(1937) 09 BOM CK 0004

In the Bombay High Court

DWARAKANATH HARISCHANDRA PITALE AND ANOTHER — APPELLANT

Vs

RE. — RESPONDENT

Date of Decision : 27-09-1937

Acts Referred:
Income Tax Act, 1961 — Section 3

Citation : (1937) 5 ITR 716

Hon'ble Judges : Beaumont, C.J;Blackwell, J

Bench : Full Bench

Judgement

BEAUMONT, C.J. - This is a reference made by the Commissioner of Income Tax u/s 66(2) of the Indian Income Tax Act, and the questions raised are :-

"(1) Whether in the circumstances of the case, the assessees constituted in law an association of individuals within the meaning of Section 3 of the Income Tax Act ?

(2) Whether the said association can be said to be the owner of the properties within the meaning of Section 9 of the Income tax Act and was rightly assessed as such ?

(3) Whether the assessees were in any event rightly assessed as owners of the said properties under Sec. 9(1) of the Act ?"

The facts found are that the assessees became entitled as residuary legatees under the will of their grand-fathers to certain house properties in the city of Bombay of the aggregate rental value of Rs. 25,000. They so became entitled in the year 1929, when the properties were handed over to them, and derived profit therefrom. I think this case is really governed by the decision of this Court in Commissioner of Income Tax, Bombay Presidency, Sind and Aden v. Laxmidas Devidas (1937 39 BLR 910) in which we held, following the principle laid down by the Calcutta High Court in In re B. N. Elias, 1935 ILR 63 Cal 538, that two persons who had purchased property and managed it for the purpose of producing income were properly assessed as an association of individuals under

Sec. 3 of the Indian Income Tax Act. The only distinction between that case and the present one is that the original association in the present case was not a voluntary act on the part of the assessees, they did not purchase the property for the purposes of managing it; they received it under a will, and it may be said, that in the first instance they did not constitute an association of individuals. But as soon as they elected to retain the property and manager it as a joint venture producing income, it seems to me that the became an association of individuals within the meaning of the Income Tax Act, and that they are properly assessed as the owners of the property under Sec. 9. In my opinion, therefore, the questions must all be answered in the affirmative. The assessees to pay the costs of the Commissioner on the Original Side scale to be taxed by the Taxing Master, less the deposit of Rs. 100.

BLACKWELL, J. - I agree.

Reference answered.