts Referred:

Income Tax Act, 1961 — Section 254(2), 256(2)

Citation : (1986) 58 CTR 157 : (1987) 164 ITR 501

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

Bench : Division Bench

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

Judgement

Nazir Ahmad, J.—A statement of the case has been submitted by the Income Tax Appellate Tribunal, "B" Bench, Patna (hereinafter referred to as "the Tribunal"), u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), referring the following two questions for the opinion of this court:

"1. Whether, on the facts and in the circumstances of the case, the deposit of Rs. 2,77,471 in the Bharat Bank on January 19, 1951, is an unexplained income ?

2. Whether, on the facts and in the circumstances of the case, the deposit of Rs. 2,77,471 in Bharat Bank on January 19, 1951, in the name of Bandhan Ram Bhadani is taxable in the hands of the Hindu undivided family Bandhan Ram and Sons ?"

2. It appears that a supplementary statement of the case was called for from the Tribunal and a supplementary statement of the case was furnished along with the amended order as passed by the Tribunal u/s 254(2) of the Act, which is annexure A to the supplementary statement of the case. In the supplementary statement of the case, the amount was wrongly mentioned as Rs. 2,77,472 and question No. 1 which was not called for by this court u/s 256(2) was also referred. Question No. 1 is to the following effect in the supplementary

statement of the case:

"Whether, on the facts and in the circumstances of the case, the Tribunal has committed errors of record which has vitally vitiated the findings of fact ?"

3. This question was never called for by this court, as it will appear from page 44 of the paper book where questions were specifically mentioned. Hence, the aforesaid question No. 1 which was not called for by this court has to be ignored and in questions Nos. 2 and 3, which are relevant questions before us, the amount has been wrongly mentioned in the supplementary statement of the case.

4. The relevant facts of the case may be culled from the statement of the case read with annexure A of the supplementary statement of the case which has incorporated the entire order of the Tribunal as amended u/s 254(2) of the Act.

5. The assessee-petitioner is a Hindu undivided family of which Shri Bandhan Ram is the karta. A sum of Rs. 2,77,471 was deposited in the name of Shri Bandhan Ram on January 19, 1951, in the Bharat Bank Ltd., Calcutta. Shri Bandhan Ram was asked to explain the source of the deposit. The explanation given was found to be unsatisfactory and the amount was assessed by the Income Tax Officer as income from undisclosed sources and this was confirmed in appeal by the Appellate Assistant Commissioner and then an appeal was filed before the Tribunal.

6. It appears that there were withdrawals of the following amounts on the following dates :

(i) June 20, 1947 Rs. 2,25,000

Being encashment of the deposit made with the Exchange Bank, Colombo, by Shri Jhari Ram Bhadani on January 18, 1947.

(ii) July 14, 1947 & August 18, 1947 Rs. 2,29,340

Being repayment of half of the deposit of Chandelijit Saheba made with C. H. Ltd. in 1946.

(iii) December 31, 1947 Rs. 2,00,000

Being encashment of the deposit made with the Exchange Bank at Jafra, Colombo, by Shri Jhari Ram Bhadani on January 15, 1947.

(iv) February 17, 1948 Rs. 1,00,000

Being encashment of the deposit made with the Bengal Central Bank Ltd. in the name of Dhrub Narain Prasad in May, 1946.

(v) March 24, 1948 Rs. 1,32,398

Being repayment of half of the deposit of Chandelijit Saheba made with C. H. Ltd. in January, 1947.

Rs. 8,86,738

7. The case of the assessee is that the investment of Rs. 2,77,471 in the Bharat Bank Ltd. on January 19, 1951, came out of the withdrawals of Rs. 8,86,738 made between June 20, 1947, to March 24, 1948. The question for consideration was whether this explanation of the assessee can be accepted.

8. A written explanation was filed before the Income Tax Officer. The Income Tax Officer had given several adjournments and after that a written explanation was filed and it was submitted before the Income Tax Officer that the amount in question was fully covered by the disclosure made by Darshan Ram before the Income Tax Investigation Commission (hereinafter referred to as "the Commission") inasmuch as it was included in the sum of Rs. 10 lakhs shown under the head "Miscellaneous" and which matter was concluded by their report dated September 12, 1951, by a further addition of an identical sum of Rs. 2,77,000 for personal expenses on the ground that the acceptance of the sum of Rs. 10 lakhs would not leave adequate money for such expenses. To verify the correctness of the statement, a reference was made to the appropriate authority with the result that it has now been found after receipt of the report that neither the original nor the revised disclosure statements of the assessee included this deposit of Rs. 2,77,471. The Income Tax Officer, therefore, held that the assessee's contention that the sum of Rs. 10 lakhs shown under the head "Miscellaneous" in the original disclosure included this sum of Rs. 2,77,471 and hence the Commission held that since the balance left after taking into account all their deposits and investments would not be adequate to meet the personal expenses and an identical sum of Rs. 2,77,000 was added towards it, is rather fanciful and does not appear to have been based on facts. The Income Tax Officer found that the reasons for estimating the personal expenses at Rs. 2,77,000 were altogether different and have been clearly mentioned in paragraph 34 of the authorised official's second report, an extract of which the Income Tax Officer has given. The Income Tax Officer has found on the basis of the report that the deposit of Rs. 2,77,471 made by the assessee into the Bharat Bank Ltd., Calcutta, on January 19, 1951, did not figure anywhere in the calculation made by the authorised official. The Income Tax Officer, therefore, made this addition of Rs. 2,77,471 as income from undisclosed sources.

9. When the matter went before the Appellate Assistant Commissioner, it was contended before him (Appellate Assistant Commissioner) that the deposit of Rs. 2,77,471 had already been taken into account by the Commission in their report dated September 12, 1951, and by the Directors of Inspection (Investigation) in the settlement arrived at on the basis of their report dated November 30, 1959. In particular, it was stated that this deposit is included in the sum of Rs. 10,00,000 shown under the head "Miscellaneous" in the disclosure petition. The Appellate Assistant Commissioner has pointed out that the scrutiny of the report of the Commission shows that the undisclosed income of the Darshan Ram Group of which the assessee formed part was arrived at Rs. 79,84,330 and there is

nowhere any indication that this deposit of Rs. 2,77,471 was included in that sum. The Appellate Assistant Commissioner also pointed out that in paragraph 26 of the report, the Commission says that the sum of Rs. 79,84,330 must be considered to have been earned in the years 1939 to 1946. The Appellate Assistant Commissioner also took the view that it is idle to contend that this deposit made in 1951 was considered in determining the income earned from 1939 to 1946. It was argued before the Appellate Assistant Commissioner that the deposit in question corresponds to the sum of Rs. 2,77,000 mentioned at page 16 of the report as forming part of the escaped income but this statement is without any basis as it was seen that the sum of Rs. 2,77,000 in question is shown as representing the personal expenses of Jhari Ram till 1947 met out of undisclosed profits. Before the Appellate Assistant Commissioner, it was further stated that as the Directors of Inspection have not sent any reply to the assessee's query regarding the specific allocation out of Rs. 10,00,000 mentioned in the authorised official's report quoted in the assessment order, it should be held that this included the deposit in question. The Appellate Assistant Commissioner took the view that it is not understood as to how a conclusion follows from the alleged silence of the directors. Moreover, the directors have written to the Commissioner of Income Tax, Bihar, stating that the deposit under consideration in that appeal had not been considered in the settlement arrived at. The Appellate Assistant Commissioner, therefore, rejected this contention.

10. Before the Appellate Assistant Commissioner, it was also argued that this deposit is covered by the receipts of cash or other funds amounting to Rs. 8,86,738 by the Darshan Ram Group between June 20, 1947, and March 24, 1948, as per details given in the written explanation of the assessee before the Income Tax Officer which is annexure 1, at page 4 of the paper book. The Income Tax Officer dealt with this aspect of the matter fully in his remand report and the Appellate Assistant Commissioner held that there is nothing to show any co-relation between the deposit on January 19, 1951, and the drawing which ended on March 24, 1948. The Appellate Assistant Commissioner took the view that a person who can spend more than Rs. 6,00,000 between 1948 and 1951 could also have easily spent away the balance of less than Rs. 3 lakhs. The Appellant Assistant Commissioner also took the view that in the absence of any evidence to show that the money in question was unspent during this period, the assessee's explanation could not be accepted. The Appellate Assistant Commissioner, therefore, upheld the addition.

11. The assessee-Hindu undivided family then appealed before the Tribunal and the Tribunal originally passed an order dated June 15, 1970, disposing of the appeal, vide annexure C, and as there were some mistakes in the order, the Tribunal passed another lengthy order u/s 254(2) of the Act making certain rectifications in the original order.

12. This court subsequently directed the Tribunal to submit a supplementary statement of the case along with a copy of the order as it stood after amendment

u/s 254(2) of the Act and so annexure A was submitted along with the supplementary statement of the case. Under such circumstances, I will refer only to the order contained in annexure A as it stands after amendment.

13. The first contention of the assessee before the Tribunal was that the amount in question was fully covered by the disclosure made by the Darshan Ram Group before the Commission. In the original disclosure made by Darshan Ram Group, a sum of Rs. 10 lakhs was shown under the head "Miscellaneous". The Commission held that since the balance left after taking into account all the deposits and investments could not be adequate to meet the personal expenses, a sum of Rs. 2,77,000 was added by the Commission. The plea of the assessee was that the amount in question was fully covered by the disclosure made. The Tribunal has pointed out that the Income Tax Officer had made a reference to the appropriate authorities and it was found that neither the original nor the revised disclosure statement of the assessee included the deposit of Rs. 2,77,471. The Tribunal has also pointed out that the amount of Rs. 8,86,738 was withdrawn in between June 20, 1947, and March 24, 1948, as already mentioned above. The Tribunal took the view that it is not clear as to how the amounts withdrawn between June 20, 1947, and March 24, 1948, could have been utilised for personal expenses for the assessment years 1944-45, 1945-46 and 1946-47. Apart from paragraph 34 of the authorised officials' second report, it shows that the expenditure for the period 1944-45 to 1946-47 was estimated at Rs. 6 lakhs and the finding was that the expenditure was obviously met out of the secret profits. The Tribunal took the view that in view of this finding, the plea of the assessee that out of the withdrawals of Rs. 8,86,738, the sum of Rs. 3,53,520 went towards the personal expenses for the assessment years 1944-45 to 1946-47 does not stand to reason.

14. It was conceded before the Tribunal that in the assessment years 1944-45 to 1946-47, the authorised representative estimated the expenditure at Rs. 6 lakhs and the finding is that it has been met from the secreted profits and that for the expenditure incurred for the assessment years 1947-48 to 1950-51, there was sufficient withdrawal to cover the expenditure. It was argued before the Tribunal that the amount of Rs. 8,86,738 withdrawn was available intact out of which the deposit of Rs. 2,77,471 was made in the Bharat Bank Ltd. on January 19, 1951. The Tribunal asked the advocate for the assessee to explain that if the sum of Rs. 8,86,738 remained intact out of which the deposit of Rs. 2,77,471 was made in the Bharat Bank, Ltd., then what happened to the balance amount, but the advocate for the assessee was unable to give any answer. Hence, the contention of the advocate for the assessee was not accepted.

15. The Tribunal considered the case of the assessee that withdrawal of Rs. 8,86,738 constituted the source for deposit in the Bharat Bank Ltd. The Tribunal held that this withdrawal was by the Darshan Ram Group and the assessee-Hindu undivided family had only 1/4th interest in this amount and so there can be no co-relation between the deposits made on January 19, 1951, and the

withdrawals made from June 20, 1947, to March 24, 1948. The Tribunal also considered that the withdrawals were made between June 20, 1947, and March 24, 1948, and the deposit in the Bharat Bank Ltd. was made on January 19, 1951, and so there was a time-lag of nearly three years between the withdrawal and the deposit. The report of the authorised official showed that Shri Jhari Ram Bhadani, the karta of another smaller Hindu undivided family lived a luxurious life and spent huge amounts, and the expenditure on account of racing, insurance of race horse, purchase of furniture and charities were expenditure on the members of the family and that he had incurred a huge expenditure for the assessment years 1947-48, 1948-49 and 1949-50. The amounts of expenditure debited in the personal account of Shri Jhari Ram Bhadani, the karta of the said Hindu undivided family, for these years were Rs. 1,36,379 for 1946-47, Rs. 5,31,860 for 1948-49 and Rs. 3,07,848 for 1949-50. The Tribunal, therefore, held that the assessee's explanation regarding source of deposit made in the Bharat Bank Ltd. is not only unsatisfactory but deliberately false and the assessment of the same as income of the assessee from undisclosed sources is perfectly legal and justified.

16. It was also contended before the Tribunal that the deposit was in the name of Bandhan Ram and it should not be considered in the assessment of the assessee-Hindu undivided family of which Bandhan Ram is the karta. The Tribunal agreeing with the Appellate Assistant Commissioner held that the contention of the assessee is not tenable in view of the fact that Bandhan Ram in his explanation for the source of the deposit has affirmed that the same is fully covered by the disclosure made by Darshan Ram Group before the Commission. However, in the disclosure petition filed by Darshan Ram Group, all deposits in the name of Bandhan Ram were shown as belonging to the family. The Tribunal took the view that Bandhan Ram is the karta and so the deposit has been made in his name and so the deposit has to be considered in the assessment of the Hindu undivided family of Bandhan Ram and Sons. The Tribunal, therefore, dismissed the appeal.

17. As regards the addition of Rs. 2,77,471, the Income Tax Officer, the Appellate Assistant Commissioner and the Tribunal have all held that this amount was not available either out of the amount of Rs. 10 lakhs or out of the withdrawals of Rs. 8,86,738 between June 20, 1947, and March 24, 1948, and this is a finding of fact recorded by all the three lower authorities and so this court cannot come to a different finding on the same materials on record. All the three authorities have discussed fully and examined the report and, on that basis, they have clearly come to a finding that the amount of Rs. 2,77,471 could not be available either out of the amount of Rs. 10 lakhs or out of the amount of Rs. 8,86,738. The reasons given by the three lower authorities are cogent and they have to be accepted.

18. Mr. K.N. Jain, for the assessee, has relied on the order of the Tribunal u/s 254 of the Act which is annexure 2 and is available at pages 16 to 19 which

shows that the Tribunal modified the earlier order of the Tribunal u/s 254 of the Act and it was in view of this position that the supplementary statement of the case was called for in which annexure A contains the full order as amended u/s 254 of the Act. Mr. K.N. Jain has also referred to the decision of this court in CWJC No. 311 of 1973 for the purpose of pointing out the differences between the original order and the rectified order at pages 51 to 64 which is annexure 6 in CWJC No. 311 of 1973. It cannot be doubted that the order as amended u/s 254(2) has to be seen and not the original order. Mr. K.N. Jain pointed out certain contradictions in the two orders and referred to CWJC No. 311 of 1973. That application was withdrawn, vide order dated September 3, 1982, and it is not possible to hold that the order of the Tribunal is vitiated because of some minor discrepancies between the original order and the order as amended u/s 254(2) of the Act.

19. Mr. K.N. Jain, for the assessee, has relied on the case of Anantharam Veerasinghaiah and Co. Vs. Commissioner of Income Tax , Andhra Pradesh, , which is a decision of their Lordships of the Supreme Court, where it has been held that when an "intangible" addition is made to the book profits during an assessment proceeding, it is on the basis that the amount represented by that addition constitutes the undisclosed income of the assessee and that income, although commonly described as "intangible", is as much a part of his real income as that disclosed by his account books and that it has some concrete existence and it could be easily available to the assessee as the book profits could be. However, in this decision, it has also been observed that in each case, true nature of the cash deficit and cash credit must be ascertained from overall consideration of the particular facts and circumstances of the case and evidence may exist to show that reliance cannot be placed completely on the availability of a previously earned undisclosed income. Thus, there could be a consideration whether the amount was available out of Rs. 10 lakhs or out of Rs. 8,86,738 and on the basis of the materials, all the three lower authorities came to a finding that the amount of Rs. 2,77,471 was not available out of the amount of Rs. 10,00,000 or out of the withdrawals of Rs. 8,86,738 and so it cannot be said that any amount was available to the assessee as intangible addition.

20. It has next been argued that the findings of the Tribunal are vitiated and so it should not be accepted. For this purpose, Mr. K.N. Jain has relied on the case of Omar Salay Mohamed Sait Vs. Commissioner of Income Tax, Madras, , where it has been held that the conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which require to be explained by the assessee, the assessee should be given an opportunity of doing so and on no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises ; nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its finding even though on questions of fact will be liable to be set aside by this court. Similar view has been taken in the

case of The Commissioner of Income Tax, Bihar and Orissa, Patna Vs. S.P. Jain, which is also a decision of their Lordships of the Supreme Court.

21. In the present case before us, I hold that the finding of the Tribunal is supported by the report of the Commission which has been referred to by the Income Tax Officer, the Appellate Assistant Commissioner and the Tribunal. I, therefore, hold that all the three lower authorities have consistently held on facts that the amount of Rs. 2,77,471 was not available to the assessee-Hindu undivided family for the deposit on January 19, 1951, either out of the amount of Rs. 10 lakhs or out of the amount of Rs. 8,86,738. This finding is a finding of fact and has to be accepted by this court. " Under such circumstances, I hold that the amount of Rs. 2,77,471 was not deposited out of the amount of Rs. 10 lakhs or out of the amount of Rs. 8,86,738 and so the amount remained unexplained.

22. I am supported in this view by the case of Karnani Properties Ltd. Vs. The Commissioner of Income Tax, West Bengal, , which is a decision of their Lordships of the Supreme Court, where it has been held that when the question referred to the High Court speaks of "on the facts and in the circumstances of the case", it means on the facts and circumstances found by the Tribunal and not facts and circumstances that may be found by the High Court on a reappraisal of the evidence and that in the absence of a question whether the findings were vitiated for any reason being before the High Court, the High Court has no jurisdiction to go behind or question the statements of facts made by the Tribunal. This decision has been relied upon by Mr. B.P. Rajgarhia for the Revenue.

23. Mr. B.P. Rajgarhia, for the Revenue, has also relied on the case of Rameshwar Prasad Bagla Vs. The Commissioner of Income Tax, Lucknow, . In this case, the Tribunal held that the shares were purchased with a view to obtaining the managing agency and not as stock-in-trade. On a reference, inter alia, of the question whether there was material before the Tribunal for that finding, the High Court proceeded to deal with the matter as if it itself had to arrive at an independent finding and held that there was no material for the finding that the shares were purchased with a view to acquiring managing agency and that the shares therefore constituted the stock-in-trade of the appellant. In those circumstances, their Lordships of the Supreme Court held that the approach of the High Court was wholly erroneous and not warranted by law and it was for the Tribunal to decide questions of fact, and the High Court in a reference u/s 66 of the Act could not go behind the Tribunal's findings of fact and that the High Court could only lay down the law applicable to the facts found by the Tribunal. Their Lordships of the Supreme Court also held that the High Court and the Supreme Court, in an appeal against the judgment of the High Court given in a reference u/s 66 of the Act, were not constituted courts of appeal against the order of the Tribunal.

24. Under such circumstances, the finding of the Tribunal that the amount of Rs. 2,77,471 which was deposited in the name of Bandhan Ram, karta of the Hindu undivided family, on January 19, 1951, in the Bharat Bank Limited, Calcutta, was

not available out of the amount of Rs. 10 lakhs or out of the amount of Rs. 8,86,738 and that the amount was the undisclosed income of the assessee has to be accepted as a finding of fact and this court cannot give a different finding. Hence, as regards question No. 1, it has to be held that the deposit of Rs. 2,77,471 in the Bharat Bank Ltd. on January 19, 1951, is unexplained income of the assessee.

25. Question No. 2 is to the effect whether this deposit of Rs. 2,77,471 in the name of Bandhan Ram Badhani is taxable in the hands of the assessee-Hindu undivided family, Bandhan Ram and Sons.

26. Mr. K.N. Jain, for the assessee, has submitted that the amount cannot be assessed in the hands of the assessee-Hindu undivided family as the amount stands in deposit in the name of Bandhan Ram Bhadani as an individual and so this amount has to be assessed in the name of Bandhan Ram Bhadani in the status of an individual.

27. The assessee in the present case before us is the Hindu undivided family of Bandhan Ram and Sons of which admittedly Bandhan Rani is the karta. The Income Tax Officer issued a notice to the assessee-Hindu undivided family to show cause as to why the amount of Rs. 2,77,471 should not be included in the income of the assessee-Hindu undivided family as income from undisclosed sources. It appears that Bandhan Ram as karta of the Hindu undivided family filed a written explanation and he claimed that this amount was available out of Rs. 10 lakhs, out of which Rs. 2,77,471 was added by the Commission and it is this amount which was added in the Darshan Ram Group. The Commission reported that the amount of Rs. 2,77,471 was not covered by the amount of Rs. 10 lakhs and so this explanation was disbelieved after the report was received. Again in the written explanation, the assessee pleaded that the amount was available out of the withdrawal of Rs. 8,86,738. This plea was also disbelieved as the withdrawals were between June 20, 1947, and March 24, 1948, and out of the total amount, the assessee's share could be only 1/4th which could not be explained to be in existence on January 19, 1951. Thus, it is evident that no money was available out of the withdrawals up to March 24, 1948 which related to the bigger Hindu undivided family.

28. Now the question is from what amount the deposit of Rs. 2,77,471 was made. It has been pointed out that on February 17, 1948, Rs. 1 lakh was withdrawn by Dhrub Narain Prasad, son of Bandhan Ram. Thus, the assessee tried to explain that the amount was available to the smaller Hindu undivided family of Bandhan Ram and Sons out of this withdrawal and other withdrawals. Once, in the written explanation, the assessee took the plea that the amount of Rs. 2,77,471 belonged to the Hindu undivided family, the assessee again cannot take a plea that the amount of Rs. 2,77,471 belonged to the individual, Bandhan Ram. Moreover, no materials have been placed before us to show that Bandhan Ram had any individual business and had enough earnings. The assessment order shows that the assessee-Hindu undivided family had business income of

Rs. 50,380. Thus, the Hindu undivided family had a source of income and the amount could be deposited out of the undisclosed business income of the assessee-Hindu undivided family.

29. Mr. K.N. Jain has relied on various decisions for the purpose that under the Hindu law, there is no presumption that a business standing in the name of the manager is a joint family business even if the manager is the father. In this connection, Mr. K.N. Jain, for the assessee, has relied on the case of *Chattanatha Karayalar Vs. Ramachandra Iyer and Another*, which is a decision of their Lordships of the Supreme Court. In this case, it has been held that under the Hindu law, there is no presumption that a business standing in the name of any member is a joint family one even when that member is the manager of the family, and it makes no difference in this respect that the manager is the father of the coparceners. Similar view has been taken by their Lordships of the Supreme Court in the case, of *G. Narayana Raju Vs. G. Chamaraju and Others*, where it has also been held that unless it could be shown that the business in the hands of the coparcener grew up with the assistance of the joint family property or joint family funds or that the earnings of the business were blended with the joint family estate, the business remains free and separate.

30. It has been held in the case of *Satinder Kumar (H.U.F.) Vs. Commissioner of Income Tax*, that if a karta does not claim to act on behalf of the family, there must be clear and definite material, if the contrary is to be proved, linking the family with the business carried on by the karta and the circumstance that the karta has commenced a business of the same character or in the same commodity as the family business gives rise to no presumption that the business commenced is an extension of the family business.

31. It has been held in the case of *PREMSUKHDAS JAGNANI Vs. COMMISSIONER OF Income Tax, BIHAR AND ORISSA*, by the Patna High Court, that there is no presumption in the Hindu law that any business carried on by a member or members of a joint family is the joint family business.

32. Thus, it is evident that under the Hindu law there is no presumption that the business standing in the name of the manager is a joint family business even if the manager is the father. But in the present case, before us, it is not disputed that the Hindu undivided family of Bandhan Ram and Sons has a business and in the assessment year 1951-52, the business income has been taken at Rs. 50,380.

33. At page 21 of the paper book in the reference application u/s 256(1) of the Act, it has been clearly pointed out that there was a partial partition in the parent joint family in 1943 by virtue of which movable assets of the parent joint family were partitioned between the aforesaid four brothers, namely, Darshan Ram Bhadani, Kishunchand Ram Bhadani, Bandhan Ram Bhadani and Jhari Ram Bhadani, who became kartas of their respective smaller joint families, consisting of themselves, their wives and children and, accordingly, the smaller joint family

of Bandhan Ram Bhadani began to be assessed under the name and style of Bandhan Ram and Sons in the status of a Hindu undivided family with respect to dividend and house properties acquired by this smaller Hindu undivided family. Thus, from 1943, the assessee-Hindu undivided family is being assessed and so it cannot be doubted that the assessee-Hindu undivided family had sources of income. Moreover, the decisions relating to the business will not be applicable in the present case as the question is as to from what source the amount of Rs. 2,77,471 was deposited in the Bharat Bank Ltd., on January 19, 1951.

34. Of course, Mr. K.N. Jain has relied on the case of Commissioner of Income Tax (Central), Calcutta Vs. Daulat Ram Rawatmull, , where their Lordships of the Supreme Court, having found on the particular facts of the case, held that the approach of the Tribunal that the firm could not have obtained an overdraft against the security of B's fixed deposit was erroneous and that the circumstances of the transfer of amount of Rs. 5 lakhs from Calcutta to Jamnagar for fixed deposit in the name of B and the use soon thereafter of the said fixed deposit receipt as security for the overdraft facility to the respondent-firm did not justify the inference that the amount belonged to the respondent-firm. Their Lordships of the Supreme Court also held that it is a common feature of commercial and other transactions that securities are offered by other persons to guarantee the payment of the amount which may be found due from the principal debtor and that the concepts of security and ownership are different and it would be a wholly erroneous approach to hold that a thing offered in security by a third person to guarantee the payment of debt due from the principal debtor belongs not to the surety but to the principal debtor. Thus, the facts of this case were different and so the observations in this decision will not be applicable to the facts of the present case before us.

35. Mr. B.P. Rajgarhia has relied on the case of Sankaranarayanan and Another Vs. The Official Receiver, Tirunelveli and Others, where it has been observed in paragraph 8 that where a manager of a joint family claims that any immovable property had been acquired by him with his own separate funds and not with the help of the joint family funds of which he was in possession and charge, it was for him to prove by clear and satisfactory evidence his plea that the purchase money proceeded from his separate fund and the onus of proof must, in such a case, be placed on the manager and not on his coparceners. This will be applicable to the facts of the present case before us. It has also been held in the case of Mallesappa Bandeppa Desai and Others Vs. Desai Mallappa and Others, , that if a member of a joint family augments joint property, whatever may be the mode of augmentation, the property which goes to augment the joint family property becomes part of the joint family property.

36. Mr. B.P. Rajgarhia has also relied on the case of Rajangam Ayyar v. Rajangam Ayyar AIR 1922 PC 266, where it has been held that where the nucleus is admitted or proved, the burden of proving that particular property is a self-acquisition rests on the party alleging it.

37. It cannot be doubted that the decisions relied upon by Mr. B.P. Rajgarhia, for the Revenue, support the case of the Department. The amount of Rs. 2,77,471 is a cash deposit in the Bharat Bank Limited, Calcutta, on January 19, 1951, in the name of Bandhan Ram. Bandhan Ram has not led any evidence in the case whether he had sufficient source of income for depositing this amount. In the written explanation filed on May 21, 1956, before the Income Tax Officer, he never pleaded that the deposit was made out of his individual earnings. A written explanation was filed in the assessment of the Hindu undivided family and Bandhan Ram tried to explain the availability of the amount from the withdrawals by the bigger Hindu undivided family. Thus, Bandhan Ram admitted that the deposits were out of the Hindu undivided family fund. If the case of Bandhan Ram that the amount was deposited out of the fund available from the bigger Hindu undivided family is believed, then, in view of the explanation, it has to be held that the amount was deposited from the fund of the smaller Hindu undivided family of Bandhan Ram and Sons. Bandhan Ram in his written explanation dated May 21, 1956, at pages 4 to 6 of the paper book never asserted that he had deposited the amount from his individual income. This goes to show that the deposit of Rs. 2,77,471 was not from his individual income. Under such circumstances, it has to be held that the deposit was made out of the income of the assessee-Hindu undivided family.

38. In view of my discussions above, I hold that the deposit of Rs. 2,77,471 in the Bharat Bank Ltd. on January 19, 1951, is an unexplained income and that the deposit in the name of Bandhan Ram Bhadani is taxable in the hands of the Hindu undivided family-assessee, Bandhan Ram and Sons.

39. In the result, both the questions are answered in favour of the Revenue and against the assessee. However, in view of the peculiar circumstances of the case, the parties will bear their own costs. Let a copy of this judgment be transmitted to the Assistant Registrar of the Tribunal in terms of Section 260 of the Act.

Uday Sinha, J.

40. I agree.