

(1936) 05 PAT CK 0016

Patna High Court

Case No: Misc. Judicial Case No. 3 of 1935

LACHIRAM BALDEODAS

APPELLANT

Vs

COMMISSIONER OF Income Tax,
BIHAR AND ORISSA.

RESPONDENT

Date of Decision: May 7, 1936

Acts Referred:

- Income Tax Act, 1961 - Section 25A

Citation: (1936) 4 ITR 279

Hon'ble Judges: Wort, Acting C.J.; Dhavle, J

Bench: Full Bench

Judgement

WORT, AG.C.J. - This is a case stated by the Commissioner of Income Tax under the direction of the Court and the question submitted for consideration was "Under the circumstances of this case is the family to be considered joint or separated in law ?" There is no doubt that that question, that is to say, whether the family can be considered joint or separate, is substantially a question of fact : but it is contended shortly by Mr. Jayaswal on behalf of the assessee that in the circumstances of the case there was no evidence upon which the Income Tax Officer, and ultimately the Assistant Commissioner and the Commissioner could decide against the application which was made by the assessee to be registered as a firm under S. 26A, Income Tax Act. The case has been very elaborately argued; but in my judgment the matter is resolved by a very simple consideration. Shortly stated, the family of Lachhiram had been assessed as a joint Hindu family up to 1931; the year of assessment in dispute is the year 1931-1932. Lachhirsams family was carrying on business as a joint Hindu family and in 1931 three members of that firm being the sons of Lachhiram, Baldeodas, Mulchand and Mahabir Prasad, executed what purported to be a deed of partnership. This was on 1st June of that year and in the month of August following they made an application to the Income Tax Officer under S. 26-A, Income Tax Act, to be registered as a firm. In the result that Income Tax Officer decided that the

alleged partnership was fictitious, not being acted upon, and that the members of the family still remained a joint Hindu family.

Now Mr. Jayaswal contends in substance that the apparent state of facts should be taken as real in the absence of any evidence to the contrary and he contends that the inquiries which were made by the Income Tax Officer and upon which he appears to have decided that the family was still joint were not evidence upon which he was entitled to come to the conclusion that this partnership deed was an unreal transaction. The Income Tax Officer relied upon inquiries made from outsiders; he also found that the parties were messing together, and also a matter which in his opinion was of considerable importance was the fact that the father Lachhiram did not execute the partnership deed to which I have already made reference. I should be more accurate in saying that the Income Tax Officer stated that the father did not endorse the partnership deed. His statement to that effect was made for obvious reasons. It is nowhere contended that Lachhiram was a partner in the new firm and therefore it would be unnecessary to execute it; but the Income Tax Officer in making a reference to this fact stated that it was recited in the partnership deed that the members of the family had separated and it is in reference to this statement that the Income Tax Officer was of the opinion that the endorsement of Lachhiram might have been or was necessary and its absence raised a suspicion, which added to the facts of the case and made him come to the conclusion to which I have already referred.

As I have already stated, whether the partnership transaction was real or not is purely a question of fact. The matter seems to me to be concluded by what I have already described as one which was of considerable importance for consideration. Mr. Jayaswal would have this Court to hold that the effect of the Income Tax Officers finding is a finding of fact against the assessee, and in order to come to that conclusion definite evidence is required which in this case it is contended is absent.

Now the points which seem to me to determine this question are very simple. The applicant applied under S. 26-A, as I have already stated, and it was for him to establish the fact that a partnership had come into existence and that partnership firm in the future was to be assessed in substitution for the Hindu joint family which heretofore had been assessed as such. Shortly stated, the Income Tax Officer was not satisfied with that transaction and when the matter comes to be examined it seems to me that transaction is something more than a matter of suspicion. The mere application under S. 26-A and a decision even in favour of the assessee would not conclude the matter, and for this reason; Lachhiram had three sons, two of whom I have mentioned, the third was Hazarimul who is now represented in the partnership transaction by his son Mahabir Singh who was his adopted son. There was Debi Prasad who was the son of the second member of the alleged partnership, that is to say, the son of Mulchand, and there were at least four sons of Baldeodas. It will be seen that as Lachhiram and the sons of whom I have made mention were

not partners under the partnership deed, in one form or another either the joint family or several joint families remained and the mere decision of the Income Tax Officer under S. 26-A that three persons had constituted themselves a partnership firm, would not settle the question of whether there was to be in future an assessment on the joint family or more than one joint family. It is important to notice this in connexion with a matter to which I am about to refer. Mr. Jayaswal contends that it was necessary for him to make an application under S. 25-A, Income Tax Act. That section provides :

Where at the time of making an assessment it appears that there has been a separation between the members of the family who have been assessed as such, and that the joint family property has been partitioned among the various members or groups of members in definite proportions, he shall record (that is to say the Income Tax Officer shall record) an order to that effect.

It was never the case of the assessee either before the Income Tax Officer or the Commissioner or before this Court, although it was faintly suggested by Mr. Jayaswal, before this Court, that the partnership firm existed alongside the joint Hindu family, and as it was nowhere stated, as I have already stated in order to finally decide the question of assessment, it would have been necessary for an application to have been made and a decision to have been given under S. 25-A for the reasons which I have already indicated. In those circumstances as no application was made, and in order to test whether in future this partnership firm should be substitute for the joint Hindu family that has been heretofore assessed, it was not only possible, but it was the only course which the Income Tax Officer could take in the circumstances, to inquire whether in fact the joint Hindu family property had been divided. Under S. 25-A the Income Tax Officer does not inquire into a question of separation or disruption of the family, notional or otherwise; he has to inquire into the question of whether the joint family property has in fact been divided, and having regard to the fact to which I have already referred, that it is not suggested that the joint Hindu family firm existed alongside the new partnership firm, it is not surprising that the Income Tax Officer, in this case, in the absence of evidence that the property of the family had been divided, came to the conclusion that the partnership transaction was not a genuine one.

Now Mr. Jayaswal contends on the other hand that there are two items of evidence which do in fact prove that the joint family property was divided and that neither the joint family nor the joint family property hereafter existed. The evidence to which reference was made was first a deed of relinquishment entered into by Baldeo Das, Mulchand and Mahabir Prasad and various minor members of the family and Lachhiram, the father, that purported to relinquish the rights of the parties in the property in favour of their father Lachhiram. It is difficult to know exactly what effect in law this deed would have if the family were joint. It is perfectly obviously that they could not execute such a document, at any rate a document such as this could not

take effect. In any event the deed of relinquishment is not a document of title, and thirdly it is to be noticed that the mention of the properties and the relinquishment of the rights of the parties in them in favour of the father indicate, taken in conjunction with the evidence of Baldeo Das taken on oath before the Income Tax Officer, that there were properties other than those mentioned in the deed. But apart from that, the deed does not purport to be a partition deed; it may relinquish some properties in favour of the father, but, as I have already indicated, there are properties which are not the subject matter of this deed and in those circumstances in my judgment it is impossible to say that that evidence by itself was such that the Income Tax Officer was not entitled to come to any other conclusion than that the property had been divided as alleged.

The other piece of evidence is the account in the bahi dated 28th June 1930 in which the accumulated profits are shown to be divided between the three members of the firm and the father Lachhiram. In this account Lachhiram gets a share of approximately Rs. 24,000 less than the others which it is stated is made up by movable property which had been released under the deed of relinquishment. It was some evidence possibly that the joint family property had been divided, although it is stated by the Income Tax Officer to be a division of the accumulated profits; but it is, in my judgment, impossible to say that it was such evidence that the Income Tax Officer was bound to come to the conclusion that the fact had been proved that the joint family property had been divided. Reference has been made by Mr. Jayaswal to declarations made on different dates as to the separation of the family in contradistinction to the division of the property. One was made in 1933 before the Agent of the Imperial Bank, but the fact that it was so late as 1933 is in itself significant. The partnership deed was entered into in June 1931; there was a gap therefore of a year or two before the declaration was made before the Imperial Bank. The weight of this evidence is not a matter for this Court.

The fact that the declaration was made is stated in the report made by the Income Tax Officer, but if any criticism were necessary it is to be found in the fact that the declaration was made in 1933 whereas the partnership was entered into in June 1931. We can assume (and we must Assume) that Baldeo Das who acted as the manager of the firm had up to that time operated on the account; and the necessary question which arises is what was happening between June 1931 and 1933 when the declaration was made ? It rather indicates that at any rate during that period, although that partnership deed was in existence, the members of the partnership did not treat themselves as such. As I have already stated this is not a matter for this Court but was one of the questions which influenced the mind of the Income Tax Officer and it is impossible therefore to hold that he was not entitled to be so influenced. Shortly stated, the matter comes to this; in the circumstances of the case the Income Tax Officer had to be satisfied that the joint family property had been divided. I say that by reason of the facts of the case which had been put forward by the assessee before him under the application u/s 26A. That being so, although

there was some evidence it was not evidence on which he was obliged to act and he came to the conclusion that the property had not been so divided. That being so the only conclusion which he could arrived at on the application made under S. 26-A was that the partnership transaction was not a real one. The case is not unlike that reported in *Bisseswarlal Brijlal v. Commissioner of Income Tax*, in which a partnership deed alone had been adduced in evidence before the Income Tax Officer. Sir George Rankin pointed out that that was the only evidence before the Income Tax Officer upon which he was asked to act. It was for the applicant to establish the fact that the partnership existed and it was, to use the words of Sir George Rankin :

"Tolerably clear in the absence of some evidence to the contrary, that this piece of paper referring to the partnership deed which the parties had signed was expected to be marginal talisman which would protect them from the imposition of super tax and had no other reality at all."

It is contended as I have already stated that there was evidence in this case. It is true that there was evidence, but the weight of that evidence was for the Income Tax Officer as also the conclusion at which he should arrive. It is impossible to hold that in this case the Income Tax Officer was not entitled to come to the conclusion which he did. That in my judgment is sufficient and the answer to the case submitted by the Commissioner of Income Tax, is that in the circumstances of this case the family is to be considered joint. The application is dismissed with costs; hearing fee Rupees two hundred and fifty.

DHAVLE, J. - I agree. When the assessee first came up to this Court his grievance substantially was that the refusal of the Income Tax authorities to register the firm was wrong and arbitrary; and he got this Court to direct the Commissioner to state a case on the point whether in the circumstances of this case the family was to be considered joint or separate in law. Partnerships are dealt with in S. 26-A or the Act, and the question which the Income Tax Commissioner was required to state is a question that is dealt with in S. 25-A of the Act. As regards the question under 26-A, no appeal lay at the time the assessee's application was disposed of by the Income Tax Officer, but there was an appeal provided by law at the time against orders under S. 25-A. It was obvious how in the circumstances of this case the two questions were connected together. Some of the argument before us had proceeded on the footing of what is called the notional separation of a Hindu joint family which sometimes gave rise to very difficult questions of law; and the legislature has got over the difficulty by enacting specially in Section 25A of the Act that what the Income Tax authorities have to proceed upon is whether "the joint family property has been partitioned amongst the various members or groups of members in definite proportions. That is a concrete question of fact which it is fairly easy to investigate.

It has been contended on behalf of the assessee that in view of the deed of partnership and the ladavi deed and the accounts put forward on behalf of the assessee it was not open to the Income Tax authorities without any material whatsoever to treat these documents as bogus, but it is not a fact that the Income Tax authorities have proceeded without any material at all. They were entitled to take the circumstances into account, particularly the delay in the declarations of separation made by the members of the family to the Imperial Bank and elsewhere, and the statement I find made in the tenth ground of the assessee's application to this Court that the petitioners never thought it necessary to make it known to the outside world that there had been a disruption in the family when their close friends and relatives knew about it. Whether in the circumstances of this case there had been what the Income Tax Commissioner calls an actual separation of the family, or as S. 25-A of the Act puts it, a partition of the joint family properties amongst the various members or groups of members in definite proportions, was clearly a question of fact. I do not think that on the materials produced before the Income Tax authorities by the assessee there could in law have been a decision one way only and this, as my Lord the Chief Justice has observed, is sufficient to dispose of the reference.

Reference answered.