(1936) 03 MAD CK 0005

In the Madras High Court

Case No : O.P. No. 285 of 1935

THONTEPU CHINNA PULLAYYA — APPELLANT

Vs

COMMISSIONER OF Income Tax, MADRAS. — RESPONDENT

Date of Decision : 31-03-1936

Acts Referred:
Income Tax Act, 1961 — Section 25A(2), 26(2)

Citation : (1937) 5 ITR 132

Hon'ble Judges : King, J;Gentle, J

Bench : Full Bench

Judgement

The question referred to us by the Commissioner of Income Tax is

Whether when all the members of a Hindu undivided family after separation and partition constitute themselves into a firm in order to continue the

business hitherto carried on by the undivided family, the assessment of the total income of the undivided family up to date of separation and

partition should be made

(a) on the firm carrying on the business as successors of the undivided family within the meaning of Section 26(2) of the Income Tax Act, or

(b) on the members aforesaid as if no separation or partition had taken place according to Section 25-A(2) of the Income Tax Act"".

The facts sufficiently appear in the question propounded and it is therefore not necessary to state them more fully. This point, it appears to me, has

been considered and decided in Jupudi Kesava Rao v. Commissioner of Income Tax 70 M.L.J. 13 a decision of MADHAVAN NAIR, O.C.J.,

and STONE AND KING, JJ. I need only refer to the judgment of MADHAVAN NAIR, O.C.J., where he states :

The terms the person carrying on any business, profession or vocation has been succeeded in such capacity by another person may well suggest

that what is contemplated is merely succession in the management of business by another person, but obviously that cannot have been the intention

of the Legislature. It appears to us that the word succession as used in the section connotes a transfer of ownership and the person who succeeds

another must have by such succession become the owner of the business which his predecessor was carrying on and which he after the succession

carries on in such capacity that is the capacity as owner. If this view is correct, as we think it is, then it seems fairly clear that the undivided Hindu

family which was carrying on business has not been ""succeeded"" in such capacity by the petitioner as the petitioner was himself in part the owner of

the property already and as such there has been no transfer of ownership in the business as he has become entitled to it by survivorship.

Applying the test laid down there to the present case, there seems to have been no change of ownership at all. All the members of the new firm

were members of the undivided family and they now have the same share in the business of the firm as they had in the family business at the date of

the partition. Applying that case to this, the answer to the question propounded must be that the assessment must be in accordance with Section

25-A(2) of the Income Tax Act. The Commissioner of Income Tax will get Rs. 250 costs.

KING, J. - I agree.

GENTLE, J. - I agree.

Reference answered accordingly.

