

**(1937) 04 BOM CK 0023**

**Bombay High Court**

**Case No:** None

The Commissioner of Income  
Tax

APPELLANT

Vs

A.P. Swamy Gomedalli

RESPONDENT

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**Date of Decision:** April 30, 1937

**Acts Referred:**

- Income Tax Act, 1961 - Section 55

**Citation:** (1937) 39 BOMLR 1010

**Hon'ble Judges:** Shadi Lal, J; Rankin, J; Macmillan, J

**Bench:** Full Bench

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### **Judgement**

Macmillan, J.

Since the order pronounced by the High Court in the present case on March 28, 1935, this Board has had occasion to consider the interpretation of the words "Hindu undivided family" as employed in Section 55 of the Indian Income Tax Act, in the case of Kalyanji Vithaldas v. Commissioner of Income Tax, Bengal in which the judgment of their Lordships was delivered on November 30, 1936. In that case the meaning of those words in the section in question, where they are used in connection with liability to super-tax, was very fully examined in the judgment which Sir George Rankin prepared on behalf of the Board, and a conclusion was reached contrary to the view which the High Court has adopted in the present case. Mr. deGruyther has sought to show that the principle of that decision does not apply to the facts of the case now before the Board. Their Lordships have listened attentively to Mr. deGruyther's observations; but they are not satisfied that the facts of the present case differ in any material respect from the facts which were before the Board in the previous case in 1936, and the decision in that case must accordingly rule the present appeal.

2. Their Lordships will, therefore, humbly advise His Majesty that the appeal should be allowed, and the order of March 28, 1935, be reversed; that it should be found in

answer to the first question as follows :◆

That in the circumstances of the case the income received by right of survivorship by the sole surviving male member of a Hindu undivided family can be taxed in the hands of such male member as his own individual income for the purposes of assessment to super-tax u/s 55 of the Indian Income Tax Act, 1922;

and that the answer to the second question should be in the affirmative.

3. The appellant will have his costs here and below.