A **COMMISSIONER OF EXPENDITURE-TAX, GUJARAT, AHMEDABAD**

v.

DARSHAN SURENDRA PAREKH

December 12, 1967

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[J. C. SHAH, V. RAMASWAMI AND V. BHARGAVA, JJ.]

Expenditure Tax Act (29 *of* 1957), *ss.* 2(*g*) *and* 4—*Assessee a Hindu undivided family—Karta, if dependant of assessee—Expenditure by trustees on behalf of children of karta—Whether liable to be included under s.* 4(*i*) *or* (*ii*).

C Section 4(i) of the Expenditure Tax Act, 1957, is intended to include in the taxable expenditure of an assessee, the expenditure incurred directly or indirectly by a person other than the assessee for discharging any obligation of the assessee, or for the personal requirement of the assessee or of any of the assessee's dependants, which, but for the expenditure having been incurred by that other person would have been incurred by the assessee; and, s. 4(ii) is intended to include any expendi-
D ture incurred by any dependant of the assessee for the benefit of the assessee or of any of his dependants out of any settlement on trust or other source made or created by the assessee.

A Hindu, his children by his first wife, his second wife, and children by her, formed a Hindu undivided family, with himself as the *karta*. By deeds of trust he settled certain assets belonging to the joint family in favour of the children by the first wife and appointed trustees to manage
E the assets, to collect the income and to defray the expenses of the children. The *karta* was also possessed of separate property. In computing the taxable expenditure of the assessee-family for the years 1958-59 and 1959-60, under the Expenditure-Tax Act, the department included two items : (1) the expenditure incurred by the *karta*, out of his own separate property for his own purposes; and (2) the sum spent out of the trust estate for the children. On a reference, the High Court held that the two items were not chargeable to tax.

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In appeal to this Court it was contended that the first item was liable to be included in the expenditure of the assessee family under s. 4(i) because, the *karta* in a Hindu undivided family is a 'dependant' and the expenditure incurred was by a person other than the assessee for the personal requirement of a 'dependant' and the family would have been liable to meet the expenditure if it were not incurred by the *Karta;* and the second, either under s. 4(i) or (ii).

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HELD : (1) The expression 'other member of the family' in s. 2(g) (ii)(b) does not include a coparcener : it means wives and unmarried daughters of coparceners and widows of the family. A *karta,* is expressly excluded from cl. (a) and is not within the expression 'other member of the family' in cl. (b). Therefore, the *karta* is not a 'dependant'. The facts that when a *karta* incurs expenditure for the coparceners or other members out of his separate estate the expenditure is liable to be included
H in the taxable expenditure of the family, and that the expenditure incurred by a coparcener or other member of family out of his separate property in respect of the obligations of the family, or for the personal requirements of the coparceners or other members of the family, is also liable to

be included in the taxable expenditure of the family, are not grounds for attributing to the expression 'dependant' a wholly artificial meaning different from its statutory definition. There is nothing in the scheme of the Act which suggests that the expression 'dependant' in s. 4(1) of the Act was used in a sense different from that of the definition. No rule of interpretation permits, for the purpose of s. 4(i) of the Act, the application of the statutory definition of 'dependant' to bring within the net of taxation, expenditure incurred for coparceners other than the *karta*, and of a special meaning of that expression, inconsistent alike with the personal law of the parties and the statutory definition, to bring within the net of taxation, the expenditure for the *karta*. The Court cannot attribute two different meanings to a single expression in its application to two different situations contemplated by a single clause. [593 H; 594 C-D, F; 595 C-E; 596 B-C]

For the year 1959-60, s.4(i) was amended by the deletion of the words 'which but for the expenditure having been incurred by that other person, would have been incurred by the assessee'. But these words were a surplusage : by deleting them no intention to alter the meaning of the original clause (i) could be attributed to the Legislature [598 E-F]

Therefore, for both the years, the expenditure incurred by the *karta* out of his separate property for his own purposes could not be taken into account in computing the taxable expenditure of the assessee-family, even if the family would have been liable to incur that expenditure [596 F]

(2) The Appellate Tribunal found that as regards the children of the *karta*, the trustees 'had paid, spent or applied the income'. If the finding meant that the trustees incurred the expenditure for necessary expenses of the children, the case would fall under s. 4(i) for, the expenditure would be deemed to be incurred by a person other than the assessee-family for discharging an obligation of the family. If it meant that the expenditure was incurred by or on behalf of the children after it was received from the trustees, the case would fall under cl. (ii). The trusts were created by the *karta* out of the family funds; the children were dependants within the meaning of s. 2(g); and the expenditure was incurred for the benefit of the dependants of the family. The High Court was in error in observing that the expenditure contemplated by s. 4(ii) is one which enures for the benefit of a person other than the person who incurs the expenditure. If expenditure was incurred by a dependant for his own benefit out of any gift, donation or settlement on trust or out of any other source made or created by the undivided family, the case falls within the terms of s. 4(ii). [597 B-F]

For the year 1959-60, the Legislature amended s.4(ii) and expressly provided that where the assessee is a Hindu undivided family, any expenditure, incurred by any dependant of the assessee from or out of any income or property transferred directly or indirectly to the dependant by the assessee, is liable to be included in the taxable expenditure of the assessee. Thus the dependant who incurs the expenditure need not be other than the dependant to whom the property is transferred by the assessee, and, the expenditure incurred for his own purposes by the dependant to whom the property is transferred by the assessee-family falls within s.4(ii) as amended. Therefore, if the amount expended from out of the trust estate be held to be expended by the trustees, the case falls within the terms of cl. (i): if it be held that the expenditure was incurred by or on behalf of the children after the income was received from the trustees it would fall within the amended cl. (ii). [598 F-H; 599 A-B]

A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2523 and 2524 of 1966.

Appeals from the judgment and order dated October 26, 1964 of the Gujarat High Court in Expenditure Tax Reference No. 1 of 1963.

B *B. Sen, R. N. Sachthey* and *S. P. Nayar,* for the appellant (in both the appeals).

S. T. Desai and *I. N. Shroff,* for the respondent (in both the appeals).

The Judgment of the Court was delivered by

C **Shah, J.** One Surendra had by his wife Rameshchandrika (who died in 1947) three children—Darshan, Ranna and Rajeshri. By his second wife Pratima he had two sons and one daughter. Surendra, his wife Pratima and his children formed a Hindu undivided family. Surendra executed three deeds settling certain assets belonging to the Hindu undivided family in favour of his children Darshan, Ranna and Rajeshri, and appointed trustees D to manage the assets and to collect the income arising therefrom. The three children also owned some property which they had inherited from their mother. Separate books of account were maintained in respect of the two sets of properties and of income received therefrom. Surendra was also possessed of separate property. Expenditure for the education of the three children E was, it appears, defrayed out of the income received from the trust estates.

In a proceeding for assessment of tax under the Expenditure-tax Act, 1957, of the Hindu undivided family for the assessment year 1958-59 the Expenditure Tax Officer brought to tax Rs. 20,508/- being the aggregate of the following heads of F expenditure less the basic allowance of Rs. 30,000/- :

Rs. 11,504/- .. Expenditure of the Hindu undivided family;

Rs. 10,321/- .. Expenditure for the minors out of the separate properties;

G Rs. 28,683/- .. Expenditure incurred by Surendra out of his separate property.

The order of the Tax Officer was confirmed by the Appellate Assistant Commissioner and the Appellate Tribunal.

The Tribunal referred to the High Court of Gujarat under s. 25(1) of the Act, three questions, out of which only two H survive for consideration:

"1. Whether on the facts of the case, in computing the taxable expenditure of the assessee H.P.F. the sum

of Rs. 28,683/- being the expenditure incurred by Shri Surendra, the *Karta* of the H.U.F. out of his own self acquired and separate property was includible in law ? A

2. Whether on the facts of the case in computing the taxable expenditure of the assessee H.U.F. the sum of Rs. 10,321/- being the amount spent by the trustees was includible in law?" B

The High Court answered the two questions in favour of the assessee. Appeal No. 2523 of 1966 arises out of that order.

The relevant provisions of the Act may be briefly noticed. C Clause (c) of s. 2 defines an "assessee" as meaning "an individual or a Hindu undivided family by whom expenditure-tax or any other sum of money is payable under this Act, and includes every individual or Hindu undivided family against whom any proceeding under this Act has been taken for the assessment of his expenditure". Section 2(g) defines "dependant" as meaning "(i) where the assessee is an individual, his or her spouse or D child wholly or mainly dependant on the assessee for support and maintenance; (ii) where the assessee is a Hindu undivided family —(a) every coparcerner other than the *karta*; and (b) any other member of the family who under any law or order or decree of a court, is entitled to maintenance from the joint family property". Section 2(h) defines "expenditure" as meaning "any sum in money E or money's worth, spent or disbursed or for the spending or disbursing of which a liability has been incurred by an assessee, and includes any amount which under the provisions of this Act is required to be included in the taxable expenditure". Section 3 which imposes the charge of expenditure-tax provides :

"Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the first day of April, 1958, a tax (hereinafter referred to as expenditure-tax) at the rate or rates specified in the Schedule in respect of the expenditure incurred by any individual or Hindu undivided family in the previous year: F G

Provided . . . . . ."

Section 4 deals with the amount to be included in the taxable expenditure. The section as applicable to the year of assessment 1958-59 read as follows :

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"Unless otherwise provided in section 5, the following amounts shall be included in computing the expenditure of an assessee liable to tax under this Act, namely :—

A (i) any expenditure incurred, whether directly or indirectly by any person other than the assessee in respect of any obligation or personal requirement of the assessee or any of his dependants which, but for the expenditure having been incurred by that other person, would have been
B incurred by the assessee, to the extent to which the amount of all such expenditure in the aggregate exceeds Rs. 5,000/- in any year;

(ii) any expenditure incurred by any dependant of the assessee for the benefit of the assessee or of any of his dependants out of any gift, dona-
C tion or settlement on trust or out of any other source made or created by the assessee, whether directly or indirectly.

Explanation.— . . . . . ."

Section 5 sets out certain exemptions and s. 6 sets out certain
D deductions in the computation of taxable expenditure. In computing the taxable expenditure of an assessee under the Act, the expenditure actually incurred by an assessee is increased by certain specific items of expenditure incurred by persons other than the assessee, and reduced by the amounts exempted under s. 5 or permitted to be deducted under s. 6 of the Act.

E The dispute in the appeal relates to the inclusion of the expenditure incurred by Surendra out of his separate estate, and the expenditure incurred out of the estate beneficially vested in his children under the deeds of trust. The Tax Officer brought to tax the first item under s. 4(i) read with cl. (ii)(b) of s. 2(g), and the second item under s. 4(ii) of the Act. The Appellate Assistant Commissioner and the Tribunal were of the view that
F both the items were chargeable to tax under s. 4(i) of the Act. The High Court held that the two items were not chargeable to tax.

Counsel for the Revenue contended that a *karta* in a Hindu undivided family is a "dependant", and any expenditure incurred by the *karta* even out of his separate estate for his own
G needs or pleasures is expenditure incurred by a person other than the assessee for the personal requirement of a dependant, and is liable to be included in the taxable expenditure of the Hindu undivided family under s. 4(i) of the Act.

In the definition of the expression—"Dependant" in s. 2(g)
H (ii)(b) the expression "other member of the family" does not include a coparcener: it means wives and unmarried daughters of coparceners and widows in the family. A *karta* of a Hindu family being expressly excluded from cl. (a), he is not within

the meaning of cl. (b) "other member of the family". To include him in the expression "other member of the family" would make the exclusion of the *karta* in cl. (a) meaningless. A *karta* of a Hindu undivided family is therefore not a "dependant" within the meaning of s. 2(g)(ii) of the Act. A

Under the Act a Hindu undivided family is a taxable entity distinct from its coparceners and other members. A coparcener or other member of a Hindu undivided family is for purposes of assessment of the family to expenditure-tax a person other than the assessee. Expenditure incurred out of the family estate by the *karta* for and on behalf of the family is undoubtedly expenditure by the Hindu undivided family and taxable accordingly. Expenditure incurred by a coparcener or other member of the family out of his separate property is liable to be included in the taxable expenditure of the family, only if it is incurred in respect of the obligations of the family, or for the personal requirements of the coparceners or other members of the family, which if not incurred would have been incurred by the family. But every item of expenditure incurred by a corparcener or other member of the Hindu undivided family for his own purposes out of his separate property is not expenditure in respect of an obligation of the Hindu undivided family; nor is it expenditure to meet the personal requirements of the coparceners or other members of the family. For an item to be included under s. 4(i) within the taxable expenditure of a Hindu undivided family, it must be incurred for the collective obligation of the family, or for the separate personal requirements of the coparceners or other members of the family in their capacity as members of the family. The *karta* of a Hindu undivided family assessed to tax under the Expenditure-tax Act is by the express words of s. 2(g)(ii)(b) not a dependant, and when expenditure is incurred by a *karta* out of his separate estate for his own purposes, even though the family would have been liable to meet that expenditure if the expenditure were not incurred, the expenditure will, *prima facie*, not be liable to be included in the taxable expenditure of the family. B C D E F

Counsel for the Revenue contended that the Parliament could not have intended, in the computation of the taxable expenditure of a Hindu undivided family, to exclude the expenditure for the personal requirement of the *karta*, when expenditure for the personal requirement of other coparceners and members of the family is liable to be included. He submitted that the distinction between expenditure for personal requirement of the *karta* and of other coparceners of the family, from property not belonging to the family is based on no rational principle, and on that account the definition of dependant in s. 2(g) must be held G H

A inapplicable in the interpretation of the Act. Undoubtedly the definitions in s. 2 of words and expressions used in the Act apply unless the context otherwise requires, and if the context in s. 4 requires that the expression "dependant" should not be given the meaning which is assigned thereto by the definition in cl. (g) of s. 2, the Court would be justified in discarding that definition. It B is a settled rule of interpretation that in arriving at the true meaning which is assigned thereto by the definition in cl. (g) of to be viewed isolated from its context; it must be viewed in its whole context, the title, the preamble and all the other enacting parts of the statute. It follows therefrom that all statutory definitions must be read subject to the qualifications expressed in the definition clauses which create them, such as "unless the C context otherwise requires"; or "unless a contrary intention appears"; or "if not inconsistent with the context or subject-matter". But there is nothing in the scheme of the Act which suggests that the expression "dependant" in s. 4(i) of the Act was used in a different sense. Section 4(i) is intended to include expenditure incurred directly or indirectly by a person other than D the assessee for discharging any obligation or for personal requirement of the assessee or dependant of the assessee. The clause applies in the computation of the expenditure of an individual as well as a Hindu undivided family. It is not claimed that the definition in s. 2(g)(i) does not apply to the computation of the taxable expenditure under s. 4 of an individual E assessee : it is only contended that a part of the definition in s. 2 (g)(ii) does not apply to the interpretation of s. 4(i). When a *karta* of a Hindu undivided family incurs expenditure out of the joint family property to discharge an obligation of the family the expenditure is clearly by the Hindu undivided family, for in that case the *karta* must be deemed to be acting in incurring the expenditure for and on behalf of the Hindu undivided family. F When the *karta* incurs expenditure for the coparceners or other members out of his separate estate and for that expenditure the family would have been liable if it had not been incurred, the expenditure will be included in the taxable expenditure of the family. But when the expenditure is incurred by the *karta* out of his separate estate for his personal requirements it will not G be included even if the family would have been liable to incur that expenditure if it had not been incurred. This may apparently be anomalous. But that is not a ground for attributing to the expression "dependant" a wholly artificial meaning different from its statutory definition. No coparcener in a Hindu undivided family is a dependant of the family: he is an owner of the entire H property of the family in common with the other coparceners. His rights arise on birth into the family, and so long as the family remains joint, his interest in the property is no whit less than the interest of any other coparcener.

The Parliament in devising a special definition of the expression "dependant" has included therein all coparceners except the *karta*. If it be that the definition given in s. 2(g) is not to apply in interpreting s. 4 of the Act, expenditure incurred for the personal requirements of all the coparceners would have to be excluded. But that is not the contention of the revenue. No rule of interpretation permits for the purpose of s. 4(i) of the Act the application of the statutory definition of "dependant" to bring within the net of taxation, expendiutre incurred for coparceners other than the *karta*, and of a special meaning of that expression inconsistent alike with the personal law of the parties, and the statutory definition to bring within the net the expenditure for the *karta*. The Court cannot attribute two different meanings to a single expression in its application to two different situations contemplated by a single clause. The case is one clearly of defective draftsmanship. In ss. 5 & 6 wherever it was thought necessary, having regard to the special relation between members of a Hindu undivided family, the Parliament has restricted the use of the expression "dependant" to individual assessees, and has used different phraseology in defining exclusions and deductions in computing the taxable expenditure of assessees : see s. 5 (r); s. 6(c)(ii); s. 6(f)(ii); s. 6(g) and s. 6(h). In s. 4, however, the Parliament has in seeking to attain undue brevity failed to make provision for inclusion in computing the taxable expenditure of a Hindu undivided family expenditure incurred by the *karta* out of his separate estate, which expenditure would have been incurred by the family if it was not incurred by the *karta*.

Expenditure incurred by Surendra out of his separate property cannot therefore be taken into account in computing the taxable expenditure of the Hindu undivided family, in the absence of a finding that expenditure was incurred either for the obligation of the family, or for the personal requirements of the other coparceners or members of the family, which would have been incurred by the family if it had not been incurred by Surendra.

The amount of Rs. 10,321/- consists of two components— expenditure incurred out of the trust estate of the children of Surendra, and out of their personal estate. It is not clear from the finding recorded by the Tribunal whether the expenditure was incurred by the children of Surendra from the income received from the trust estate, or whether it was incurred on behalf of the children by the trustees. Clause 2(b) which is common to all the three deeds of trust provides that the trustees shall "pay, spend or apply the residue of the trust income to and after the beneficiary until the beneficiary attain the age of twenty-one

A years for or towards the maintenance, education, advancement in life, religious ceremonies, marriage, welfare and benefit of the beneficiary in such manner as the trustees shall in their absolute and uncontrolled discretion deem fit." The Tribunal has in the statement of the case stated that in accordance with the terms of the trust settlement, the "trustees had paid, spent or B applied the income in the account year 1957." That finding of the Tribunal is vague. But the position in law in any one of the three alternatives is plain. If the trustees incurred the expenditure for the education, maintenance, advancement in life, or for religious ceremonies, the case would clearly fall within the terms of s. 4(i), for there can be no doubt that the ex- C penditure would be deemed to be incurred by a person other than the assessee the Hindu undivided family, for the dependants to discharge obligation which the family was bound to discharge. If it be held that the expenditure was incurred by or on behalf of the children after it was received from the trustees, the case, in our judgment, would, even if it be assumed that it does not fall within cl. (i), fall within the terms of cl. (ii). The trusts D were created by Surendra out of the family funds; the children were dependants within the meaning of s. 2(g); and the expenditure was incurred for the benefit of the dependants of the family. We are unable to agree with the High Court that the dependant who incurs expenditure, to bring the case within the terms of s. 4(ii), must be other than the dependant who obtains E the benefit of that expenditure. In our view, the High Court was in error in observing that the expenditure contemplated under cl. (ii) of s. 4 is one which enures for the benefit of a person other than the person who incurs the expenditure. If expenditure was incurred by a dependant for his own purposes or benefit out of any gift, donation or settlement on trust or out of any F other source made or created by the Hindu undivided family, the case clearly fell within the terms of s. 4(ii) before the clause was amended by the Finance Act, 1959. There is nothing in the Act to show that the application of the clause was restricted to cases in which the dependant incurred expenditure for another dependant.

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Turning now to Civil Appeal No. 2524 of 1966 which arises out of the reference to the High Court on two questions framed in language identical with the language of the questions in the main appeal, but with different amounts of expenditure relating to the assessment year 1959-60, it is unnecessary to set out H the different components of the taxable expenditure incurred by the Hindu undivided family, expenditure incurred from the trust estate, and the expenditure incurred by Surendra in his individual capacity. The questions raised are only about

the liability to tax: the figures are not in dispute. Section 4, as it stood in the year of assessment 1959-60 read as follows:

> "Unless otherwise provided in section 5, the following amount shall be included in computing the expenditure of an assessee liable to tax under this Act, namely :—
>
> (i) any expenditure incurred, whether directly or indirectly by any person other than the assessee in respect of any obligation or personal requirement of the assessee or any of his dependants, to the extent to which the amount of all such expenditure in the aggregate exceeds Rs. 5,000/- in any year;
>
> (ii) where the assessee is an individual, any expenditure incurred by any dependant of the assessee, and where the assessee is a Hindu undivided family, expenditure incurred by any dependant from or out of any income or property transferred directly or indirectly to the dependant by the assessee."

Clause (i) is a reproduction of the original clause, subject to the deletion of the words "which but for the expenditure having been incurred by that other person, would have been incurred by the assessee." In our view, the words which were deleted did not add to the meaning of the expression "obligation or personal requirement of the assessee or any of his dependants". Expenditure which was not related to any obligation or personal requirement of the dependants in their capacity as dependants did not fall within the terms of s. 4(i) before it was amended. The words to which we have already referred, were a surplusage: by deleting them no intention to alter the meaning of the original cl. (i) may be attributed to the Legislature.

We are of the view, for the reasons already set out in dealing with the assessment year 1958-59, that the expenditure incurred by Surendra out of his personal estate is not liable to be included in the taxable expenditure for the year 1959-60. If the amount expended from out of the trust estate be held, for reasons already set out to be expended by the trustees, the case falls within the terms of cl. (i): if it be held that the expenditure was incurred by or on behalf of the children after the income was received from the trustees it would fall within cl. (ii). The Legislature has by the amended clause (ii) expressly provided that where the assessee is a Hindu undivided family, any expenditure incurred by *any* dependant of the assessee from or out of any income or property transferred directly or indirectly to the depen-

A dant by the assessee, is liable to be included. The words are not susceptible of the interpretation that the dependant who incurs the expenditure must be other than the dependant to whom the property is transferred by the assessee. Expenditure incurred for his own purposes by the dependant to whom the property is transferred by the Hindu undivided family clearly falls within s. 4(ii) as amended.

We therefore modify the order of the High Court. The answer to the first question for each year will be in the negative. The answer to the second question will be in the affirmative. It must, however, be understood that this answer does not imply that the amount of Rs. 10,321/- in respect of the assessment year 1958-59 was the amount spent by the trustees. In disposing of the appeal under s. 25(6) of the Expenditure-tax Act, the Tribunal must make appropriate adjustments in declaring the liability of the assessee to pay tax in respect of the expenditure incurred from the trust estate by the trustees after making the permissible deductions under ss. 5 & 6 of the Act. In view of the partial success, there will be no order as to costs in this Court and in the High Court.

V.P.S. *Order modified.*