

## Commissioner of Income Tax Vs Maganlal Vithaldas Panchmatiya

**Court:** Bombay High Court

**Date of Decision:** Dec. 9, 1991

**Acts Referred:** Income Tax Act, 1961 " Section 171, 256, 256(1), 263

**Citation:** (1993) 199 ITR 772

**Hon'ble Judges:** V.A. Mohta, J; G.D. Patil, J

**Bench:** Division Bench

**Advocate:** P.N. Chandurkar, for the Appellant; L.S. Dewani, for the Respondent

### Judgement

V.A. Mohta, J.

These are applications u/s 256(2) of the Income Tax Act, 1961 (the Income Tax Act), for directing the Tribunal to state the case and refer the following two questions, said to be law, for the opinion of this court :

(i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in cancelling the Commissioner of

income tax's order u/s 263 ?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the income arising from

property received on partition by the assessee is assessable as the income of the Hindu undivided family ?

2. Since the applications arise out of a common order of the Tribunal, though for different assessment years, namely, 1980-81, 1981-82 and

1982-83, and involve common questions of law, they are heard together and are being disposed of by this common order.

3. The undisputed factual background is this :

4. M/s. Maganlal Vithaldas Panchmatiya is a larger Hindu undivided family consisting of Shri Maganlal Panchmatiya, his wife, Smt. Indirabai, their

minor son, Amit, and major unmarried daughters. There was a partial partition of the said larger Hindu undivided family on October 31, 1978, in

which property worth Rs. 49,693 was allotted to the smaller Hindu undivided family of Maganlal and Indirabai and property worth Rs. 44,951

was allotted to the smaller Hindu undivided family of Indirabai and minor son, Amit. The said partition was recognised by the Income Tax Officer

u/s 171 of the Income Tax Act. Maganlal Panchmatiya had and has individual income also which is returned in separate returns under the Income

Tax. Two separate returns of income were filed by the two smaller Hindu undivided families disclosing income derived from the assets allotted in

the partial partition. Assessments were made by the Income Tax Officer on that basis. The Commissioner of Income Tax in revisional jurisdiction

u/s 263 of the Income Tax Act, 1961, set aside the assessment order made by the Income Tax Officer in the case of the smaller Hindu undivided

family of Maganlal and his wife and ordered that the said income should be included in the individual income of Maganlal. The Tribunal set aside

the said order of the Commissioner. An application for reference u/s 256(1) of the Income Tax Act was made before the Tribunal but it was

rejected on the ground that there was no referable question of law involved.

5. Now, the partial partition dated October 31, 1978, has been recognised u/s 171 of the income tax Act and that said order has become final.

The effect of such an order has been summed up thus by the Supreme Court in the case of Joint Family of Udayan Chinubhai, etc. Vs.

Commissioner of Income Tax, Gujarat, while dealing with a pari materia section 25A(1) of the old Income Tax Act (at pages 423) :

Income from property of a Hindu undivided family, "hitherto" assessed as undivided, may be assessed separately if an order u/s 25A(1) has been

passed. When such an order is made, the family ceases to be assessed as a Hindu undivided family. Thereafter, that family cannot be assessed in

the status of a Hindu undivided family unless the order is set aside by a competent authority. Under clause (3) of section 25A if no order has been

made notwithstanding the severance of the joint family status, the family continues to be liable to be assessed in the status of a Hindu undivided

family, but once an order has been passed, the recognition of severance is granted by the Income Tax Department, and clause (3) of section 25A

will have no application.

6. Under the circumstances, it was impermissible for the Commissioner of Income Tax to go behind the order passed u/s 171 of the Income Tax

Act. Even if the partial partition is ignored and treated as non est, income derived from the property of the larger Hindu undivided family could not

be added in the individual income of Maganlal.

7. Under the circumstances, the Tribunal has rightly held that the order passed by the Commissioner of Income Tax in revisional jurisdiction u/s

263 of the Income Tax Act could not be sustained. No referable question of law arises out of the above order passed by the Tribunal and hence

the application u/s 256(1) of the Income Tax Act was rightly rejected.

8. In the result, these applications are dismissed. Rule discharged. No order as to costs.