**(1991) 03 AHC CK 0052**

**In the Allahabad High Court**

**Case No :** Income-tax Reference No. 144 of 1979

Ramesh Chandra APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

**Date of Decision :** 13-03-1991

**Acts Referred:**
Hindu Succession Act, 1956 — Section 6(1), 8

**Citation :** (1992) 194 ITR 157

**Hon'ble Judges :** B.P. Jeevan Reddy, C.J;S.P. Singh, J

**Bench :** Division Bench

# Judgement

B.P. Jeevan Reddy, C.J.—u/s 256(2) of the Income Tax Act, 1961, the Tribunal has stated the following two questions for the opinion of this court:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the property which was inherited by the assessee from his father in terms of section 8 of the Hindu Succession Act, 1956, was his individual property and not of his joint Hindu family ?

2. Whether, on the facts and circumstances of the case and the provisions of the Hindu law in regard to the nature and character of ancestral property, the Tribunal was right in holding that the property in question became the individual property of Shri Ramesh Chandra, simply because the property was inherited by him according to the rules of Hindu Succession Act ?"

2. The assessee''s father, Sri Surendra Nath Dhaul, was a partner in a firm, Messrs. Bebru Brushware. He was a partner in that firm in his individual capacity. After his death, the said interest devolved upon the asses-see. Indeed, the partnership deed dated October 24, 1971, executed after the death of his father specifically recites that the assessee joined the partnership after the death of his father who was himself a partner of the said partnership dated April 1, 1967. The capital of the deceased father continued to remain with the firm and became the capital of the assessee. In his assessment, the assessee claimed that the interest

 

of his father in the firm which devolved upon him is joint family property in his hands and that he must be assessed in the status of Hindu undivided family with respect to the said property. (The assessee had a son.) The Income Tax Officer, however, held that since the father was a partner in the aforesaid firm in his individual status, his interest devolved upon the assessee u/s 8 of the Act and, therefore, it is his separate property.

3. On appeal, the Appellate Assistant Commissioner agreed with the Income Tax Officer and dismissed the appeal. Thereupon, the matter came in appeal before the Tribunal. Indeed, it appears that there were two appeals before the Tribunal, one by the assessee and the other by the Revenue, but that is not relevant for our purpose. The Tribunal dismissed the appeal following a decision of this court in Commissioner of Wealth Tax Vs. Chander Sen, , whereupon the assesses obtained the present reference.

4. It may be noticed that the interest of the father in the partnership firm was his individual property. It was not coparcenary property in his hands. If so, the father''s interest devolved upon the assessee u/s 8 of the Hindu Succession Act and not under the main limb of section 6(1). Once this is so, the property would be his separate property ; as has been held by this court in Commissioner of Wealth Tax Vs. Chander Sen, which decision we find has been affirmed in appeal by the Supreme Court in Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, .

5. For the above reasons, question No. 1 is answered in the affirmative, i.e., in favour of the Revenue and against the assessee.

6. So far as question No. 2 is concerned, we find that it does not really arise from the order of the Tribunal. We have already answered question No. 1. We decline to answer question No. 2.

7. The Income Tax reference is, accordingly, disposed of. No costs.

 