V. D. DHANWATEY

v.

THE COMMISSIONER OF INCOME TAX, M.P. NAGPUR

(With Connected Appeal)

October 26, 1967

[K. N. WANCHOO, C.J., R. S. BACHAWAT, V. RAMASWAMI, G. K. MITTER AND K. S. HEGDE, JJ.]

Income-tax—Hindu undivided Family—Karta as partner of firm—also getting salary as manager under partnership deed—capital contribution made by family alone—if salary income of family or of individual partner.

The appellant in Civil Appeals Nos. 1372 and 1373, was a Hindu undivided family of which V was the karta and was, as such, a partner in a business of lithography and art printing with other members of the family, including M, who was the karta of the appellant HUF in Civil Appeal No. 1371. The capital in the case of both V and M was entirely contributed by their respective families. The partnership was governed by two successive partnership deeds which were in similar terms during the relevant period, whereby it was provided, *inter alia*, that interest would be payable to each partner on the amount of capital, that the general management and supervision of the business would be in the hands of V; M would be the manager of the works and both he and V would have power to make contracts, etc. Provision was also made for the payment of specified amounts by way of remuneration to various other partners out of the gross earnings of the partnership business. For the accounting period relating to the assessment year 1954-55 and 1955-56, V was paid a sum of Rs. 18,000 in each year and M was paid Rs. 7,500 in respect of the assessment year 1955-56. The appellants, being the assessee Hindu undivided family in each of the appeals, showed these amounts in Section D of their returns and it was contended that these amounts were not taxable in their hands as they represented income earned by V and M for the services rendered by each of them to the partnership and constituted their individual income. The Income Tax Officer rejected this contention and appeals to the Appellate Assistant Commissioner were dismissed. Further appeals were also dismissed by the Appellate Tribunal and it held that although V was an employee of the firm even before the family was taken as a partner, after he was taken as such partner, he could not at the same time be an employee of the partnership firm; the remuneration received by him must therefore be held to be only an adjustment of the share in profits of the family in the partnership. The High Court, upon a reference, also held against the assessees.

On appeal to this Court,

Held : (By Majority) in Appeals Nos. 1372 and 1373 : The High Court had rightly answered the question of law against the assessee and the appeals must therefore be dismissed.

(i) It was the investment of the joint family funds in the partnership which enabled V to become a partner and there was a real and sufficient connection between that investment and the remuneration paid to V under the deed of partnership. It follows therefore that the remuneration of V was not earned without detriment to the Hindu joint family funds and the case fell directly within the principle laid down in The *C.I.T., West Bengal* v. *Kalu Babu Lal Chand*, [1960] 1 S.C.R. 320; and in *Mathura Prasad* v. *C.I.T., U.P.* 60 I.T.R. 428. [74 C-E]

A *M/s. Piyare Lal Adishwar Lal* v. *The C.I.T., Delhi*, [1960] 3, S.C.R. 669; referred to.

The general doctrine of Hindu Law is that property acquired by a karta or a coparcener with the aid or assistance of joint family assets is impressed with the character of joint family property. The test of self-acquisition by the karta or coparcener is that it should be without detriment to the ancestral estate and before an acquisition can be claimed to be a B separate property, it must be shown that it was made without any aid or assistance from the ancestral or joint family property. [68B, C]

The finding of the Tribunal that even before the partnership was formed V was receiving the salary from the business which was carried on the larger joint family, was not relevant for the determination of the question of law in the present case. The salary given to V before he became a C partner had no connection with the remuneration earned by him after the contract of partnership which had a different character, and which arose out of a different legal relationship and was paid to him by virtue of the partnership deed. [73H]

(ii) The conclusion reached by the Tribunal that V had earned the remuneration in question without any detriment to the family funds was not a conclusion on a question of pure fact but was a conclusion on a D mixed question of law and fact. Though this conclusion was based upon primary evidentiary facts, its ultimate form had to be determined by the application of the relevant legal principles of Hindu law. In dealing with findings on questions of mixed law and fact the High Court must no doubt accept the findings of the Tribunal on the primary questions of fact; but it is open to the High Court to examine whether the Tribunal had applied the relevant legal principles correctly or not in reaching its final conclusion; and in that sense, the scope of enquiry and the extent E of the jurisdiction of the High Court in dealing with such points is the same as in dealing with pure points of law [74G—75B]

G. Venkataswami Naidu & Co., v. *C.I.T.* 35 I.T.R. 594, referred to.

(Per Hegde, J., *dissenting*) The sum of Rs. 18,000 received by V as his remuneration was not rightly included in the total income of the assessee.

F

From the facts found by the Tribunal it was established (i) that V was attending to the business in question even before the partnership came into existence and that he was getting remuneration for the work done by him; (ii) after the partnership came *into existence, he, one out of the several partners*, was designated as the general manager and for that work he was given a monthly remuneration of Rs. 1,500; and (iii) the said remuneration was received by him without any detriment to his G family. [76H]

There was no basis for the conclusion reached by the Tribunal that the remuneration received by V was only "an increased share in the profits of the firm paid to him as representing his HUF." The remuneration received by V had no relationship with the share capital subscribed by him. He was not appointed general manager merely because he was a partner. It cannot be said that his joint family was the general manager H nor that for any act or omission of his as the general manager his family could be held responsible. It was the family which was contending that the income in question was V's individual income and it was therefore reasonable to infer that his family had agreed to his receiving that income

as his individual income; the assessee's case would therefore fall within the rule laid down in *Jugal Kishore Baldeo Sahi* v. *Commissioner of Income-tax, U.P.* [1967] 1 S.C.R. 416. [77G, H; 85B-E] A

Piyare Lal v. *Commissioner of Income Tax*, [1960] 3 S.C.R. 669; *Palaniappa Chettiar* v. *Commissioner of Income Tax, Bihar and Orissa*, C.A. 1055 of 1966; *Sardar Bahadur Indra Singh* v. *Commissioner of Income Tax, Bihar and Orissa*, 11 I.T.R. 16; *Commissioner of Income Tax, Bihar and Orissa* v. *Darsanram and Ors.* 13 I.T.R. 419; and *Commissioner of Income Tax, Madras* v. *S.N.N. Sankaralinga Iyer*, 18 I.T.R. 194; relied upon. B

Commissioner of Income Tax, West Bengal v. *Kalu Babu Lal Chand*, [1960] 1 S.C.R. 320; *Mathura Prasad* v. *Commissioner of Income tax, U.P.*, 60 I.T.R. 428; distinguished.

Palaniappa Chettiar v. *Commissioner of Income Tax, Madras*, [1968] 2 S.C.R. 55; referred to. C

The Tribunal and the High Court were wrong in thinking that the partner of the firm can under no circumstances be given remuneration for taking part in the conduct of the partnership business. It is clear from s. 13(a) of the Partnership Act that by agreement between the partners, one of the partners can be remunerated for attending to partnership work. [77D]

S. Magnus v. *Commissioner of Income tax, Bombay City*, 33 I.T.R. 538: distinguished. D

The High Court was wrong in thinking that the finding of the tribunal that the remuneration received by V was without detriment to his family is not a finding of fact but a legal inference drawn by the tribunal from the facts proved. The tribunal reached that finding on the basis of the facts placed before it and it had given cogent reasons in support of that finding. The conclusion reached by the tribunal was therefore a finding of fact. A finding of this character cannot be considered as a mixed question of law and fact as no legal principle was required to be applied in arriving at that conclusion. [77B-C] E

Held : In Civil Appeal No. 1371 of 1966 (*Per* Wanchoo C.J., Bachawat, Ramaswami and Mitter, JJ): The material facts in the case of M being almost identical with those in Civil Appeals 1372 and 1373 of 1966, the High Court rightly answered the question referred to it and the appeal must therefore be dismissed. F

(Hegde J. concurred with the decision of the majority that the appeal should be dismissed but disagreed that the material facts in the case of M were almost identical with those in the case of V).

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1371-73 of 1966. G

Appeals from the judgments and orders dated July 23, 1963 and July 23, 1964 of the Bombay High Court, Nagpur Bench in Income-tax Reference No. 5 of 1962 and 85 of 1963.

G. L. Sanghi, A. S. Bobde, P. C. Bhartari and *O. C. Mathur*, for the appellant (in all the Appeals). H

C. K. Daphtary, Attorney-General, A. N. Kirpal and R. N. Sachthey, for the respondent.

A The judgment of WANCHOO, C.J., BACHAWAT, RAMASWAMI AND MITTER, JJ. was delivered by RAMASWAMI J. HEGDE J. delivered a dissenting Opinion.

Ramaswami, J. These appeals are brought, by certificate, on behalf of the assessee from the judgment of the Bombay High B Court dated July 23, 1964 in Income Tax Reference No. 85 of 1963.

The appellant (hereinafter called the 'assessee') is a Hindu Undivided family represented by its Karta, Shri V. D. Dhanwatey. The assessment years involved in these appeals are 1954-55 and 1955-56. For the year 1954-55 there was a deed of partnership C dated April 1, 1951 governing the relationship of the partners. For the year 1955-56 there was another partnership deed dated October 1, 1953. There was, however, no material change in the terms of the two deeds of partnership. The business carried on by the partnership was of lithography and art printing and was carried on through a Press under the name and style of Shivraj D Fine Art Litho Works. The capital of the partnership under the partnership deed was Rs. 10,50,000. Clause (4) of the partnership deed enumerated the share capital contributed by the partners as follows :

"1.	Baburao *alias* Vasantrao Dattaji Dhanwatey.	.. Two annas.
E 2.	Marotirao Dattaji Dhanwatey.	.. Three annas.
3.	Shamrao Dattaji Dhanwatey.	.. Two annas, three pies.
F 4.	Shankarao Dattaji Dhanwatey.	.. Two annas, three pies.
5.	Krishnarao Dattaji Dhanwatey.	.. Two annas, three pies.
G 6.	Balu *alias* Yeshwantrao Dattaji Dhanwatey.	.. Two annas." three pies.
7.	Shivaji Vasantrao Dhanwatey.	.. Two annas.'

H Clause (5) states that interest at the rate of 5% per annum shall be payable to each partner on the amount of the capital, Clause (7) provides that general management and supervision of the partnership business shall be in the hands of Shri V. D. Dhanwatey

Clause (8) states that Marotirao Dhanwatey shall be the manager incharge of the works and both he and Vasantrao Dhanwatey shall have power to make contracts and arrange terms with constituents or customers. Clause (10) empowered three partners, *viz.*, V. D. Dhanwatey, M. D. Dhanwatey and Shamrao Dhanwatey to appoint such person or persons on such salary as they deem fit for carrying on the work of the partnership and delegate to them such powers as they think proper. Clause (15) provided that the various adult members of the partnership shall devote their whole time and attention to the partnership in the sphere of their respective duties. Clause (16) is to the following effect :

> "The said Baburao *alias* Vasantrao Dattaji Dhanwatey shall be paid remuneration at the rate of Rs. 1,250 (Rupees Twelve Hundred Fifty) per month, the said Marotirao Dattaji Dhanwatey shall be paid remuneration at the rate of Rs. 1,000 (Rupees One thousand) per month, the said Shamrao Dattaji Dhanwatey shall be paid remuneration at the rate of Rs. 700 (Rupees seven hundred) per month, the said Shankarrao Dattaji Dhanwatey and Krishnarao Dattaji Dhanwatey shall each be paid remuneration at the rate of Rs. 500 (Rupees five hundred) each out of the gross earnings of the partnership business. This amount of remuneration of any or all can, however, be revised at any time if all the partners agree to revise."

According to this clause the remuneration paid to the various partners shall be paid to them out of the gross earnings of the partnership business. The remuneration provided for Shri V. D. Dhanwatey was later raised to Rs. 1,500 per month. For the accounting period relating to the assessment years 1954-55 and 1955-56 Shri V. D. Dhanwatey had been paid Rs. 18,000 in each year. The assessee showed the said amount in his return in Section D. It was contended on behalf of the appellant that the amount was not taxable because it was the income earned by Shri V. D. Dhanwatey for the services rendered by him to the partnership and the amount constituted his individual income and not the income of the Hindu Undivided Family. It was urged that the said amount should be taxed in the hands of Shri V. D. Dhanwatey in his status as individual and not in his status as Karta of the Hindu Undivided family. The Income Tax Officer rejected the contention of the assessee. The appeals of the assessee were disallowed by the Appellate Assistant Commissioner of Income-tax, Nagpur. The assessee took the matter in further appeal before the Income-tax Appellate Tribunal in Bombay. It was contended by the assessee that Shri V. D. Dhanwatey was an

A employee of the firm even before the family was taken as a partner. It was said that on partition of the larger Hindu undivided family in 1939 of which Shri V. D. Dhanwatey was a member, Shri V. D. Dhanwatey representing the small Hindu undivided family of which he became the karta, became a partner in the said firm and received salary from it. The Tribunal, by its order B dated September 4, 1962 dismissed the appeal of the assessee. The Tribunal accepted the contention of the assessee that Shri V. D. Dhanwatey was rendering services to the firm and was getting salary even before his family became a partner in the firm. But the Tribunal held that Shri V. D. Dhanwatey who was a partner of the firm could not at the same time be an employee of C the partnership firm and the remuneration received by him must be held to be only an adjustment of the share in profits of the Hindu Undivided family in the partnership. At the instance of the assessee the Appellate Tribunal stated a case to the High Court under s. 66(1) of the Income Tax Act, 1922 on the following question of law :

D "Whether on the facts and in the circumstances of the case, the sum of Rs. 18,000 was rightly included in the total income of the assessee-family for the assessment years 1954-55 and 1955-56?"

By its judgment dated July 23, 1964 the High Court answered the E reference against the assessee, holding that the entire capital contribution was made by the Hindu Joint family, that the remuneration paid to Shri V. D. Dhanwatey was paid under a clause of the deed of partnership, that the remuneration paid was only an increased share in the profits of the firm paid to Shri V. D. Dhanwatey as representing the Hindu undivided family and so the said amount of remuneration was taxable in the hands of the F assessee. The High Court took the view that the case was governed by the decision of this Court in *The C.I.T., West Bengal* v. *Kalu Babu Lal Chand*(1).

On behalf of the assessee learned Counsel stressed the argument that the remuneration to Shri V. D. Dhanwatey was by G reason of his own exertions and it was not earned with the help of the joint family assets. It was contended that there was no nexus between the joint family funds and the remuneration paid to Shri V. D. Dhanwatey for the services rendered by him and there was no evidence that any training had been given to Shri V. D. Dhanwatey at the expense of the family funds for equipping H him for the services rendered by him to the partnership. It was argued that the remuneration earned by Shri V. D. Dhanwatey could not be said to have been earned by detriment to the joint

(1) [1960] 1 S.C.R. 320.

family funds. It was therefore said that the High Court was wrong in applying the principle laid down by this Court in *The C.I.T., West Bengal* v. *Kalu Babu Lal Chand*(1) in deciding the present case.

The general doctrine of Hindu Law is that property acquired by a karta or a coparcener with the aid or assistance of joint family assets is impressed with the character of joint family property. To put it differently, it is an essential feature of self-acquired property that it should have been acquired without assistance or aid of the joint family property. The test of self-acquisition by the karta or coparcener is that it should be without detriment to the ancestral estate. It is therefore clear that before an acquisition can be claimed to be a separate property, it must be shown that it was made without any aid or assistance from the ancestral or joint family property. The principle is based on the original text of Yajnavalkya who while dealing with property not liable to partition, states :

पितृद्रव्याविरोधेन यदन्यत् स्वयमर्जितम् ।
मैत्रौद्वाहिकं चैव दायादानां न तद् भवेत् ॥
क्रमादभ्यागतं द्रव्यं हृतमप्यहरेत्तु यः ।
दायादेभ्यो न तद् दद्यात् विद्यया लब्धमेव च ॥

"Whatever else is acquired by the coparcener himself, without detriment to the father's estate, as a present from a friend or a gift at nuptials, does not appertain to co-heirs. Nor shall he, who receives hereditary property which had been taken away, give it up to coparceners; nor what has been gained by science."
(Yajnavalkya 2, verses 119-120).

Commenting on this text of Yajnavalkya the author of Mitakshara states :

"The author explains what may not be divided whatever else is acquired by the coparcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs. Nor shall he, who recovers hereditary property, which had been taken away, give it up to the coparceners; nor what has been gained by science."

The author sets out in verse 2 the text of Yajnavalkya in his own words and states in verse 6 :

अत्र च "पितृद्रव्याविरोधेन यत्किञ्चित्स्वयमर्जितम्" । इति सर्वत्र शेषः । अतश्चपितृद्रव्याविरोधेन यन्मैत्रमर्जितम्, पितृद्रव्याविरोधेन यदौद्वाहिकं पितृद्रव्याविरोधेन यत्क्रमायातमद्धृतं, पितृद्रव्याविरोधेन विद्यया यल्लब्धमिति प्रत्येकमभिसंबध्यते ।

(1) [1960] 1 S.C.R. 320.

A तथा च पितृद्रव्याविरोधेन प्रत्यपकारेण यन्मैत्रम्, आसुरादि विवाहेषु यल्लब्धम् तथा पितृद्रव्यव्ययेन यन्क्रमायातपुद्धृतं तथा पितृद्रव्यमयेन लब्धदा विद्यया यल्लब्धम् तत् सर्वं सवभ्रातृभिः पित्रा च विभाजनीयम ।

"Here the phrase anything acquired by himself, without detriment to the father's estate must be everywhere
B understood; and it is thus connected with each member of the sentence; what is obtained from a friend, without detriment to the paternal estate; what is received in marriage, without waste of the patrimony; what is redeemed, of the hereditary estate without expenditure of ancestral property; what is gained by science, without use of the
C father's goods. Consequently, what is obtained from a friend, as the return of an obligation conferred at the charge of the patrimony; what is received at a marriage concluded in the form termed Asura or the like; what is recovered, of the hereditary estate, by the expenditure of the father's goods; what is earned by science acquired at the expense of ancestral wealth; all that must be shared
D with the whole of the brethern and with the father."

The expression 'without detriment to the father's estate' in the text of Yajnavalkya is : "पितृद्रव्याविरोधेन" Dealing with the same matter, Devanna Bhatta states in Smriti Chandrika :

"27. The principle contained in Yajnavalkya's text
E *i.e.*, 'Whatever else is acquired by the coparcener himself without detriment to the father's estate' is explained by Manu in his passage, 'What has been acquired by labour without prejudice to the father's estate.'

28. In both the above passages, the word 'father'
F signifies an undivided co-heir generally—'By labour' means by acts requiring labour, such as agriculture, etc. Without prejudice,' means without detriment.

29. Vyasa, too; 'Whatever a man gains by his own labour without the assistance of the father's estate shall not be given by him to the co-heirs.'

G 30. 'Without the assistance', means without deriving assistance for the purpose of gaining. The word 'father' is used to denote an undivided co-heir generally"
(Setlur's translation, Ch. VII. Paragraphs 27 to 30) "

This principle is implicit in the decision of this Court in *The C.I.T., West Bengal* v. *Kalu Babu Lal Chand*(1) in which one
H Rohatgi, manager of a Hindu undivided family, who took over a business as a going concern, promoted a company which was

(1) [1960] 1 S.C.R. 320.

to take over the business. The Articles of Association of the company provided that Rohatgi would be the first managing director at a remuneration specified in the Articles. The shares which stood in the name of Rohatgi and his brother were acquired with funds belonging to the joint family and the family was in enjoyment of the dividends paid on those shares, and the company was floated with funds provided by the family, and was at all material times financed by the joint family. In proceedings for assessment of the Hindu undivided family, it was claimed that the managing director's remuneration were personal earnings of Rohatgi and could not be added to the income of the Hindu undivided family. The contention was rejected by this Court and it was held that the managing director's remuneration received by Rohatgi was, as between him and the Hindu undivided family, the income of the family and should be assessed in its hands. In reaching that conclusion, the court first observed that a Hindu undivided family cannot enter into a contract of partnership with another person or persons. The karta of the Hindu undivided family, however, may, and in fact, does, enter into partnership with outsiders on behalf and for the benefit of his joint family, but when he does so, the other members of the family do not, *vis-a-vis* the outsiders, become partners in the firm. So far as the outsiders are concerned, it is the manager who is recognised as a partner. Whether in entering into a partnership with outsiders, the manager acted in his individual capacity and for his own benefit, or he did so as representing his joint family and for its benefit, is a question of fact. If, for the purpose of contribution of his share of the capital in the firm, the karta brought in monies out of the till of the Hindu undivided family then he must be regarded as having entered into the partnership for the benefit of the Hindu undivided family, and as between him and the other members of his family he would be accountable for all profits received by him as his share out of the partnership profits, and such profits would be assessable as income in the hands of the Hindu undivided family. The court then proceeded to consider whether that principle was applicable to the income derived by a manager as a partner of a managing agent to remuneration received by the manager as the managing director of the company, and held that if the manager was appointed a managing director as representing the Hindu undivided family, the income received would be taxable as the income of the Hindu undivided family. In the course of his judgment, S. R. Das, C. J. speaking for the Court observed as follows at pages 331-332 of the Report :

> "The karta was one of the promoters of the Company which he floated with a view to take over the India Electric Works as a going concern. In anticipation of the incorporation of that Company the karta of the

A family took over the concern, carried it on and supplied the finance at all stages out of the joint family funds and the finding is that he never contributed anything out of his separate property, if he had any. The Articles of Association of the Company provided for the appointment as managing director of the very person who, as
B the karta of the family, had promoted the Company. The acquisition of the business, the floatation of the Company and appointment of the managing director appear to us to be inseparably linked together. The joint family assets were used for acquiring the concern and for financing it and in lieu of all that detriment to the joint family properties the joint family got not only the shares stand-
C ing in the names of two members of the family but also, as part and parcel of the same scheme, the managing directorship of the company when incorporated.....
.....The recitals in the agreement also clearly point to the fact of B. K. Rohatgi having been appointed managing director because of his being a pro-
D moter of the company and having actually taken over the concern of India Electric Works from Milkhi Ram and others. The finding in this case is that the promotion of the Company and the taking over of the concern and the financing of it were all done with the help of the joint family funds and the said B. K. Rohatgi did not
E contribute anything out of his personal funds if any. In the circumstances, we are clearly of opinion that the managing director's remuneration received by B. K. Rohatgi was, as between him and the Hindu undivided family, the income of the latter and should be assessed in its hands."

F The same principle was reiterated by this Court in a subsequent case—*Mathura Prasad* v. *C.I.T., U.P.*(1) In that case, a Hindu undivided family owned considerable property and carried on many businesses. There was a partition among the six branches in the family and a sixth share of the property was allotted to the smaller Hindu undivided family of which M was the manager. After partition the managers of the six branches
G entered into an agreement of partnership to carry on the businesses. Under the agreement, M, who was to manage the affairs of one of the offices, was entitled to a monthly allowance of Rs. 1,500, such allowance not exceeding the profits disclosed at that office. It was conceded before the Tribunal that M had entered into partnership as representing his smaller Hindu un-
H divided family for the benefit of the family. It was further found that M became a partner with the help of joint family funds and

(1) 60 I.T.R. 428.

that the allowance received by him was directly related to the investment of the family funds in the partnership business. Accordingly, his allowance was taxed as the income of the smaller Hindu undivided family in its hands. The appellant thereupon applied for a reference of the question whether the allowance was the income of the Hindu undivided family or of M in his personal capacity. Both the Tribunal and the High Court were of the view that the question sought to be raised was concluded by the judgment of this Court in *C.I.T.* v. *Kalu Babu Lal Chand*(1) and therefore it need not be referred for the opinion of the High Court. The assessee preferred an appeal to this Court from the order of the High Court rejecting his application for reference. It was held by this Court that on the findings recorded by the Tribunal, the question was concluded by the judgment of this Court in *C.I.T.* v. *Kalu Babu Lal Chand*(1) and any further elaboration was academic and that the High Court was therefore right in refusing to direct a case to be stated under s. 66(2) of the Indian Income-tax Act, 1922. Reference was made on behalf of the appellant to the decision of this Court in *M/s. Piyare Lal Adishwar Lal* v. *The C.I.T., Delhi*(2). But that case was distinguished and it was pointed out that there was no analogy between a case in which the property of the Hindu undivided family was sought to be encumbered for obtaining a benefit which was essentially personal to the manager, and a case in which with the aid of the family funds the manager of the family was able to enter into a partnership and to earn allowance, which he would not otherwise have been entitled to receive. In the course of his judgment at page 433 of the Report, Shah, J. speaking for the Court observed as follows :

> "In the present cases the Tribunal has found that Mathura Prasad had become a partner in the firm of Badri Prasad Jagan Prasad with the aid of the funds of the Hindu undivided family, and as a partner of the firm he was entrusted with the management of the Agarwal Iron Works and he earned the allowance which was claimed to be salary. The right to draw the allowance was, in the view of the Tribunal, made possible by the use of family funds. The family funds enabled him to become a partner and to claim the allowance for the services rendered. There was in the view of the Tribunal an inseparable connection between the joint family funds and the allowance received. The right to draw the allowance therefore arose directly from the joint family funds.
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> It may be recalled that in the second paragraph of clause 8 of the partnership agreement, though a monthly

(1) [1960] 1 S.C.R. 320. (2) [1960] 3 S.C.

A allowance of Rs. 1,500 was named as the amount which Mathura Prasad was entitled to withdraw, the amount was liable to be reduced, if the profits earned did not justify the withdrawals, and Mathura Prasad was bound to refund the excess of the withdrawals over his appropriate share in the profits. Therefore, by the agreement
B it was intended that subject to a maximum of Rs. 1,500 per month, Mathura Prasad will be entitled to make withdrawals commensurate with the profits of the firm. In the light of the principle laid down by this Court in *Kalu Babu Lal Chand's* case [(1960) 1 S.C.F 320], it must be held that on the finding recorded by the Tribunal, the question, which it was claimed should be referred to
C the High Court, was concluded by the judgment of this Court."

Now what are the facts found in the present case? It is not in dispute that the capital contribution of Shri V. D. Dhanwatey in the partnership belonged to the Hindu undivided family which he represented. In other words, the entire capital contribution
D to the partnership was made by the Hindu undivided family of which Shri V. D. Dhanwatey was the karta. It has been found that Shri V. D. Dhanwatey was in the partnership as representing the Hindu undivided family and he became a partner on account of the investment of the joint family assets in the capital of the partnership. It is also not disputed that shri V. D. Dhanwatey
E got remuneration at the rate of Rs. 1,500 per month by virtue of clause (16) of the deed of partnership. In other words, the payment was made to Shri V. D. Dhanwatey because of the investment of the capital by the joint family in the partnership business and had it not been for such investment Shri V. D. Dhanwatey would not have got the remuneration. It was stated by
F Counsel on behalf of the assessee that the Appellate Tribunal had found that even before the partnership was formed Shri V. D. Dhanwatey was receiving salary from December 1930 to August 1939 from the business which was carried on by the larger joint family. In our opinion, this finding is not relevant for the determination of the question of law in the present case. Even assuming that Shri V. D. Dhanwatey was rendering services to the busi-
G ness before the partnership was formed it does not necessarily follow that the remuneration paid to Shri V. D. Dhanwatey after the formation of the partnership should be deemed to be individual income in his hands and did not belong to the Hindu joint family of which he is the karta. The salary given to Shri V. D. Dhanwatey from December, 1930 to August, 1939 has no con-
H nection with the remuneration earned by him after the contract of partnership and has a different character and arises out of a different legal relationship. On the other hand, the remuneratio

in the present case was given to Shri V. D. Dhanwatey by virtue of the contract of partnership. It should also be noticed that under cl. (16) of the partnership deed the amount of remuneration of Shri V. D. Dhanwatey or of any other partner could be revised at any time if all the partners agreed to do so. It has been found by the Appellate Tribunal that the remuneration received by Shri V. D. Dhanwatey was only an increased share of the profits of the firm paid to him as representing the Hindu undivided family, and therefore the whole of the payment made to Shri V. D. Dhanwatey, *viz.*, the share in the profits of the firm and his individual remuneration was taxable as income of the Hindu undivided family. It is manifest that Shri V. D. Dhanwatey was made a partner due to the contributions made by the joint family funds to the entire share capital of the firm. In other words, it was the utilisation of the joint family funds which enabled Shri V. D. Dhanwatey to become a partner in the partnership business. In our opinion, the remuneration paid to Shri V. D. Dhanwatey was directly related to investments from the assets of the Hindu joint family in the partnership business. In other words, there was a real and sufficient connection between the investment from the Hindu joint family funds into the partnership business and the remuneration paid to Shri V. D. Dhanwatey under cl. (16) of the deed of partnership. It follows therefore that the remuneration of Shri V. D. Dhanwatey was not earned without detriment to the Hindu joint family funds and the case falls directly within the principle laid down by this Court in *The C.I.T., West Bengal* v. *Kalu Babu Lal Chand*(1) and in *Mathura Prasad* v. *C.I.T., U.P.*(2).

It was finally contended on behalf of the appellant that the Appellate Tribunal had found that Shri V. D. Dhanwatey had earned the remuneration without any detriment to the family funds and the finding of the Appellate Tribunal on this point was a finding on a question of pure fact and the High Court could not, in a reference under s. 66(1) of the Income-tax Act, 1922, question the correctness or the validity of that finding. We are unable to accept the argument put forward on behalf of the appellant. It is true that the jurisdiction conferred on the High Court by s. 66(1) of the Income-tax Act is limited to entertaining references on questions of law. In the present case, however, the conclusion reached by the Tribunal is not a conclusion on a question of pure fact but it is a conclusion on a mixed question of law and fact. In other words, though the conclusion of the Tribunal is no doubt based upon primary evidentiary facts, its ultimate form is determined by the application of the relevant legal principle of Hindu Law which has been discussed in the course of this judgment. In dealing with findings on questions of mixed law and fact the High

(1) [1960] 1 S.C.R. 320. (2) 60 I.T.R. 428.

A Court must no doubt accept the findings of the Tribunal on the primary questions of fact; but it is open to the High Court to examine whether the Tribunal had applied the relevant legal principles correctly or not in reaching its final conclusion; and in that sense, the scope of enquiry and the extent of the jurisdiction of the High Court in dealing with such points is the same as in dealing with pure points of law. For example, in *G. Venkataswami Naidu & Co.* v. *C.I.T.*(1) it was pointed out by this Court that where the question is whether a transaction is in the nature of trade, even if the conclusion of the Tribunal about the character of the transaction is treated as a conclusion on a question of fact, in arriving at its final conclusion on facts proved, the Tribunal has necessarily to address itself to the legal requirements associated with the concept of trade or business. The final conclusion of the Tribunal can, therefore, be challenged on the ground that the relevant legal principles have been mis-applied by the Tribunal in reaching its decision on the point; and such a challenge is open under s. 66(1) because it is a challenge on a ground of law.

For the reasons expressed we hold that the High Court rightly answered the question of law against the assessee and these appeals must be dismissed with costs—one set of hearing fees.

Hegde, J. I regret that it has not been possible for me to agree with the majority decision.

The question for decision in these appeals is "whether on the facts and circumstances of the case, the sum of Rs. 18,000 was rightly included in the total income of the assessee family for the assessment years 1954-55 and 1955-56."

The facts as found by the tribunal are these : The assessee is a Hindu undivided family of which Shri V. D. Dhanwatey (who will be hereinafter referred to as Dhanwatey) is the karta. He is one of the partners in a firm engaged in lithography and printing business. The partnership came into existence in August 1939. But that very business was being carried on by Dhanwatey's family before its partition in 1939. After partition in the bigger family, several members of the quondam family formed a partnership and that partnership took over the business in question. Dhanwatey was attending to that business ever since 1930 and he was being remunerated for the same. Dhanwatey joined the firm as one of its partners but his share of the capital was subscribed by his joint family. Under the deed of partnership he was designated as the general manager and his remuneration was fixed at Rs. 1,500 per month. The High Court found that he was getting the same remuneration even before the partnership came into existence.

(1) 35 I.T.R. 594.

The relevant findings of the tribunal are found in paragraph 5 of its order. It reads as follows :—

> "Even after the partition and the formation of the firm Shri V. D. Dhanwatey was getting a salary for managing the said business. These facts are not disputed by the department. We think, therefore, that the assessee has proved that Shri V. D. Dhanwatey has been rendering services to the firm and that as he was getting the salary even before he became a partner (subsequently representing his H.U.F.) it cannot be said that the salary now paid to Shri V. D. Dhanwatey is because of any detriment to the joint family."

Even after coming to that conclusion, the tribunal repelled the contention of the assessee that the salary received by Dhanwatey was his individual income on the sole ground, to quote its own words :

> "Dhanwatey is a partner in the said firm representing his H.U.F. In law he alone is a partner of the firm and not the H.U.F. Shri V. D. Dhanwatey cannot, therefore, be an employee of the partnership and the alleged salary received by Shri V. D. Dhanwatey must be held to be only an adjustment of the share of the H.U.F. in the partnership. As in this case no salary can be said to have been paid to Shri V. D. Dhanwatey, but what is paid can be said to be only an increased share in the profits of the firm paid to him as representing his H.U.F., and the share in the partnership being undoubtedly the income of the H.U.F., it is clear that the whole of the payment made to Shri V. D. Dhanwatey, *viz.*, the share in the profits of the firm and the alleged salary, all this is income of the H.U.F. and in our opinion was rightly taxed as such in the hands of Shri V. D. Dhanwatey as the karta of the H.U.F."

In support of the conclusion that no partner of a firm can get remuneration for taking part in partnership business, the tribunal purported to rely on the decision of the Bombay High Court in *S. Magnus* v. *Commissioner of Income tax, Bombay City*(1).

From the above findings of fact reached by the tribunal which were binding on the High Court and are binding on this Court, it is established (1) that Dhanwatey was attending to the business in question even before the partnership came into existence and that he was getting remuneration for the work done by him. (2) after the partnership came into existence, he, one out of the

(1) 33 I.T.R. 538.

several partners, was designated as the general manager and for that work he was given a monthly remuneration of Rs. 1,500, and (3) the said remuneration was received by him without any detriment to his family. We have now to see whether on the basis of these findings the remuneration received by Dhanwatey can be considered as an accretion to his family income. In my opinion the High Court went wrong in thinking that the finding of the tribunal that the remuneration received by Dhanwatey was without detriment to his family is not a finding of fact but a legal inference drawn by the tribunal from the facts proved. The tribunal reached that finding on the basis of the facts placed before it and it has given cogent reasons in support of that finding. The conclusion reached by the tribunal is a finding of fact. I respectfully disagree with the majority that a finding of this character can be considered as a mixed question of law and fact as no legal principle was required to be applied in arriving at that conclusion.

The appellate tribunal as well as the Bombay High Court were wrong in thinking that a partner of a firm can under no circumstance be given remuneration for taking part in the conduct of the partnership business. In reaching that conclusion the tribunal as well as the High Court ignored s. 13(a) of the Partnership Act, which says that subject to the contract between the partners, a partner is not entitled to receive remuneration for taking part in the conduct of the business. From that provision it follows that by agreement one of the partners in a partnership firm can be remunerated for attending to partnership work.

The tribunal as well as the High Court erred in thinking that the Bombay High Court in the case of *S. Magnus* had laid down that a partner of a partnership firm cannot be given any remuneration for taking part in partnership business. All that that decision has laid down is that a partner cannot be an employee of the partnership. That is not the same thing as saying that a partner cannot be remunerated for taking part in the conduct of the partnership business. On the facts found by it there was no basis for the conclusion reached by the tribunal that the remuneration received by Dhanwatey was only "an increased share in the profits of the firm paid to him as representing his HUF". It may further be noted that the remuneration received by Dhanwatey had no relationship with the share capital subscribed by him. It is in no manner linked with the share capital subscribed by him.

On the material on record it is not possible to hold nor did the tribunal hold that Dhanwatey was appointed as the general manager merely because he was a partner. The partnership deed does not say so either expressly or even by implication. In law he alone is the partner. Therefore it would not be correct to say

that every right Dhanwatey acquired under the partnership deed was acquired on behalf of the family. Under cl. (16) of the partnership Dhanwatey as the general manager of the firm was given a remuneration of Rs. 1,500 per month. It cannot be said that Dhanwatey's joint family was the general manager of the family, nor could it be said that for any act or omission of his as the general manager of the firm his family could be held responsible.

Dhanwatey evidently had great deal of experience in the business in question. To repeat, even before the partnership came into existence, he was attending to that very business and he was drawing a salary of Rs. 1,500 per month. For the capital supplied by his joint family, it was getting dividends. It may be, the fact that he was a partner of the firm was a circumstance that had induced the other partners to appoint him as the general manager. But that could not have been the determinative circumstance. There were other partners who had subscribed more capital than he had done. It must be remembered that investment in a business is but one of its facets. The know-how and intelligent direction is no less important. Business concerns do not earn profits merely because capital is invested in them. Much depends upon the persons who are in charge of the business. Captains of industries and business managers should possess business knowledge, tact, capability, drive and numerous other qualities. The experience of Dhanwatey in that particular business must have greatly weighed with the partners in appointing him as the general manager and entrusting to him the supervision of the business. Therefore it can be reasonably concluded that remuneration paid to him was a *quid pro quo* for the special services rendered by him.

So far as the partnership is concerned, it was Dhanwatey and not his joint family that was the partner. The partnership had nothing to do with his joint family. But the capital invested by Dhanwatey being that of his joint family, Dhanwatey had to hold that capital and the accretions thereto as joint family property. But he need not make over to his family his personal earnings. Before an acquisition made by a coparcener of a Hindu family can be considered as family acquisition, as observed in the majority judgment, there must be real and sufficient connection between the family investment and the acquisition. On the facts of this case it cannot be said that the management of Dhanwatey involved any risk to his family as such. Nor can it be said—except in a very remote sense—that he took the aid of the family funds in making the acquisition.

As laid down by the Hindu law texts, whatever is acquired by a coparcener himself without detriment to the father's estate, does

A not appertain to the co-heirs. The tribunal, the final fact finding authority, has found that the payment of remuneration to Dhanwatey did not entail any detriment to the family assets. Nor could it be said that he made that acquisition with the aid of the family assets. The aid contemplated by law must be a real and substantial one and not any remote connection between the income
B earned and the family funds. That position is made clear by the decision of this Court in *Piyare Lal* v. *Commissioner of Income tax*(1) and the decision of this very Bench in *Palaniappa Chettiar* v. *Commissioner of Income Tax, Madras*(2).

In *Sardar Bahadur Indra Singh* v. *Commissioner of Income tax Bihar and Orissa*(3), the income realized by the karta of Hindu
C undivided family as the governing director of a private company of which he was a partner as representing his family, was held to be his personal income. A similar view was taken in *Commissioner of Income tax, Bihar and Orissa* v. *Darsanram and others*(4). In *Commissioner of Income-tax, Madras* v. *S. N. N. Sankaralinga Iyer*(5), a division bench of the Madras High Court
D consisting of Satyanarayana Rao and Viswanatha Sastri, JJ. held that the remuneration deceived by Sankaralinga Iyer as the managing director of a bank was his individual income though he had acquired the shares in the bank which qualified him to be a director from out of the funds of his family of which he was the karta. It held that the remuneration received by him as the managing
E director's remuneration and director's sitting fee was earned by him in consideration of the services which he rendered to the bank, and as there was no detriment to the family property in earning that remuneration, his income as the managing director of the bank was his personal income and not the income of the Hindu undivided family of which he was the karta.

F Then came the decision of this Court in *Commissioner of Income-tax, West Bengal* v. *Kalu Babu Lal Chand*(6). On the facts of that case, this Court held that the remuneration earned by Rohatgi as the managing director of a firm was the income of his HUF. The facts of that case were somewhat peculiar. They are set out at p. 331 of the report. It would be best to quote the
G passage in question which reads :—

> "Here was the Hindu undivided family of which B. K. Rohatgi was the karta. It became interested in the concern then carried on by Milkhi Ram and others under the name of India Electric Works. The karta was one of the promoters of the Company which he
H floated with a view to take over the India Electric Works

(1) [1960] 3 S.C.R. 669.
(2) [1968] 2 S.C.R. 55.
(3) 11 I.T.R. 16.
(4) 13 I.T.R. 419.
(5) 18 I.T.R. 194.
(6) [1960] 1 S.C.R. 320

as a going concern. In anticipation of the incorporation of that Company the karta of the family took over the concern, carried it on and supplied the finance at all stages out of the joint family funds and the finding is that he never contributed anything out of his separate property, if he had any. *The Articles of Association of the Company provided for the appointment as managing director of the very person who, as the karta of the family, had promoted the Company* (Emphasis supplied). The acquisition of the business, the floatation of the Company and appointment of the managing director appear to us to be inseparably linked together. The joint family assets were used for acquiring the concern and for financing it and in lieu of all that detriment to the joint family properties the joint family got not only the shares standing in the names of two members of the family but also, as part and parcel of the same scheme, the managing directorship of the company when incorporated. It is also significant that right up to the accounting year relevant to the assessment year 1943-44 the income was treated as the income of the Hindu undivided family. It is true that there is no question of *res judicata* but the fact that the remuneration was credited to the family is certainly a fact to be taken into consideration."

It may be noted that it is on the basis of those facts that this Court came to the conclusion that the remuneration received by Rohatgi was the income of his HUF.

While dealing with the decisions in *Sardar Bahadur Indra Singh*(1) and *Darsanram's*(2) cases referred to earlier, this Court observed in *Kalu Babu's*(3) case :

"The case of *Sardar Bahadur Indra Singh* v. *Commissioner of Incometax, Bihar and Orissa* is clearly distinguishable in that it was expressly provided in the Articles of Association of the Company in that case that the remuneration of the managing director would be his personal income. In *Commissioner of Incometax, Bihar and Orissa* v. *Darsanram*, the finding of fact was that the joint family property had not been spent in earning the managing director's remuneration which was, therefore, held to be the personal earnings of the karta who had been appointed as the managing director."

(1) 11 I. T. R. 16 (2) 13 I. T. R. 419.

(3) [1960] 1 S.C.R. 320.

A From these observations it follows that this Court did not dissent from the view taken in *Darsanram's*(1) case. The facts found by the tribunal in the present case are identical to those found in *Darsanram's*(1) case.

Dealing with *Sankarlinga Iyer*(2) case, this Court observed in the aforementioned *Kalu Babu's*(3) case :

B

> "The case of *Commissioner of Income tax, Madras* v. *S. N. N. Sankaralinga Iyer* does not help the respondent because of the facts found in that case. In that case it was found that the remuneration of the managing director was earned by him in consideration of the
> C services which he rendered to the bank and no part of the family funds had been spent or utilised for acquiring that remuneration except that the necessary shares to acquire the qualification of a managing director were purchased out of the joint family funds. It was said that there was no detriment to the family property in any
> D manner or to any extent, as admittedly the shares earned dividends which were included in the income of the family."

If this Court had observed nothing further about *Sankaralinga Iyer's*(2) case, the rule laid down in that case could have been relied on by the assessee in this case as the facts found in the two
E cases are in *pari materia*. But unfortunately in *Kalu Babu's*(3) case this Court went further and observed :

> "With great respect to the learned judges, it appears to us that they overlooked the principles laid down by the Judicial Committee in *Gokul Chand* v. *Hukum Chand Nath Mal* (48 I.A. 162) where it was pointed
> F out that there would be no valid distinction between the direct use of the joint family fund and the use which qualified the member to make the gains on his own efforts. The member of the joint family entered into the Indian Civil Service no doubt by reason of his intelligence and other attainments. He certainly entered
> G into a personal agreement with the Secretary of State in Council and he received his salary for rendering his personal service. But all that was made possible by the use of the joint family funds which enabled him to acquire the necessary qualifications and that fact made his earnings part of the joint family properties. That
> H apart, those decisions do not clearly govern the case now before us."

(1) 13. I. T. R. 419. (2) 18 I. T. R. 194.

(3) [1960] 1 S.C.R. 320.

The above observations, which are purely *obiter dicta* have led to a great deal of misunderstanding about the true legal position. It is well known that the decision in *Gokul Chand's*(1) case gave rise to great deal of public dissatisfaction and the legislature was constrained to step in and enact the Hindu Gains of Learning Act 1930 (Act 30 of 1930) which nullified the effect of that decision. The observation in *Gokul Chand's*(1) case that there is no valid distinction between the direct use of the joint family fund and the use which qualified the member to make the gains on his own efforts, if I may say so with respect, is an unduly wide statement of the law. It does not flow from the relevant text referred to earlier. Further the said observation is wholly out of tune with our present day socio-economic conditions. Hence that decision should not be allowed to influence our judgment. In *Piyare Lal's*(2) case this Court ignored the rule laid down by the Judicial Committee in *Gokul Chand's*(1) case and this very Bench did not allow itself to be influenced by that rule in *Palaniappa Chettiar's*(3) case.

Dealing with *Sankaralinga Iyer's*(4) case this Bench observed thus in *Palaniappa Chettiar's*(3) case :

> "We consider it also necessary to state that the decision of Madras High Court in *C.I.T., Madras* v. *S. N. N. Sankaralinga Iyer*(4) was not impliedly overruled by this Court in *C.I.T., West Bengal* v. *Kalu Babu Lal Chand*(5). It was merely pointed out that the material facts of that case were different from those of *Kalu Babu Lal Chand's*(5) case. It was, for instance, found in *C.I.T., Madras* v. *S. N. N. Sankaralinga Iyer*(1) that the remuneration of the managing director was earned by rendering services to the bank and no part of the family funds were utilised except that the necessary shares to acquire the qualification of a managing director were purchased out of joint family funds. It was held that there was no detriment to the family property in any manner or to any extent. In view of this finding it follows that the remuneration of the managing director could not be treated as an accretion to the income of the joint family and taxed in its hands. The process of reasoning of the Madras High Court in *C.I.T., Madras* v. *S. N. N. Sankaralinga Iyer*(3) may not be wholly sound but, in our opinion, the actual decision in that case is correct and is supported by the principle that there is no detriment to the family property and no part of the family funds had been spent or utilised for acquiring the remuneration of the managing director."

(1) 48 I. A. 162. (2) [1960] 3 S. C. R. 669. (3) [1968] 2 S. C. R. 55.
(4) 18 I. T. R. 194. (5) [1960] 1 S. C. R. 320.

A From these observations, it follows that this Court has accepted the correctness of the rule laid down in *Sankaralinga Iyer's* case. I am unable to discover any real basis to distinguish the facts of the present case from those found in *Sankaralinga Iyer's* case. Hence, in my judgment the ratio of that decision fully applies to the facts of this case.

B This takes me to the decision of this Court in *Mathura Prasad* v. *Commissioner of Income tax, U.P.*(1). The facts found in that case are more or less similar to those found in the Kalu Babu's case. Those facts as conceded before the tribunal are : Mathura Prasad, the manager of his HUF had entered into a partnership as representing his family of which he was the karta and for the C benefit of the family. There was also no dispute that in the firm of Badri Prasad Jagan Prasad, the assets of the assessee family were invested. The tribunal found that Mathura Prasad, the manager, became a partner in the firm with the help of joint family funds and as partner he was entrusted with the management of the Agarwal Iron Works. On the basis of those facts, D it was held that the allowance received by Mathura Prasad was therefore directly related to the investment of the family funds in the partnership business. In the course of the judgment, it was observed :

> "It was suggested that Mathura Prasad earned the allowance sought to be brought to tax because of the E special aptitude he possessed for managing the Agarwal Iron Works and the allowance claimed by him was not earned by the use of the joint family funds. But no such contention was raised before the High Court. We have been taken through the petition filed in the High Court under section 66(2) of the Act, and there is no aver- F ment to the effect that Mathura Prasad had any special aptitude for management of the Agarwal Iron Works, and what was agreed to be paid to him was as remuneration for performing services because of such aptitude."

From these observations it is clear that in that case this Court G was not considering a case wherein the facts found were similar to those before us in this case. I do not think that the rule laid down by this Court either in *Kalu Babu's*(2) case or in *Mathura Prasad's*(3) case is applicable to the facts of the present case.

It is unnecessary to go into the decisions rendered by the High Courts after the decision of this Court in *Kalu Babu's*(2) case. Most of them, we were told, are pending in this Court in appeal. H Further, they were decided on their own facts. Some of them

(1) 60 I.T.R. 428. (2) 1960 1 S.C.R. 320.

(3) 60 I.T.R. 428.

appear to have been greatly influenced by the observations in *Kokulchand's*(1) case quoted with approval in *Kalu Babu's*(2) case.

The contention that if a coparcener of a Hindu joint family takes any aid from his family funds in making an acquisition, however, slender that aid might be, the acquisition in question should be considered as a family acquisition, stands repelled by the decision of this Court in *Pyare Lal Adishwar Lal's*(3) case. Therein, one Sheel Chandra who was the karta of his HUF consisting of himself and his younger brother, furnished as security his family properties for being appointed the treasurer of a bank. He would not have been appointed treasurer of the bank but for the security given. In that case also, it was contended on behalf of C.I.T. that the salary earned by Sheel Chandra was a family income and is liable to be taxed as such. That contention was negatived by this Court. From that decision it follows that it is not any and every kind of aid received from family funds which taints an income as family income. Before an income earned by the exertions of a co-parcener can be considered as a family income, a direct and substantial nexus between the income in dispute and the family funds should be established. The ratio of the decision of this Bench in *Palaniappa Chettiar's* case also leads to the same conclusion. Palaniappa Chettiar would not have become the director of the firm Trichy-Sri Ranga Transport Company Ltd. but for the shares acquired by him from out of the funds of his joint family. But yet this Bench held that the remuneration received by him as the managing director of the company was his individual income. I see no real distinction between the relevant facts found in *Palaniappa Chettiar's* case and those found in the present case. In my opinion, both these cases stand on the same footing.

Law is a social mechanism to be used for the advancement of the society. It should not be allowed to be a dead weight on the society. While interpreting ancient texts, the courts must give them a liberal construction to further the interests of the society. Our great commentators in the past bridged the gulf between law as enunciated in the Hindu law texts and the advancing society by wisely interpreting the original texts in such a way as to bring them in harmony with the prevailing conditions. To an extent, that function has now to be discharged by our superior courts. That task is undoubtedly a delicate one. In discharging that function our courts have shown a great deal of circumspection. Under modern conditions legislative modification of laws is bound to be confined to major changes. Gradual and orderly development of law can only be accomplished by judicial interpretation.

(1) 48 I. A. 162. (2) [1960] 1 S. C. R. 320.

(3) [1960] 3 S.C.R. 669.

A The Supreme Court's role in that regard is recognised by Art. 141 of our Constitution.

On the facts found in this case, it is clear that Dhanwatey was treating the remuneration received by him as his individual income with the consent of his family. As pointed out earlier, he was getting the same remuneration when his quondam joint B family was running the business. He could not have received the same on behalf of the family. There was no point in the family giving remuneration to him in one hand and taking it back in the other. Therefore, the remuneration drawn by him prior to 1939 must be held to be his individual income. That remuneration quite clearly must have been paid to him with the consent of the C members of the family. Factually there was no change in the position after the partnership came in to existence. Dhanwatey has always been treating that income as his individual income. In these cases it is the family which is contending that the income in question is Dhanwatey's individual income. From these facts it is reasonable to infer that his family had agreed to his receiving D that income as his individual income. If that is so, the assessee's case falls within the rule laid down by this Court in *Jugal Kishore Baldeo Sahi* v. *Commissioner of Income tax, U.P.*(1). It is true that at no stage the assessee had put forward the contention that Dhanwatey was getting the remuneration in question as his individual income with the consent of the members of his family, but that conclusion clearly flows from the facts found by the tribunal E and such a conclusion is not outside the scope of the question referred to the High Court.

For the reasons mentioned above, I allow these appeals and answer the question referred under s. 66(1) of the Income Tax Act 1922 in favour of the assessee, *i.e.*, on the facts and circumF stances of the case the sum of Rs. 18,000 received by Dhanwatey as his remuneration was not rightly included in the total income of the assessee for the assessment years 1954-55 and 1955-56.

ORDER

In accordance with the opinion of the majority the appeals are G dismissed with costs. One hearing fee.

C.A. 1371 *of* 1966.

Ramaswami, J. This appeal is brought, by certificate on behalf of the assessee from the judgment of the Bombay High Court dated July 23, 1963 in Income Tax Reference No. 5 of 1962.

H The appellant (hereinafter called the "assessee') is a Hindu undivided family of which Shri M. D. Dhanwatey is the Karta. The

(1) [1967] 1 S.C.R. 416.

assessment year involved in this appeal is 1954-55, the corresponding accounting year being the year ended September 30, 1953. Shri M. D. Dhanwatey was a partner in the partnership firm carrying on business under the name and style of M/s. Shivraj Fine Art Litho Works. The share capital of Shri M. D. Dhanwatey was entirely contributed by the assessee Hindu undivided family. The rights of the partners were governed at the relevant time by a partnership agreement dated April 1, 1951. According to the agreement, the partnership was of lithography and art printing and was carried on by means of a press under the name and style of "Shivraj Fine Art Litho Works'. Clause (4) of the partnership deed enumerated various capital contributions of the partners. The share contribution of Shri M. D. Dhanwatey was shown as Rs. 1,96,875/-. It is admitted that this amount belonged to the Hindu undivided family. Clause (5) provided for payment of interest at a certain rate to the partners on the share contribution. Clause (7) provided that general management and supervision of the partnership business shall be in the hands of Shri V. D. Dhanwatey. Clause (8) stated that Shri M. D. Dhanwatey shall be the manager in charge of the works and both he and Shri V. D. Dhanwatey shall have power to make contracts, and arrange terms with constituents or customers. Clause (10) empowered three partners, *viz.*, V. D. Dhanwatey, M. D. Dhanwatey and Shamrao Dhanwatey to appoint such person or persons on such salary as they deem fit for carrying on the work of the partnership and delegate to them such powers as they think proper. Clause (15) provided that the various adult members of the partnership shall devote their whole time and attention to the partnership in the sphere of their respective duties. Clause (16) is the material clause and it provides for various amounts to be paid by way of remuneration to the partners. The remuneration provided to be paid to Shri M. D. Dhanwatey under cl. (16) is Rs. 1,250 per month. For the relevant accounting year Shri M. D. Dhanwatey was paid Rs. 7,500 as remuneration. For the assessment year 1954-55 the assessee showed the said amount in Section D of the return. It was contended that the salary received by Shri M. D. Dhanwatey, the karta of the assessee family was received by him in his individual capacity and that it was not taxable in the hands of the assessee. The Income-tax Officer, Special Investigation Circle 'B', Nagpur, by his assessment order dated May 28, 1955 negatived the contention of the assessee. The assessee took the matter to the Appellate Assistant Commissioner but the appeal was dismissed. The assessee preferred a further appeal to the Appellate Tribunal which rejected the contention of the assessee that the amount of Rs. 7,500 was earned by Shri M. D. Dhanwatey in his individual capacity and that it should not have been included in the taxable income of the assessee. As directed by the High Court, the Appellate Tribunal stated a case on the following

A B C D E F G H

A question of law under s. 66(2) of the Indian Income-tax Act, 1922 :

> "Whether on the facts and circumstances of the case, the payment of Rs. 7,500 (Rupees seven thousand five hundred) paid to Shri M. D. Dhanwatey for rendering services to the firm, could be included in the total
B income of the assessee family?"

The High Court answered the reference in favour of the Income-tax Department and against the assessee. The High Court observed that Shri M. D. Dhanwatey was one of the partners in the partnership as representing the Hindu undivided family consisting of himself and his two minor sons. There was no evidence
C whatever to show that Shri M. D. Dhanwatey was in the service of the partnership firm in his individual capacity and the High Court held that what was paid to him in the form of remuneration was only for the purpose of adjustment of the rights *inter se* between the partners. The remuneration paid to karta was therefore the income of the Hindu undivided family and it cannot be said, on
D the facts found in the case, that the remuneration paid to Shri M. D. Dhanwatey was without any detriment to the joint family property. It was also found that the share capital contributed by Shri M. D. Dhanwatey came from the joint family assets.

The material facts of the present case are almost identical with those in *Shri V. D. Dhanwatey* v. *Commissioner of Income Tax, M.P. Nagpur*(1) judgment in which has been pronounced today.
E For the reasons elaborately set out in that case we hold that the decision of the question of law in the present case is governed by the decisions of this Court in *The C.I.T. West Bengal* v. *Kalu Babu Lal Chand*(2) and in *Mathura Prasad* v. *C.I.T. U.P.*(3).

We are accordingly of the opinion that the question referred
F to the High Court was rightly answered against the assessee and this appeal must be dismissed with costs.

Hegde, J. I agree with the conclusion reached by my learned brothers. For the reasons stated in my judgment in Civil Appeals 1372 and 1373 of 1966 (Shri V. D. Dhanwatey *v.* Commissioner
G of Income Tax, M.P., Nagpur) I am unable to subscribe to the observation in the majority judgment that the material facts of the present case are almost identical with those in *Shri V. D. Dhanwatey* v. *Commissioner of Income Tax, M.P., Nagpur.*

R.K.P.S. *Appeal dismissed.*

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(1) Civil Appeals Nos. 1372 & 1373 of 1966.
(2) [196] 1 S. C. R. 320.
(3) 61 I. T. R. 428.