IN THE HIGH COURT OF PATNA

FULL BENCH

Taxation Case Nos. 13, 14 and 15 of 1977

Decided On: 17.12.1986

Appellants:**Commissioner of Income Tax**

Vs.

Respondent:**Shankar Lal Budhia**

Cases Referred:

i. (1937) 5 ITR 90 (Kalyanji Vithaldas vs. C.I.T.)
ii. (1975) 101 ITR 776 (SC) (Surjit Lal Chhabda vs. C.I.T.)
iii. (1974) 971 ITR 493 (SC) (C. Krishna Prasad vs. C.I.T.)
iv. (1983) 142 ITR 357 (MP) (C.I.T. vs. Vishnu Kumar)

Income Tax Act – Whether the status of an individual asses-see governed by the Hindu Law would change to that of a HUF under the IT Act merely on his marriage (as yet without issue) – Whether marriage would change that legal position can be tested on the touchstone of the question whether his wife as yet could challenge or object to any alienation of the property by the assessee after her marriage – One of the basic concepts of limited ownership in a Hindu undivided family would be conspicuous by its absence – Merely marriage by itself would not convert separate property and individual Income Tax status to that of a Hindu undivided family – Concept of Hindu undivided family under the Act is different and distinct from a Hindu coparcenary – In case of a Hindu assessee having an unmarried daughter, if his original status was that of an individual, the same would not change by the factum of marriage or female issue and even by the throwing of his separate property into the common hotchpot.

Held – The status of an individual assessee governed by Hindu Law would not change to that of a Hindu undivided family under the Income Tax Act, automatically on his marriage and the status of the assessee after marriage was that of an individual but not that of a Hindu undivided family.

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Hon'ble Judges/Coram:
S.S. Sandhawalia , C.J., S.K. Jha and Udai Sinha , JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: B.P. Rajgarhia and S.K. Sharan, Advs.

For Respondents/Defendant: S.B. Gadodia, Pawan Kumar and L.K. Tewary, Advs.

JUDGMENT

S.S. Sandhawalia, C.J.

1. Whether the status of an individual asses-see governed by the Hindu law would change to that of a Hindu undivided family under the Income Tax Act merely on his marriage (as yet without issue)--is the somewhat ticklish question necessitating this reference to the Full Bench.

2. The facts may be noticed with relative brevity. The respondent-assessee, Shri Shankar Lal Budhia, was originally a member of a larger Hindu undivided family of Shri Mahabir Prasad Budhia. Way back on March 22, 1956, there was a partial partition of the said family and at that time the respondent was a minor. Therein, he was allocated shares in the Ranchi Electric Supply Co., Budhia Brothers Pvt. Ltd. and Ganpatrai Properties Pvt. Ltd. and thereafter he acquired interest in some other immovable property as well. It is common ground that from the date of the partial partition, for nearly a decade, the returns were filed by him in the status of an individual up to the assessment year 1966-67. The assessment was also throughout made in the status of an individual.

3. However, after his marriage on March 9, 1966, the assessee filed two returns--one in the status of an individual and the other in the status of a Hindu undivided family for the years 1967-68, 1968-69 and 1969-70. The Income Tax Officer, however, took the firm view that for these years also, the status of the respondent-assessee must remain as, in the past that of an individual only. The assessee took the matter in appeal before the Appellate Assistant Commissioner wherein he called for a remand report from the successor Income Tax Officer who later expressed the view that the entire income under both capacities should be assessed in the status of a Hindu undivided family. However, the Appellate Assistant Commissioner took the firm view that in respect of the assets acquired by the assessee on partial partition of the bigger Hindu undivided family on March 22, 1956, when the assessee was a minor and even after his marriage on March 9, 1966, his status would continue to be that of

an individual till a son was born to him. Aggrieved thereby, the assessee came up in further appeal to the Tribunal which held in his favour by observing that after his marriage in March, 1966, the assessee would constitute a Hindu undivided family even when no son was born to him. They accordingly set aside the order of the Appellate Assistant Commissioner and remanded the matter to him to dispose of the same in the light of the above.

4. The Commissioner of Income Tax claimed reference from the Tribunal on the point of law which was, however, declined. Thereafter the Commissioner approached this court for seeking a mandamus and on August 16, 1978, the Division Bench directed that the following question of law for the decision of the court be stated :

> "Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the status of the assessee even after marriage was that of a Hindu undivided family and not that of an individual?"

5. Apparently because of the significance of the issue, it was also directed that the case should be placed for hearing before a Bench of three judges.

6. Since I am firmly inclined to the view that that the core question before us is now squarely governed both by binding and persuasive precedent, it would be unnecessary, if not wasteful, to launch on any elaborate dissertations on principle. Nevertheless, at the very threshold, it first seems apt to recall the terse but celebrated dictum of Sir George Rankin in Kalyanji Vithaldas v. CIT [1937] 5 ITR 90 :

> 1"The phrase 'Hindu undivided family' is used in the statute with reference, not to one school only of Hindu law, but to all schools; and their Lordships think it a mistake in method to begin by pasting over the wider phrase of the Act the words 'Hindu coparcenary', all the more that it is not possible to say on the face of the Act that no female can be a member."

7. Having thus noticed that the concept of a Hindu undivided family under the Act is different and distinct from a Hindu coparcenary which is indeed a much narrower concept, one may proceed to the undisputed and the basic rule of Hindu law applicable in the context. This indeed may be noticed from the terse element thereof in article 340 of the authoritative work of Mulla on the Principles of Hindu Law:

> "340. Devolution of share acquired on partition.--The effect of a partition is to dissolve the coparcenary, with the result that the separating members thenceforth hold their respective shares as their separate property, and the share of each member will pass on his death to his heirs. But if a member while separating from his other coparceners continues joint with his own male issue, the share allotted to him on partition will in his hands retain the character of a coparcenary property as regards the male issue."

8. Proceeding from the aforesaid firm base, one may briefly advert to the undisputed facts and an objective test which may be applied thereto. Admittedly from 1956 onwards, after the partition of the earlier Hindu joint family, the assessee held his share as his separate individual property. At that time, he was a minor but it is not in dispute that after attaining majority as well both in law and fact, he held the taxable property as his separate property and his status as an individual one. It bears repetition that right from 1956 for ten years the respondent-assessee himself filed his returns in the status of an individual and was assessed as such. There seems to be no dispute that in this period he had an absolute and unlimited right of ownership to his

separate property and not a limited one. Whether marriage would change that legal position can be tested on the touchstone of the question whether his wife as yet could challenge or object to any alienation of the property by the assessee after her marriage. Plainly the answer has to be in the negative. Admittedly, as yet, there is no child of the wedlock and even if the wife has no right to assail any alienation, one of the basic concepts of limited ownership in a Hindu undivided family would be conspicuous by its absence. Therefore, on this touchstone as well, mere marriage by itself would not convert separate property and individual Income Tax status to that of a Hindu undivided family.

9. If authority was needed for the aforesaid principle, it exists in C. Krishna Prasad v. CIT MANU/SC/0240/1974 : [1974]97ITR493(SC) . Therein, their Lordships of the Supreme Court were considering the case of a single individual claiming the status of a Hindu undivided family for purposes of tax and observed as follows (at page 497):

> "In view of the above, it cannot be denied that the appellant at present is the absolute owner of the property which fell to his share as a result of partition and that he can deal with it as he wishes. There is admittedly no female member in existence who is entitled to maintenance from the above-mentioned property or who is capable of adopting a son to a deceased coparcener. Even if the assessee-appellant in future introduces a new member into the family by adoption or otherwise, his present full ownership of the property cannot be affected."

10. Having cleared the decks, one may now straightaway go to the authoritative enunciation of their Lordships in Surjit Lal Chhabda v. CIT MANU/SC/0266/1975 : [1975]101ITR776(SC) , which, in my view, now conclusively covers the issue. Apart from other matters, the allied questions came in for direct consideration by their Lordships in the context of an assessee who, besides his wife, had an unmarried daughter as well. It was held therein as under (at pages 795-796):

> "The appellant has no son. His wife and unmarried daughter were entitled to be maintained by him from out of the income of Kathoke Lodge while it was his separate property. Their rights in that property are not enlarged for the reason that the property was thrown into the family hotchpot. Not being coparceners of the appellant, they have neither a right by birth in the property nor the right to demand its partition nor indeed the right to restrain the appellant from alienating the property for any purpose whatsoever...The property which the appellant has put into the common stock may change its legal incidents on the birth of a son but until that event happens, the property, in the eye of Hindu law, is really his. He can deal with it as a full owner, unrestrained by considerations of legal necessity or benefit to the estate. He may sell it, mortgage it, or make a gift of it. Even a son born or adopted after the alienation shall have to take the family hotchpot as he finds it. A son born, begotten or adopted after the alienation has no right to challenge the alienation.
>
> Since the personal law of the appellant regards him as the owner of Kathoke Lodge and the income therefrom as his income even after the property was thrown into the family hotchpot, the income would be chargeable to Income Tax as his individual income and not that of the family."

11. It would be somewhat manifest from the above that even in the case of a Hindu

assessee having an unmarried daughter, if his original status was that of an individual, the same would not change by the factum of marriage or female issue and even by the throwing of his separate property into the common hotchpot. The present case is on a stronger footing in favour of the Revenue because, as yet, the assessee has no issue whatsoever--male or female. The persuasive judgment that is on all fours is that of the Division Bench of the Madhya Pradesh High Court in CIT v. Vishnukumar Bhaiya MANU/MP/0120/1983 : [1983]142ITR357(MP) , which, in following Surjit Lal Chhabda's base MANU/SC/0266/1975 : [1975]101ITR776(SC) observed in identical circumstances as under (page 360 of 142 ITR) :

> "In the present case, as stated above, when the property was received by the assessee in partition, he was a single member and did not constitute a family. His status was that of an individual. In the circumstances, the fact of his marriage did not alter the position and in the absence of a son, the personal law of the assessee regards him as the owner of the property received by him in partition and the income therefrom as his income. The assessee is, therefore, liable to be assessed in his status as an individual as hithertofore and the Tribunal was not justified in holding that the assessee was entitled to be assessed in the status of a Hindu undivided family after his marriage."

12. From the aforequoted two cases, it would be somewhat axiomatic that if even marriage and with a female issue or issues would not convert individual status for purposes of Income Tax into a Hindu undivided family, it is manifest that mere marriage without any issue at all would be very far from achieving any such result. As I have said earlier, it is thus clear that the issue being now governed by binding precedent and by virtue of article 141 of the Constitution, no further discussion thereon is either necessary or possible barring the question whether the view aforesaid would in any way be at variance with another decision of the final court itself. Finding himself confined within these narrow parameters. Mr. Gadodia, for the respondent assessee, almost in an argument of desperation, sought to contend that the view expressed in Swjit Lal Chhabda's case MANU/SC/0266/1975 : [1975]101ITR776(SC) , was at variance with that of their Lordships in C. Krishna Prasad's case MANU/SC/0240/1974 : [1974]97ITR493(SC) . A close reading of that judgment would, however, indicate that any such submission is not in the least warranted. In that case, their Lordships were primarily considering the question as to whether a single individual would first constitute a family and would constitute a Hindu undivided family for the purpose of Income Tax. They answered the threshold question in the negative by holding that a single individual does not constitute a family and consequently any further consideration of being a Hindu undivided family would not even arise. It was observed as under (at page 496):

> "It would follow from the above that the word 'family' always signifies a group. Plurality of persons is an essential attribute of a family. A single person, male or female, does not constitute a family. He or she would remain, what is inherent in the very nature of things, an individual, a lonely wayfarer till perchance he or she finds a mate. A family consisting of a single individual is a contradiction in terms. Section 2(31) of the Act treats a Hindu undivided family as an entity distinct and different from an individual and it would, in our opinion, be wrong not to keep that difference in view,"

13. The above observations far from in any way buttressing the stand of learned counsel for the respondent, in fact, strongly boomeranged upon him. It does not

follow from the observations that because a single individual cannot constitute a family, every two individuals would constitute a Hindu undivided family. Indeed I have already quoted earlier from this very judgment wherein it has been held that the assessee was an individual and not a family. I am unable to find the least deviation or cleavage in C. Krishna Prasad v. CIT MANU/SC/0240/1974 : [1974]97ITR493(SC) and Surjit Lal Chhabda v. CIT MANU/SC/0266/1975 : [1975]101ITR776(SC) , and the two judgments are in a way supplementary to each other and both go strongly in aid of the appellant Revenue.

14. In the light of the aforesaid discussions, the answer to the question posed at the very outset is rendered in the negative and it is held that the status of an individual assessee governed by Hindu law would not change to that of a Hindu undivided family under the Income Tax Act automatically on his marriage.

15. In the light of the above, the specific answer to the referred question is that the Tribunal was not correct in law in holding that the status of the assessee after marriage was that of a Hindu undivided family and not that of an individual. The question is answered in favour of the Revenue and against the assessee. There will, however, be no order as to costs in the three references,

S.K. Jha, J.

16. I entirely agree.

Udai Sinha, J.

17. I agree.