

STATE OF ORISSA

v.

SHYAM SUNDAR PATNAIK

October 27, 1965

[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

Orissa Agricultural Income-tax Act, 1947—Family consisting of sons of two deceased brothers whether Joint Hindu family for the purpose of Cl. B of the Schedule to the Act—Income from milk derived from cows and buffaloes maintained on agricultural lands whether agricultural income.

The respondent represented a joint Hindu family consisting of himself, his brother, and two sons of his father's brother. The joint family owned agricultural land, cows and buffaloes. Under s. 10 of the Orissa Agricultural Income Tax Act, 1947, the income of joint Hindu family was normally assessable as the income of one individual; but certain concessions were given in cl. B. of the Schedule of the Act to a joint family consisting of brothers only. The Explanation to the Schedule stated that for the purpose of the Schedule 'brother' included the son and the son of a son of a brother, and the widow of a brother. For the assessment years 1950-51, 1951-52 and 1952-53 the assessing authorities under the Act did not allow to the family the benefit given by cl. B of the Schedule and refused to treat the income from milk derived from cows and buffaloes maintained by the assessee family as agricultural income. The order of assessment was confirmed by the Assistant Collector but the Agricultural Income-tax Tribunal gave the benefit of the rates in the Schedule to the family and treated the income from milk as agricultural income. In a reference the High Court confirmed the views of the Tribunal. The State of Orissa appealed to this Court against the High Court's order by special leave.

It was urged on behalf of the State that (1) a family consisting of the sons of two brothers both of whom were dead was not a family consisting of "brothers only" under cl. B to the Schedule, (2) the income from the milk in question was not agricultural income.

HELD : If by the Explanation clause the expression "brother" has been given an artificial meaning as inclusive of the son and the son of a son of a brother, it would be difficult to regard the family as not consisting of brothers only. For the purpose of interpreting cl. B Explanation (i) must be incorporated in the expression "consisting of brothers only" and by so doing the conclusion is inevitable that an undivided family consisting of sons of deceased brothers, for the purpose of taxation under the Orissa Agricultural Income-tax Act, would be regarded as one consisting of "brothers only". [405 E-F]

The question whether income from milk derived from milch cows maintained by the respondent's family was agricultural income was held to be concluded by the court's decision in *Commissioner of Income-tax, West Bengal, Calcutta v. Raja Benoy Kumar Sahas Roy*, [1958] S.C.R. 101. [404 C]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 382 to 384 of 1964.

- A Appeals by special leave from the judgment and order dated August 20, 1962 of the Orissa High Court in S.J.Cs. Nos. 16, 17 and 18 of 1961.

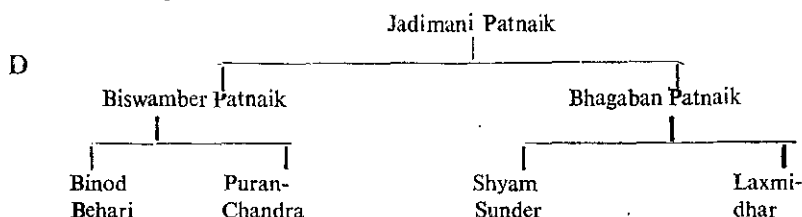
S. V. Gupte, Solicitor-General and *R. N. Sachthey*, for the appellant.

- B The respondent did not appear.

The Judgment of the Court was delivered by

- Shah, J.** These three appeals relate to proceedings for assessment of agricultural income-tax under the Orissa Agricultural Income-tax Act, 1947, for the years 1950-51, 1951-52 and 1952-53, and raise common questions.

The respondent represents a joint Hindu family consisting of four members, relationship between whom is explained by the following table :



- E Before the relevant years of account Jadimani, Biswambar and Bhagaban had died and Binod Behari, Puran Chandra, Shyam Sunder and Laxmidhar were the surviving members of the family. The joint family owned agricultural lands, cows and buffaloes. The assessing officer determined the income of the respondent for 1950-51 at Rs. 11,949, for 1951-52 at Rs. 10,850 and for 1953-54 at Rs. 9,549. In these sums were included in each year Rs. 200 as income derived by sale of milk of cows and buffaloes maintained by the family. The order of assessment was confirmed by the Assistant Collector of Agricultural Income-tax. In appeals to the Agricultural Income-tax Tribunal, the amount of Rs. 200 in each year derived from sale of milk was excluded and the Tribunal gave to the respondent benefit of the rates prescribed in the Schedule to the Act.
- F
- G

At the instance of the State of Orissa the following questions were referred to the High Court under s. 29(2) of the Act :

- H “(1) Whether in the facts and circumstances of the case the Tribunal is right in holding that income from milk derived from milch cows maintained by the opposite party is not agricultural income so as to be assessed

to income-tax under the Agricultural Income-tax Act, 1947. A

(2) Whether in the facts and circumstances of the case the Tribunal is right in holding that the Hindu undivided family represented by Sri Shyam Sundar Patnaik in the instant case, is a Hindu undivided family consisting of brothers only." B

The High Court answered both the questions in the affirmative. The State of Orissa has preferred these appeals with special leave.

Before us the correctness of the answer recorded by the High Court on the first question is not challenged, because the question raised is concluded by the judgment of this Court in *Commissioner of Income-tax, West Bengal, Calcutta v. Raja Benoy Kumar Sahas Roy*⁽¹⁾. C

The second question alone remains to be determined.

Section 2(1) of the Orissa Agricultural Income-tax Act, 1947 defines "agricultural income". Section 3 defines the incidence of tax on agricultural income. By s. 5 it was provided at the material time that agricultural income-tax shall be payable by every person whose total agricultural income of the previous year exceeds five thousand rupees. By s. 10 it is provided : D

"(1) The total agricultural income of a Hindu undivided family shall be treated as the income of one individual and assessed as such : E

"Provided that if a Hindu undivided family consists of brothers only as explained in the Schedule, the total agricultural income of the family shall be assessed at the rate specified in the Schedule. F

(2)"

Clause B of the Schedule prescribed the rates of agricultural income-tax in the case of every Hindu undivided family consisting of brothers only : G

(a) If the share of a brother is five thousand rupees or less } Three pies in the rupee.

(b) If the share of a brother exceeds five thousand rupees. } The average rate applicable to the share of such brother if he were assessed as an individual. H

(1) [1958] S.C.R. 101.

- A** The Explanation to the Schedule states that for the purpose of the Schedule "brother" includes the son and the son of a son of a brother and the widow of a brother, and the "share of a brother" means the portion of the total agricultural income of a Hindu undivided family which would have been allotted to a brother if a partition of the property of such family had been made on the last day of the previous year.
- B**

Binod Behari and Puran Chandra sons of Biswamber were brothers, and Shyam Sundar and Laxmidhar sons of Bhagaban were brothers. By the Explanation, the expression "brother" includes the son and the son of a son of a brother. The learned

- C** Solicitor-General for the State of Orissa submitted that the four members of the respondent could not be regarded as brothers within the meaning of the Schedule Cl. B. The Solicitor-General concedes that if in the year of assessment, Biswambar and Bhagaban were living and were sought to be taxed as an undivided Hindu family, they could obtain the benefit of cl. B of the Schedule. Even if
- D** one of them had died before the year of account and the family consisted of the surviving brother and the sons of the deceased brother, the benefit of cl. B would, it is conceded, have been available. But, says the Solicitor-General, after the two brothers Biswambar and Bhagaban died, the family could not be regarded as consisting of brothers only. If, however, by the Explanation
- E** clause the expression "brother" has been given an artificial meaning as inclusive of the son and the son of a son of a brother, it would be difficult to regard the family as not consisting of brothers only. For the purpose of interpreting cl. B, we must incorporate the Explanation (i) in the expression "consisting of brothers only"
- F** and by so doing the conclusion is inevitable that an undivided family consisting of sons of the deceased brothers, for the purpose of taxation under the Orissa Agricultural Income-tax Act would be regarded as one consisting of "brothers only".

The appeals therefore fail and are dismissed. There will be no order as to costs.

Appeals dismissed.