

A THE COMMISSIONER OF INCOME TAX, BIHAR-II, RANCHI

v.  
SMT. SANDHYA RANI DUTTA

FEBRUARY 22, 2001

B [S.P. BHARUCHA, N. SANTOSH HEGDE AND  
Y.K. SABHARWAL, JJ.]

*Income Tax :*

C *Income Tax Act, 1961—Hindu Undivided Family—Constitution by female members through agreement—Held, the constitution of Hindu Undivided Family by Hindu females through an agreement is contrary to basic tenet of Hindu personal law, which requires atleast one male member for the formation.*

D A Hindu male governed by Dayabhaga School of Hindu Law, died intestate leaving behind his widow (respondent-assessee) and two daughters. They formed an Hindu Undivided Family (H.U.F.) by entering into an agreement. The assessee threw her share of inherited property into the kitty of H.U.F. and did not disclose income from her share of the inherited property for the assessment years 1974-75 and 1975-76. The I.T.O. assessed the income from her share of inherited property to tax rejecting the formation of H.U.F. by female members. The Appellate Assistant Commissioner rejected the appeal of the assessee. Tribunal allowed the appeal. High Court dismissed the reference made at the instance of the Revenue under the Income Tax, Act, 1961. Hence the appeals by the Revenue.

F Allowing the appeals, the Court

G HELD : 1.1. The capacity of Hindu females to form among themselves an H.U.F. appears to be alien to the Hindu personal law which requires the presence of a male for the purposes of the constitution of an H.U.F. The concept of Hindu females forming a joint Hindu Family by agreement amongst themselves appears to us to be contrary to a basic tenet of the Hindu personal law. Atleast one male member is necessary for the purposes of the formation of an H.U.F. [68-B; 67-C]

H 1.2. Consequently, the female heirs cannot treat the inherited property as joint family property. [67-E]

1.3. The share of properties inherited by the assessee from her husband is assessable in her hands in the status of individual under the Income Tax Act, 1961. [66-A]

*Gowli Buddanna v. Commissioner of Income Tax, Mysore, 60 ITR 293; Surjit Lal Chhabda v. Commissioner of Income Tax, 101 ITR 776 and Pushpa Devi v. Commissioner of Income-tax, 109 ITR 730, relied on.*

*Commissioner of Wealth Tax v. Gauri Shankar Bhar, 84 ITR 699, distinguished.*

*Commissioner of Wealth Tax v. Gouri Shankar Bhar, 68 ITR 345; Commissioner of Income-tax v. Sarwan Kumar, 13 ITR 361 and Commissioner of Income-tax, Madras v. Veorappa Chottiar, 76 ITR 467, referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5450-5451 of 1997.

From the Judgment and Order dated 9.8.95 of the Patna High Court in T.C. Nos. 70 and 71 of 1980.

M.L. Verma, Rajiv Tayagi, (B.V.B. Das) for Sushma Suri for the Appellant.

B. Sen, (A.C.), Prakash Shrivastava and Ms. Pradipti Shrivastava for the Respondent.

The Judgment of the Court was delivered by

**BHARUCHA, J.** These appeals arise from a judgment delivered by the High Court at Patna (Ranchi Bench) on an income tax reference at the instance of the Revenue. The three questions the High Court was called upon to consider read thus:

“(i) Whether on the facts and in the circumstances of the case, female heirs of a Hindu governed by the Dayabhaga School of Hindu Law dying intestate could form a joint Hindu Family by means of agreement ?

(ii) Whether female heirs of a Hindu governed by the Dayabhaga School of Hindu Law dying intestate could impress upon their inherited property the character of joint family property ?

- A (iii) Whether on the facts and in the circumstances of the case, one-third of the properties inherited from her husband was assessable in the hands of the assessee in the status of individual?"

B The High Court answered the first and second questions in the affirmative and in favour of the assessee and the third question in the negative and against the Revenue.

C The brief facts leading to the reference are these: One Har Govind Dutta, a Hindu governed by the Dayabhaga School of Hindu Law, died intestate on 19th June, 1972, leaving behind his widow (the assessee-respondent) and two daughters, Priya Dutta and Keya Dutta. That the assessee and the two daughters inherited the self-acquired properties of the deceased in equal shares is not in dispute. The assessee and the two daughters entered into an agreement on 26th July, 1972. Thereby they claimed to form a Hindu undivided family and the assessee threw her share of the inherited property into the kitty of this Hindu undivided family. Accordingly, for the Assessment Years 1974-75 and 1975-76 the assessee did not disclose in her income tax returns any income from her share of the inherited property.

E The Income Tax Officer rejected the assessee's contention that her share of the inherited property had been thrown into the kitty of a Hindu undivided family and he held that she was liable to income tax in respect of the income therefrom. Her appeal was rejected by the Appellate Assistant Commissioner. She went up before the Income Tax Appellate Tribunal, which reversed the view of the taxing authorities. From out of the judgment of the Tribunal the questions aforesaid were referred to the High Court. The High Court, relying principally upon the judgment of this Court in *Commissioner of Wealth-Tax v. Gauri Shankar Bhar*, 84 I.T.R. 699, came to the conclusion that there was no bar to the constitution of a Hindu undivided family in respect of properties inherited by the heirs, whether female or male, of a Hindu governed by the Dayabhaga School dying intestate by throwing an ascertained share into the hotchpot by agreement.

G The High Court was in error in its reading of the judgment of this Court in the case of *Gauri Shankar Bhar* (supra). This Court held, in view of the concession that each one of the heirs of a deceased governed by the Dayabhaga School took a definite share in the property left by him, that it was not necessary to decide whether a Dayabhaga Hindu family could be considered

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a Hindu undivided family within the meaning of Section 3 of the Wealth Tax Act, 1957. It held that, on the facts of the case, the heirs had taken the property of the deceased in separate shares; therefore, in law, each of them was liable to pay wealth-tax as individuals. It could not be said that an individual who inherited some property from someone became a Hindu undivided family merely because he was a member of a Hindu undivided family. There is, therefore, nothing in the judgment in *Gauri Shankar Bhar's* case to support the view taken by the High Court.

In *Gowli Buddanna v. Commissioner of Income-Tax, Mysore*, (60 I.T.R. 293) this Court held that there might be a joint Hindu family consisting of a single male member and the widows of deceased coparceners. The plea that there had to be at least two male members to form a Hindu undivided family as a taxable entity was found to have no force. Implicit in this is the conclusion that at least one male member is necessary for the purposes of the formation of a Hindu undivided family.

In *Surjit Lal Chhabda v. Commissioner of Income-tax*, (101 I.T.R. 776) it was held by this Court that a joint Hindu family, with all its incidents, is a creature of law and cannot be created by the act of parties, except to the extent to which a stranger may be affiliated to the family by adoption.

This Court in *Pushpa Devi v. Commissioner of Income-tax*, (109 I.T.R. 730) held that it was a fundamental notion governing a joint Hindu family that a female member of the joint family cannot blend her separate property, even if she is the absolute owner thereof, with joint family property. This judgment covered a case where there was already a joint family in existence and held that, even so, a female cannot blend her absolute property therewith. The ratio applies as much when a female purports to create by agreement with other females a Hindu undivided family and blends the property of her absolute ownership therewith.

The assessee respondent has not put in an appearance. Since a question of law was involved, we had requested Mr. B. Sen to assist us, which he has very kindly done. He has drawn our attention to the judgment of the Calcutta High Court in *Commissioner of Wealth Tax v. Gouri Shankar Bhar*, (68 I.T.R. 345), which judgment was considered by this Court in *Gouri Shankar Bhar's* case. Mr. Sen drew our attention to the observation therein that under the Dayabhaga School a joint family amongst brothers was a creation not of law

A but of a desire to live jointly, it originated in fact and not by legal fiction. He drew our attention also to the observation that a joint family could, in relation to persons governed by the Dayabhaga School, come into existence only by an act of volition on the part of the heirs, such as an agreement to live, mess and worship jointly.

B The principal question that we are concerned with here is the capacity of Hindu females to form among themselves a Hindu undivided family. No authorities to support this are brought to our notice; indeed they cannot be, for the concept appears to us to be alien to the Hindu personal law which requires the presence of a male for the purposes of the constitution of a Hindu undivided family.

C It is appropriate, however, to note the two judgments cited by the Tribunal in its order which it thought supported the assessee's case. The Tribunal stated that it had been observed by the Allahabad High Court in *Commissioner of Income-tax v. Sarwan Kumar*, (13 I.T.R. 361) that "there can be a Hindu undivided family consisting of female members only." We have seen that judgment and we find that that is not the conclusion of the High Court. What it said was, "It follows that on the disappearance of the last male member, the other members of the family, though not coparceners, continue to be members of a undivided Hindu family." What was held, therefore, was that on the death of the sole male member of a Hindu undivided family, the ladies who were members thereof could continue with that status. The Tribunal also cited the judgment of this Court in *Commissioner of Income-tax, Madras v. Veoroppa Chottiar*, (76 I.T.R. 467). The Tribunal rightly noted that this Court had there held that so long as the property which was originally of a joint Hindu family remained in the hands of the widows of the members of the family and was not divided among them, the joint family continued. The conclusion that the Tribunal drew from this was erroneous, namely, "Thus according to the Supreme Court also only females can also form a joint Hindu family."

G In the present case, as aforesaid, the assessee and her two daughters inherited in their individual capacity a one-third share each in the estate of the deceased. We have no authority before us which can lead us to the conclusion that the assessee and her two daughters were capable of forming a joint Hindu family or of throwing the interest of any one of them in the inherited property therein. As we have stated, the concept of Hindu females forming a joint Hindu family by agreement amongst themselves appears to us

to be contrary to a basic tenet of the Hindu personal law.

A

Accordingly, the questions are answered thus:

Question (i) - in the negative and in favour of the Revenue.

Question (ii) - in the negative and in favour of the Revenue.

Question (iii) -in the affirmative and in favour of the Revenue.

B

We repeat our gratitude to Mr. Sen for his assistance. The appeals are allowed. No order as to costs.

B.S.

Appeals allowed.