

(1946) 09 BOM CK 0010

In the Bombay High Court

Case No : Income-tax Reference No. 5 of 1946

In Re: Haridas Purshottam

Date of Decision : 11-09-1946

Acts Referred:

Citation : AIR 1947 Bom 299 : (1946) 48 BOMLR 905

Hon'ble Judges : Leonard Stone, J;Chagla, J

Bench : Division Bench

Judgement

Leonard Stone, Kt., C.J.—Before embarking upon circumstances of this reference, I desire to draw attention to the fact, that as long ago as August 16, 1940, the assessee made a petition for this matter to be referred, but in fact no reference was made until April 11, 1946, that is to say for a period of 5½ years. No explanation is forthcoming as to why a delay of this magnitude should have taken place. It is a very shocking thing, that an assessee, who under the Indian Income Tax Act has to pay the full amount claimed, should have his petition to refer a question to the Court delayed in this way, and we draw the attention of the authorities concerned to it in the hope that such a delay will not occur again.

2. The assessment year is the year 1939-40 in respect of the accounting year which is the Samvat year 1994, that is to say, in respect of the period November 4, 1937, to October 23, 1938. Mr. Haridas Purshottam, who was the assessee, died, during the course of the long delay, and his son, who is now the karta of the joint family in his father's stead, has been brought on the record.

3. During his lifetime Mr. Haridas filed two returns for Income Tax purposes, one being in his personal capacity and the other being as karta of the joint family, consisting of himself and his four sons. The question which is now referred to us by the Commissioner is, whether, on the facts of this case, the share of the income from the managing agency of the Bharat Spinning & Weaving Company, Limited, received by Mr. Haridas Purshottam has been rightly treated as the income of the Hindu undivided family of which he is the karta. The Commissioner came to the conclusion that it was a joint family asset. The question in fact largely turns on the construction, which is to be put on certain documents to

which I will refer.

4. There were three brothers one of whom was Mr. Haridas Purshottam, and they were separate, but each- of them was joint with his own sons. The three brothers formed a partnership, and it is admitted that Mr. Haridas Purshottam held his share in this partnership as karta. In the year, 1918 the three brothers and five other persons purchased the Hubli Mills in partnership. There is no deed of this partnership, but again there is no doubt, and it is not disputed, that Mr. Haridas Purshottam held his share in this partnership as karta of the joint family. In the year 1920 the three brothers and the five other persons promoted a company, being the Bharat Spinning & Weaving Company, Limited, to take over the Hubli Mills, and on March 8, 1920, the mill was in fact taken over. On July 21, 1920, two documents were executed. One of these was an agreement between the new company and the eight vendors, that is to say the three brothers and the five other persons, for the purchase of the mills. The three brothers received, by way of consideration, 1,000 shares in the new company and a sum of cash, and again there is no dispute that each brother held his 333 1/3 shares as Jcarta of his respective joint family. Clause 7 of this agreement is as follows:-

It is hereby expressly agreed that all benefits conferred upon the said firm (the three brothers and the five other persons) by these presents and all benefits conferred or to be conferred upon the said firm by the second agreement referred to in Article 150 of the articles of association of the company under which the said firm are appointed the agents of the company shall be cumulative and nothing in either of the agreements shall foe deemed or construed to in any way restrict the other of them.

5. The other agreement is the one referred to in the clause I have just read. It is also dated July 21, 1920, and can be conveniently described as the managing agency agreement, it being made between the new company and the eight partners, whereby the eight partners became managing agents of the company. In this agreement there is the following recital:-

Whereas in consideration of the services rendered by the said firm (that ia to say the eight partners) in promoting and establishing the company and for divers other valid considerations and reasons, it is provided by the articles of association of the company that the said firm of Messrs. Purshottam Govindji & Company and the present member or members thereof or the members or sole member (as the case may be) for the time being constituting the said firm of Messrs. Purshottam Govindji & Company and their successors in business and assigns, notwithstanding any change to the constitution or the name or style of the said firm, shall be and are hereby appointed managing agents of the company for the period, and upon thejterms, provisions and conditions as to remuneration, management and otherwise set out in the agreement draft whereof is set forth in the schedule thereto.

6. Clause 5 of this agreement provides for the remuneration. Clause 14 is in,

these terms:-

It shall be lawful for the said firm to assign the whole or any portion of their remuneration, without thereby in any way affecting or prejudicing their appointment as such managing agents as aforesaid.

7. It is necessary to refer to the following further facts, stated in the case referred to us:

Pursuant to the agreement of July 21, 1920, the said firm of Purshottam Govindji & Company received the managing agency commission from time to time which was divided between the partners thereof, and the firm of Purshottam Govindji consisting of the three undivided families duly received their shares of the commission. The share of each family in the commissions aforesaid has been shown for Income Tax purposes in the return of income made by the Hmta of the respective joint family from 1923-24 onwards up to and including the assessment year 1938-39. For the first time, however, in the return for the year 1939-40 the assessee objected to the inclusion in his assessment made as the karta of the family of the share of the managing agency commission on the ground that it belonged to him individually and not to the Hindu undivided family consisting of himself and his four sons.

8. An examination of the two documents of July 21, 1920, leaves in my mind no doubt, that the opportunity of becoming and of being actually appointed managing agents arose directly from the asset which was sold to the new company, viz. the mills, which in part was joint family property,

9. We have been referred by Sir Jamshedji Kanga on behalf of the assessee to the case of Ramchandra Lalbhai v. Chinubhai Lalbhai (1942) 45 Bom. L.R. 1075. That is a decision of my learned brother, and the principle which is to be deduced from it is that the right of management with no benefit or advantage or right to property attached to it could not be joint family property. In the judgment reference is made to the case in the Privy Council of Annamalai Chetty v. Murugasa Chetty 5 Bom. L.R. 404 the passage referred to being at p. 228 in which Lord Lindley delivering the judgment of the Board said :-

Their Lordships entirely concur with the High Court in holding that such a person (i.e. the karta) is not the agent of the members of the family so as to make them liable to be sued as if they were the principals of the manager. The relation of such persons is not that of principal or agent, or of partners; it is much more like that of trustee and cestui que trust.

10. However, the facts of the case before us are wholly different from those in the case before Mr. Justice Chagla to which I have referred. As is recited in the managing agency agreement, it is provided by the articles of association of the new company that Messrs. Purshottam Govindji & Co. should be appointed managing agents, and there can be no doubt that this arrangement was, part and parcel of the arrangements, whereby the Hubli Mills, in which the assessee

admittedly held a share as karta, were sold by the partnership to the new company. Clause 14 of the managing agency agreement, which I have already read, is important, since, in my opinion, if the partners should sell or assign their right to remuneration, it could not possibly be said that the portion of the proceeds of sale, attributable to Mr. Haridas Purshottam's share, did not pass to him as joint family property. The managing agency was in my judgment derived from or acquired with the assistance of joint family property, that is to say, the mills in which Mr. Haridas Purshottam as karta was beneficially interested. Accordingly, in my opinion, the question referred to us should be answered in the affirmative. The assessee must pay the costs.