

A COMMISSIONER OF INCOME-TAX, MADRAS

r.

RN. AR. AR. VEERAPPA CHETTIAR

December 4, 1969

B [J. C. SHAH AND K. S. HEGDE, JJ.]

Income Tax—Hindu Undivided Family—Estate duty paid out of joint family estate—Levy of duty held illegal—Refunded with interest—On partition a share in the interest if assessable to tax.

C The revenue authorities in Ceylon levied estate duty in respect of the estate of A and his son in the hands of their three widows. The Judicial Committee of the Privy Council set aside the levy and in 1957 the Government of Ceylon deposited in Court the duty which was levied with interest. On February 17, 1947, the joint family estate was partitioned among the three widows and their adopted sons. The Income-tax Officer brought to tax one of the adopted son's share of the interest received from the Ceylon Government on the estate duty. The Tribunal reversed the assessment order holding that the amount of interest received by the assessee was of a capital nature and was on that account not liable to tax. On a reference the High Court was of the opinion that the assessee's share in the interest attributable to the period ending February 17, 1947 was not taxable but the share attributable to the period between that date and the date of payment by the Ceylon Government was taxable. In the view of the High Court the amounts paid as estate duty had to be deemed in law to have come from the joint family estate and on severance of the joint family status in February 1947 each adopted son received his share in the estate then existing as capital.

E The Commissioner appealed to this Court. It was contended that the character of the receipt which was revenue when received by the joint family could not be altered when it was divided between the members of the joint family. Dismissing the appeal,

F HELD : On the severance of the joint status the assessee became entitled to a share in the family estate. The amount of interest on the estate duty accrued as income to the joint family but it was income of the joint family and not of the individual members. But when a share out of the estate which included the interest on estate duty was received by the assessee it had not the character of income. Once the income was received by the joint family, the amount lost its character of income : it became merged in the joint family estate and became the capital of the family. The share received by the assessee was therefore a share in the capital of the family. Therefore, the share in the joint family property which included interest on the estate duty which accrued prior to February 17, 1947 was rightly held by the High Court to be not of the nature of revenue and accordingly not taxable. [310 C-F]

G

RM. AR. RM. AR. Ramanthan Chettiar v. Commissioner of Income-tax Madras, 63 I.T.R. 458, distinguished.

H [The Court did not express any opinion on the correctness of the finding of the High Court that the interest accrued due after February 17, 1947 must be regarded as income to the extent of the share of each of the members of the family.]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2315 of 1966. A

Appeal from the judgment and order, dated August 25, 1965 of the Madras High Court in Tax Case No. 216 of 1962 (Reference No. 121 of 1962).

Sukumar Mitra and *R. N. Sachthey*, for the appellant. B

T. A. Ramachandran, for the respondent.

The Judgment of the Court was delivered by

Shah, J. Arunachallam Chettiar—whom will hereinafter be called “A Senior” had three wives—Valami Achi, Lakshmi Achi and Nachiar Achi. By Valami Achi he had a son who was also called Arunachallam—we will call him “A. Junior”. A Junior married Umayal Achi. A Senior, A. Junior and the wives of the two members formed a joint Hindu family, possessing a large estate in Ceylon. A. Junior died on July 9, 1934. A Senior died on February 23, 1938, leaving heirs running his two wives Lakshmi Achi and Nachiar Achi and his son’s widow Umayal Achi. The Revenue authorities in Ceylon levied Rs. 221,743 as estate duty in respect of the estate of A. Junior and Rs. 6,33,601.76 in respect of the estate of A. Senior. The levy was challenged by the three widows and the dispute was carried to the Judicial Committee of the Privy Council. The Board set aside the entire levy. In 1957 the Government of Ceylon deposited in Court the duty which was levied together with Rs. 7,97,072 as interest due from the date on which the estate duty was collected. C D E

After the death of A. Senior, there were disputes between the three widows Lakshmi Achi, Nachiar Achi and Umayal Achi, and each widow adopted a son to her deceased husband. A suit for partition of the joint family property was then filed in the Civil Court at Deokotai. Under a settlement reached on February 17, 1949 between the three widows and the adopted son of A. Junior (whom we will hereinafter call the assessee) was held entitled to 5/24th share in the estate. F

This appeal relates to the liability to income-tax on the share of the assessee in the amount of interest paid on the estate duty which was refunded by the Ceylon Government after the Judicial Committee set aside the order levying the estate duty. G

The Income-tax Officer, Karaikudi brought to tax the assessee’s share of the amount interest received from the Ceylon Government on the estate duty. The Income-tax Officer rejected the contention of the assessee that the receipt was of a capital nature, and that in any case it was a casual receipt and on that account H

- A** exempt from tax under S. 4(3)(vii) of the Income-tax Act, 1922. The order was confirmed by the Appellate Assistant Commissioner. The Income-tax Appellate Tribunal, however, reversed the order holding that the amount of interest received by the assessee was of a capital nature and was on that account not liable to tax.
- B** The Tribunal referred the following question to the High Court of Madras under s. 66(1) of the Income-tax Act, 1922 :
- “Whether the sum of Rs. 1,20,830 or any part thereof is assessable to tax ?”
- C** The High Court was of the opinion that the assessee's share in the interest attributable to the period ending February 17, 1947 was not taxable, but the share attributable to the period between that date and the date of payment by the Ceylon Government was taxable. Against that decision, with certificate granted by the High Court the Commissioner of Income-tax has appealed to this
- D** Court. The assessee has not appealed against the opinion insofar as it was held that the receipt to the extent to which it related to a period subsequent to February 17, 1947 is taxable. In the view of the High Court the amounts paid as estate duty must be deemed in law to have come from the joint family estate and on severance of the joint family status in February, 1947, each adopted son received his share in the estate then existing as capital. Counsel
- E** for the Revenue contended that the High Court erred in holding that the assessee's share in the amount of interest received from the Ceylon Government was of the nature of capital. Counsel submitted that the character of the receipt which was revenue when received by the joint family, could not be altered when it was divided between the members of the family. Counsel also
- F** contended that this Court has held that the share in the amount of interest on estate duty received by the son adopted by Nachiar Achi was liable to be taxed as income : *RM. AR. AR. RM. AR. AR. Ramanathan Chettiar v. Commissioner of Income-tax Madras*⁽¹⁾. But that case has no relevance here, for the only argument advanced before the Tribunal and the High Court in that case was
- G** that the receipt was of a casual and non-recurring nature and was on that account exempt from tax under s. 4(3)(vii) of the Income-tax Act. This Court negatived the contention. The Court declined to consider the argument advanced at the Bar that the share allotted to the adopted son of Nachiar Achi being a share in the estate of A. Senior was of the nature of capital, because the question did not arise out of the order made by the Income-tax
- H** Appellate Tribunal and was not made the subject-matter of the reference. In *RM. AR. AR. RM. AR. AR. Ramanathan*

(1) 63. I.T.R. 458.

Chettiar's case⁽¹⁾ the question argued before the High Court in this case was not raised before the income-tax Appellate Tribunal and was not decided.

After the death of A. Senior the property was held by the three widows as members of the Hindu Undivided family. Under the Hindu Law it is not predicted of a Hindu joint family that there must be a male member in existence. Even after the death of the sole male member, so long as the property which was originally of the Joint Hindu family remains in the hands of the widows of the members of the family and is not divided among them, the joint family continues. Payment of the estate duty was doubtless made out of the joint family fund and the interest which accrued due, also acquired the character of joint family property when received. The joint family status came to an end only on February 17, 1947. On the severance of the joint status the assessee became entitled to a share in the family estate. The amount of interest on the estate duty accrued as income to the joint family but it was income of the joint family and not of the individual members. But when a share out of the estate which included the interest on estate duty was received by the assessee it had not the character of income. Once the income was received by the joint family, the amount lost its character of income; it became merged in the joint family assets and became the capital of the family. The share received by the assessee was therefore a share in the capital of the family. The share in the joint family property which included interest on the estate duty which accrued prior to February 17, 1947 was rightly held by the High Court to be not of the nature of revenue and accordingly not taxable.

We express no opinion on the correctness of the finding of the High Court that the interest accrued due after February 17, 1947, must be regarded as income to the extent of the share of each of the members of the family.

The appeal fails and is dismissed with costs.

R.K.P.S.

Appeal dismissed.

(1) 63 I.T.R. 458.