

**(1975) 07 MAD CK 0015**  
**In the Madras High Court**  
**Case No : Appeal No. 689 of 1971**

Takhat Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision :** 22-07-1975

**Acts Referred:**

Income Tax Act, 1922 — Section 25A

**Citation :** (1976) 103 ITR 339

**Hon'ble Judges :** Ismail, J

**Bench :** Single Bench

**Advocate :** K. Mani, for the Appellant; V. Kanjithapatham, for Respondent NOs. 1 to 3 and R. Vijayan, for the Respondent

## Judgement

Ismail, J.—The plaintiff in O. S. No. 4471 of 1968 on the file of the City Civil Court, Madras, is the appellant herein. Having regard to the

narrow scope of the appeal, it is not necessary for me to refer to the pleadings in detail and it is enough if I set out the material facts which will be

adequate for the disposal of this appeal.

2. The plaintiff-appellant and defendants Nos. 4 to 7 are the sons of one Tej Singh, The said Tej Singh was an assessee under the Income Tax

Act. For the assessment year 1944-45 by an order dated December 8, 1944, the Hindu undivided family of which the said Tej Singh was the

karta was assessed to a tax of Rs. 6,24,516.10, on a total income of Rs. 7,81,261. On the failure of Tej Singh to pay the tax, proceedings for

recovery of the tax were initiated. Before the said proceedings were completed, Tej Singh himself died on February 2, 1965. The sons of Tej

Singh including the appellant herein filed a petition before the Commissioner of Income Tax, Madras, putting forward the contention that the

property which is the subject-matter of the suit, namely, No. 39, Vepery High Road, Madras, did not belong either to Tej Singh or to the joint family of which he was the karta, but belonged to the appellant and his brothers individually and that, therefore, the said property could not be proceeded against for recovery of tax due from the Hindu undivided family of which Tej Singh was the karta. As a matter of fact, it would appear that the appellant's brother, namely, the 6th defendant in the suit, had filed a writ petition, W. P. No. 2491 of 1967, before this court as evidenced by exhibit B-14 dated September 8, 1967, carbon copy of the order of this court made therein. Exhibit B-15 is a carbon copy of the order of this court dated March 24, 1968, passed in W. P. No. 1248 of 1968, filed by the appellant herein. While dismissing the former writ petition, this court stated that there was no substance in that writ petition, that what was stated was that the petitioner therein did not possess any property belonging to his deceased father who committed default and that that was a matter which he could represent to the Income Tax Officer or the Collector as the case might be and that if he still felt aggrieved, there was the Commissioner to whom he could make representation. In the latter writ petition, it was pointed out by this court that the main point that was urged was that in proceedings to recover arrears of tax due from his father, the petitioner's property had been attached and was about to be brought to sale, that it was obvious that that raised a question of title to immovable property, that it was not within the purview of a petition under Article 226 of the Constitution to have a trial on that question and that the question of title could be disposed of only after taking evidence both oral and documentary and, in the light of that, all that could be done was to file a suit. It is only on account of this view of this court, this court gave the appellant herein time to issue, a statutory notice u/s 80, Code of Civil Procedure, and thereafter, file a suit to establish his title to the property in question. It is after the disposal of the said writ petition that the appellant herein, after giving notice u/s 80, Code of Civil Procedure, filed the suit which has given rise to this appeal, praying for the relief of declaration that the appellant is the owner of one-fifth share of the suit property and injunction restraining the second defendant, namely, the Tax Recovery Officer, Madras-34, from proceeding against the appellant for recovery of the Income Tax arrears of Tej Singh. Respondents Nos. 1 to 3 alone contested the suit

putting forward several defences and the case of the appellant as well as the defence put forward by respondents Nos. 1 to 3 herein are reflected

in the following issues framed by the trial court :

- (1) Whether the suit property belongs to the plaintiff, and defendants Nos. 4 to 7 individually ?
- (2) Whether the assessment of Tej Singh was in his individual capacity or whether it was as karta of the family ?
- (3) Whether the business even if true was speculative and in any event the plaintiff is not liable ?
- (4) Is the suit barred u/s 67 of the Income Tax Act and Section 21 of the Excess Profits Tax Act ?
- (5) Is the suit barred for want of notice u/s 80, CPC ?
- (6) Is the suit barred by limitation ?
- (7) Is the suit maintainable as framed ?
- (8) Is the plaintiff entitled to the injunction prayed for ?
- (9) To what relief, are the parties entitled ?

3. In view of the facts referred to by me, issue No. 5 requires a clarification. It was not as if no notice u/s 80, Code of Civil Procedure, was given.

The contention of respondents Nos. 1 to 3 was that the notice actually issued by the plaintiff-appellant was defective and did not satisfy the

requirement of Section 80, Code of Civil Procedure, and it is (his question which was said to be covered by issue No. 5. The learned IV Assistant

Judge, City Civil Court, Madras, by his judgment and decree dated 16th March, 1971, decided all the issues against the appellant and dismissed

the suit. It is against this judgment and decree that the plaintiff in the suit has preferred this appeal.

4. There are certain positions which have been conceded by the learned counsel for the appellant. One is that the property in question, namely,

No. 39, Vepery High Road, Madras, had not been proved to be individual property of the appellant and his four brothers and, therefore, the

learned counsel conceded that he could not argue anything contrary to the finding that the property was the joint family property. The second is

that the assessment for the year 1944-45 with reference to which alone tax arrears are sought to be recovered was made on the Hindu undivided

family and not on Tej Singh personally. For the purpose of the Income Tax Act, Hindu undivided family is a separate unit of assessment and is an

assessee in its own right independent of the members of the family. It is equally conceded that the assessment order passed against the Hindu

undivided family for the year 1944-45 has become final, since that was not challenged by any method known to law by way of appeal, etc.

Consequently, it is not open to the appellant herein to challenge the correctness or the validity of the assessment order either on the ground that the

Hindu undivided family was wrongly assessed or on the ground that the tax assessed was excessive, In view of these concessions alone, I stated at

the beginning that the appeal lies within a very narrow compass. Therefore, I proceed to dispose of the appeal on the following basis : (1) The

property, namely, No. 39, Vepery High Road, Madras, was the property of the joint family consisting of Tcj Singh and his sons. (2) The

assessment for the year 1944-45 was made on the Hindu undivided family of the Tej Singh and his sons. (3) The said assessment has become final

and its correctness and validity cannot be questioned further.

5. Against the background of the above facts, the question for consideration is, whether the appellant is entitled to any relief by way of injunction

restraining the second respondent herein from proceeding to recover the tax arrears from the property in question. Though the prayer in the plaint

is rather widely worded, namely, for an injunction restraining the second defendant from proceeding against the plaintiff for recovery of the Income

Tax arrears, the real relief the plaintiff wanted was that the second defendant should be prevented from proceeding against his share in the property

in question, namely, No. 39, Vepery High Road, Madras. In my opinion, the appellant is not entitled to any such relief. Once it is held that the

assessment to tax made on the Hindu undivided family has become final, the property belonging to the said Hindu undivided family is liable to be

proceeded against for the recovery of the tax. Having regard to the provisions contained in Section 25A of the Income Tax Act then in force, the

fact that Tej Singh died in 1965 would not affect the position, because even if a partition had been effected that would not enable a person like the

appellant to escape from the obligation to discharge the tax liability out of the share of the joint family property allotted to him. In this case, the

position is much stronger, namely, there was no claim that there was any partition as between the members of the family subsequent to the

assessment in question. Consequently, the joint family property is liable to be proceeded against for recovery of the tax due by the joint family.

6. However, the principal point repeatedly urged by the learned counsel for the appellant is that the assessment order itself, which has been filed as

exhibit B-8 dated December 8, 1944, in this case, clearly shows that the major portion of the tax was said to be on profits from speculative

business and the income itself was arrived at on the basis of estimate, that these two features will render the tax liability as avyavaharika debt as

understood in the Hindu law and that, therefore, it will not be binding on the appellant herein. In my opinion, this argument proceeds on a

misapprehension. The principle of avyavaharika debt will arise only in the case of personal debt of the father sought to be recovered from a son on

the basis of pious obligation. In this case, since the Hindu undivided family itself was assessed to tax, the liability was that of the Hindu undivided

family and was not the personal liability of Tej Singh, the father of the appellant herein. This conclusion is sufficient to dispose of the argument

advanced by the learned counsel for the appellant. However, the learned counsel for the appellant sought to place considerable reliance on a

decision of the Andhra Pradesh High Court in J. J. Devaraja Rao and Others Vs. Income Tax Officer, Anantapur and Another, .. I am of the

opinion that that decision is not of any assistance whatever to the appellant herein and on the contrary it is against the appellant. It has been held by

a Bench of this court in M.R. Radhakrishnan and Another Vs. The Union of India (UOI) and Another, . that arrears of Income Tax cannot be

considered to be an avyavaharika debt as understood in the Hindu law and the learned judges who decided the case have considered the meaning

of the word ""sulka"" used in Smritis in this context and expressed the view that that would not include a liability like Income Tax imposed by the

statute. The Andhra Pradesh High Court in the judgment mentioned above has referred to and followed the decision of this court mentioned above

as well as the decision of the Supreme Court in S.M. Jakati and Another Vs. S.M. Borkar and Others, ., and observed :

Whatever may be the difference in the translations of this expression, it is now clear that the expression "avyavaharika" has been understood as

repugnant to good morals or tainted with immorality or illegality or involving some moral turpitude. Even if a wider meaning such as " improper " is

given there can be no doubt that the liability in the present case, namely, the liability of the father to pay arrears of Income Tax which had accrued

in respect of the business which he was carrying on cannot be said to be "avyavaharika ". In our opinion, it is impossible to argue that the liability to

pay taxes legally due to the Government is an " avyavaharika " debt within the meaning of the texts as interpreted by the judicial decisions, some of

which have been referred to above.

7. Just as in the case of the decisions of this court referred to already, an argument was advanced before the Andhra Pradesh High Court also on

the fact that the income was estimated and the tax was levied on such estimate. This court as well as the Andhra Pradesh High Court pointed out

that the fact that the income was estimated and the tax was levied on that basis would not in any way affect the position. The Andhra Pradesh High

Court observed :

It is stated that the assessment was made on an estimated income but even so the tax so levied would still be tax legitimately due as it has been

held that even an estimate cannot be arbitrary and must rest on some rational basis.

8. Therefore, these two decisions are against the contention of the learned counsel for the appellant and it is in view of this that I stated that the

reliance on the decision of the Andhra Pradesh High Court is not of any assistance whatever to the appellant and as a matter of fact that decision

itself is against the case of the appellant.

9. On the basis of these features, it must be held that the property, namely, No. 39, Vepery High Road, Madras, being the joint family property of

Tej Singh and his sons was liable for the discharge of the Income Tax liability of the same joint family and that the appellant is not entitled to an

injunction preventing the second respondent from proceeding against the said property for recovery of the said tax arrears. In view of this

conclusion of mine, it is unnecessary to consider the other technical points, such as the suit being barred by limitation, the notice issued u/s 80,

Code of Civil Procedure, not being in conformity with the requirements of that section and the suit itself being barred u/s 67 of the Income Tax Act.

10. Under these circumstances, the appeal fails and is dismissed. Having regard to the special circumstances of this case, there will be no order as to costs.