Before Ashok Bhan and Iqbal Singh, JJ

COMMISSIONER OF INCOME TAX, (Central) Ludhiana, —*Applicant*

versus

BHAGAT SINGH, —*Respondent*

I.T.R. 60 OF 1983

12th May, 1997

Mulla's Hindu Law, Chapter XII — Arts. 212 and 213 — Joint Hindu family property — Partial partition of joint family — Assessee getting share on partition — Nature of said property- whether ceased to be joint family.

Held, that what was received by the assessee on partition was part of the ancestral property which did not cease to be HUF property and on the birth of a daughter subsequently, the assessee constituted a HUF qua the property received in partition. Qua this property his status reverted back to that of HUF and the income received from this property could not be assessed in his hands as an individual but the same was to be assessed in the status of HUF consisting of himself and his daughter.

(Para 15)

R.P. Sawhney, Senior Advocate with Rajesh Jindal, Advocate; *for the petitioner.*

Ramesh Kumar, Advocate; *for the respondent.*

JUDGMENT

Ashok Bhan, J.

(1) At the instance of the Commissioner of Income Tax (Central), Ludhiana, the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (herinafter referred to as the Tribunal) has referred the following two questions of law to this Court for its opinion:—

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the assessee reverted back to the status of HUF with the birth of a daughter after partial partition was affected on 1st April, 1971 amongst coparceners including his wife, in respect of capital he got on partial partition?
2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that income from dividends, if interest from banks and annuity refunds belonged to the HUF and could not be subjected to tax in the assessee's hands as individual?"

(2) Facts relevant to the questions referred to us are:—

(3) Assessment year involved is 1977-78, the previous year of which ended on 31st March, 1977. Assessee is assessed in the status of an individual.

In the course of framing assessment of the assessee as an *individual, the Income tax Officer included the dividend income amonting to Rs. 52,000, interest from banks amounting to Rs. 4,903 and annuity refund of Rs. 1,546 in the hands of the assessee. These amounts were not offered for taxation in the hands of the assessee as an individual on the plea that there was a partial partition which had taken place in the family on 1st April, 1971 in respect of the share of capital invested in the firm of M/s Gurmukh Singh and Sons. Though the assessee in respect of the share income from the said firm as assessed as an individual but as the assessee was blessed with a daughter after partial partition, his status reverted back to that of HUF in respect of the funds received from partial partition on 1st April, 1971. Assessee's claim was that since his share of investment in the said firm came to him as a result of the partition of HUF property, the same was ancestral property in his hands after the birth of the daughter on 23rd November, 1971, and the amount belonged to his HUF constituted of self and his daughter. It was on the strength of this contention that he claimed exclusion of dividend income, interest from banks and annuity refund from his individual assessment. Income Tax Officer, rejected this contention by observing that since his wife was already separated from the HUF, subsequent birth of a daughter to him would not get back to him the status of HUF, as no HUF qua this property was in existence at that time. Income Tax Officer held that the said income did not belong to the HUF but to the individual and included the same in the assessment of the assessee as individual. Appeal carried by the assessee to the C.I.T. (Appeals) did not meet with success. Assessee thereafter, filed a further appeal before the Tribunal.

(4) Tribunal accepted the contention raised by the assessee and allowed the appeal. After noticing a number of judgments of various courts it was held that what was received by the assessee on partition was a part of Joint Hindu Family property and by the subsequent birth of a daughter to the assessee after partial partition the income received by the assessee in respect of dividend, interest from banks and annuity refund belonged to the HUF which could not be taxed in the hands of the assessee as an individual.

(5) On a petition filed by the revenue, the two questions of law stated to be arising out of the order of the Tribunal, referred to above, have been referred to this Court for its opinion.

(6) Answer to Question No. 2 would depend on the answer to Question No. 1.

(7) We have heard the counsel for the parties.

Question No. 1

(8) Admitted facts are that Bhagat Singh constituted a H.U.F. with his wife, son and four daughters. Partial partition took place between Bhagat Singh, his wife and his children. There is no controversy that it was out of

ancestral property that the partition was effected on 1st April, 1971. This partition was duly recognised by the department. On 23rd November, 1971, another daughter Balwinder Kaur was born to Bhagat singh. On these admitted facts, the only question to be determined is as to whether Bhagat Singh in respect of the property acquired by him in partition would constitute a HUF on the birth of a duaghter qua the properties received on partition.

(9) Article 212 of the Hindu Law by Mulla defines Joint Hindu family reads as under :-

> "212. Joint Hindu family.(1) A joint Hindu family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters(s). A daughter ceases to be a member of her father's family on marriage, and become a member of her husband's family.

(2) The joint and undivided family is the normal condition of Hindu society. An undivided Hindu family is ordinarily joint not only in estate, but also in food and worship. The existence of joint estate is not an essential requisite to constitute a joint family and a family which does not own any property may never the less be joint

Where there is joint estate, and the members of the family become separate in estate, the family ceases to be joint. Mere severance in food and worship does not operate as a separation.

(3) A joint or undivided Hindu family may consist of a single male member and widows of deceased male members. The property of a joint family does not cease to be joint family property belonging to any such family merely because the family is represented by a single male member (coparcener) who possesses rights which an absolute owner of property may possess. Thus for instance a joint Hindu family may consist of a male Hindu, his wife and his unmarried daughter. It may similarly consist of a male Hindu and the widow of his deceased brother. It may even consist of two male members. But there must be at least two members to constitute it. An unmarried male Hindu on partition does not by himself alone constitute a Hindu undivided family.

The basis of the rule that there need not be at least two male members to constitute a Hindu undivided family is that the joint family property does not cease to be such simply because of the "temporary reduction of the coparcenary unit to a single individual, the character of the property remains the same."

(10) Supreme Court of India in *Gowli Buddanna* v. *Commissioner of Income Tax, Mysore* (1) held that the family consisting of sole surviving coparcener and female member which constituted HUF was assessable as HUF under the Income Tax Act. In that case, A, his wife, his two unmarried daughters

(1) (1966) 60 I.T.R. 293

and B,his adopted son, were members of a HUF. A died. On these facts, their lordships held that the property of the HUF did not cease to belong to the family merely because the family was represented by a single coparcener B who possessed rights which an owner of property might possess, and the income received therefrom was taxable as income of HUF. It was also observed that there need not be more than one male member to form a HUF as a taxable entity under the Icome tax Act. It was held :-

> " The first contention is plainly unsustainable. Under section 3 of the Income Tax Act, not a Hindu coparcenary but a Hindu undivided family is one of the assessable entities. A Hindu joint family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. A Hindu coparcenary is a much narrower body than the joint family; it includes only those persons who acquire by birth an interest in the joint or coparcenary property, these being the sons, grandsons and great-grandsons of the holder of the joint property for the time being. Therefore, there may be a joint Hindu family consisting of a single male member and widows of deceased coparcers. In *Kalyanji Vithaldas* v. *Commissioner of Income Tax* (1937) 5 I.T.R. 90,95, delivering the judgment of the Judicial committee, Sir George Ranking observed :
>
> " 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 beging 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."

The plea that there must be at least two male members to form a "Hindu undivided family" as a taxable entity also has no force. The expression "Hindu undivided family" in the Income Tax Act is used in the sense in which a Hindu joint family is understood under the personal law of Hindus. Under the Hindu system of law a joint family may consist of a single male member and widows of deceased male members, and apparently the Income-tax Act does not indicate that a Hindu undivided family as an assessable entity must consist of at least two male members."

Similarly in *N.V. Narendranath* v. *Commissioner of Wealth Tax, Andhra Pradesh.* (2) regarding a share of HUF received on partition by a coparcener having a wife, two minor daughters and no son, it was held that in the hands of Coparcener the property had to be assessed as HUF property and not his individual property for the purpose of wealth/tax. It was observed as under:-

> " There need not be at least two male members to form a Hindu undivided family as a taxable unit for the purpose of the Wealth Tax Act, 1957. The expression "Hindu undivided family" in the Act is used

(2) (1969) 74 I.T.R. 190.

in the sense in which a Hindu joint family is understood in the personal laws of Hindus. Under the Hindu system of law a joint family may consist of a single male member and his wife and daughters and there is nothing in the scheme of the Wealth Tax Act to suggest that a Hindu undivided family as an assessable unit must consist of at least two male members."

(11) Allahabad High Court in *Prem Kumar* v. *Commissioner of Income Tax* (3) held that property falling to a single coparcener on a partition does not lose its character of joint family property solely for the reason that there is no other member, male or female, at a particular point of time. But once a sole surviving coparcener marries, a HUF comes into existence, because the wife along with her husband would then constitute a joint Hindu family. Similar was the view expressed by Madras High Court in *S. Periannani* v. *Commissioner of Income Tax* (4).

(12) Andhra Pradesh High Court in *Ashok Kumar Rattan Chand* v. *Commissioner of Income Tax* (5) held that property which a coparcener receives on partition does not become for all time his individual and separate property. By a subsequent marriage, the property becomes HUF property out of which he is obliged to maintain his wife and the wife is entitled to enforce this personal obligation by creating a charge on his property either acquired or ancestral. The status of the unit of assessment after marriage necessarily that of HUF and the income from such property is assessable in that status and not that of an individual.

(13) All persons lineally descended from a common ancestor including wife and unmarried daughter constitute a HUF which is a normal condition of Hindu society. There need not be at least two male members to constitute HUF. HUF can consist of a male Hindu, his wife and unmarried daughter. As against this Hindu coparcenary is a much narrower body than the joint family. As per Article 213 of the Hindu Law by Mulla, it includes only those persons who acquire by birth an interest in the joint or coparcenary property. It includes the three generations next to the holder in unbroken male descent. Incidence of self acquired property are different and distinct.

(14) Property received by the assessee on partition did not cease to be the joint Hindu family property only for the reason that there was no other member of joint Hindu family at a given time. On the birth of a daughter the HUF came into existence because the daughter constituted a joint Hindu family with her father qua the ancestral property received by him on partition.

(15) Respectfully following the view taken by the Supreme Court in *Gowli Buddanna's* case *(supra)* and the subsequent judgments of the different High Courts, referred to above, we answer Question No. 1 in the affirmative,

(3) (1980) 121 I.T.R. 347.
(4) (1991) 191 I.T.R. 278.
(5) (1990) 186 I.T.R. 475

that is in favour of the assessee and against the revenue. What was received by the assessee on partition was part of the ancestral property which did not cease to be HUF property and on the birth of a daughter subsequently, the assessee constituted a HUF qua the property received in partition. Qua this property his status reverted back to that of HUF and the income received from this property could not be assessed in his hands as an individual but the same was to be assessed in the status of HUF consisting of himself and his daughter. In the light of the above observations, the assessee's income from divided, interest from banks and annuity refunds could not be subjected to tax as individual in his hands. Question No. 2 is also answered in the affirmative that is in favour of the assessee and against the revenue. No costs.

S.C.K.

Before G.S. Singhvi and M.L. Singhal, JJ

UTTAM SINGH AND OTHERS,—*Appellants*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents*

LRA No. 85 OF 1989

19th August, 1997

Land Acquisition Act, 1894-S.11—Award by agreement—collector can pass award in terms of agreement only if signed by all parties who appeared before him and agree in writing—Settlement signed by Principal Secretary to C.M. and five others cannot be treated to be agreement signed by all persons interested in the land.

Held, that, the argument advanced by the learned counsel for the appellants in the context of Section 11(2) of the Land Acquisition Act is clearly misconceived. That section begins with non-obstante clause qua s.11(1) and lays down that if the collector is satisfied that all the persons interested in the land, who appear before him have agreed in writing on the matters to be included in the award of the collector in the form prescribed, then the Collector may make an award in accordance with the terms of such agreement without making further enquiry. On a plain reading of Section 11(2), it becomes clear that the Collector can pass an award in terms of the agreement only if all the parties, who had appear before him agree in writing on the matters to be included in the award. The so-called settlement which has been signed by the Principal Secretary to the Chief Minister and five other persons cannot be treated as an agreement entered into by all the persons interested in the land.

(Para 17)

Constitution of India, 1950-Arts.166(2)(3)-Rules of Business-Principal Secretary not authorised to act on behalf of Government of Punjab-Settlement not approved from the Council of Ministers-No sanctity in the eyes of law-Settled principle that any decision by Chief Minister cannot be treated as decision of Government unless it is translated into order in accordance with