

**Commissioner of Expenditure-tax, Bombay City I Vs. Lalchand Hirachand**

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**Court :** Mumbai

**Decided On :** Feb-15-1965

**Reported in :** (1965)67BOMLR664; [1965]58ITR60(Bom); 1965MhLJ820

**Judge :** V.S.Desai and ;Y.S. Tambe, JJ.

**Acts :** Expenditure-tax Act, 1957 - Sections 4

**Appeal No. :** Expenditure-tax Reference No. 1 of 1962

**Appellant :** Commissioner of Expenditure-tax, Bombay City I

**Respondent :** Lalchand Hirachand

**Advocate for Def. :** S.P. Mehta, Adv.

**Advocate for Pet/Ap. :** G.N. Joshi, Adv.

**Judgement :**

**V.S. Desai, J.**

1. The assessee is a Hindu undivided family, consisting of a father, a major son and two minor son, as its coparceners. Prior to the accounting year in question, a partial partition took place in this joint Hindu family, whereby the shares of joint stock companies held by the family came to be divided amongst the members of the family entitled to property on partition. This partial partition was recognised by

the income-tax authorities and the father and the sons in their individual capacity were assessed to tax in respect of the income derived by them from the assets obtained by them at the partial partition. Out of the said incomes which the sons had received from the said assets, they had incurred expenditure on themselves in the amounts of Rs. 11,169, Rs. 7,582 and Rs. 17,427, respectively. In the assessment for expenditure-tax of the Hindu undivided family, in the assessment year 1958-59, for which the relevant account year was the year ending 31st March, 1958, the Expenditure-tax Officer included in the taxable expenditure of the Hindu undivided family the above mentioned sums of expenditure incurred by the three sons out of the income of the assets obtained by them on partial partition. According to the Expenditure-tax Officer, these amounts were liable to be included in the taxable expenditure of the Hindu undivided family under section 4(ii) of the Expenditure-tax Act, as it stood at the material time, because in his view the sources out of which the expenditures were incurred by the sons were the sources which were made or created by the Hindu undivided family within the meaning of section 4(ii) of the Act. The view of the Expenditure-tax Officer was upheld by the Appellate Assistant Commissioner in appeal. In the second appeal, which the assessee preferred to the Income-tax Appellate Tribunal, the said Tribunal disagreed with the view taken by the departmental authorities and held that the said amounts were not from sources made or created by the Hindu undivided family and were, therefore, not liable to be included under section 4(ii). It accordingly allowed the appeal and directed the deletion of the said items from the taxable expenditure of the assessee. On an application made by the department under section 25(1) of the Expenditure-tax Act, 1957, the Tribunal has drawn up a statement and referred to this court the following question as arising out of its order :

'Whether, on the facts and in the circumstances of the case, the expenditure incurred by the dependents of the family amounting to Rs. 11,169, Rs. 7,582 and Rs. 17,427 was liable to inclusion in the expenditure-tax assessment of the assessee-family having regard to the provisions of section 4(ii) of the Act before its amendment in 195 ?'

2. In our opinion, the conclusion of the Tribunal that these items were not liable to inclusion is correct and the question, therefore, must be answered in the negative. The provision under which the amounts were sought to be included by the department is as follow :

'4. 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 : -

...

(ii) any expenditure incurred by any dependent of the assessee for the benefit of the assessee or of any of his dependents out of any gift, donation or settlement on trust or out of any other source made or crated by the assessee, whether directly or indirectly.'

3. The 'assessee' under the Act, means an individual or a Hindu undivided family by whom expenditure-tax or any other sum is payable under the Act. A 'dependent' means where the assesses is a Hindu undivided family every coparcener other than the karta and 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. 'Expenditure' under the Act includes any sum in money or money's worth spent or disbursed by an assessee. Now, under the relevant provision with which we are concerned, the expenditure to which the said provision will apply must be an expenditure incurred by a dependent of the assessee. It must be incurred for the benefit of the assessee or any of the dependents of the assessee and the sums out of which it must be incurred must be a gift, donation or settlement on trust or any other source which must be made or created by the assessee either directly or indirectly. In the case before us, the three persons who have incurred the expenditure are coparceners of the assessee-Hindu undivided family and are, therefore, the dependents within the meaning of section 2(g) of the Act. The expenditure incurred by them can also be regarded as for the benefit of the dependents of the assessee, since they themselves are the dependents of the assessee. The only question is whether the source from which the said expenditure is made by them is a source of the kind mentioned in the last part of the provision. Now, the expenditure which the three sons have incurred is from the

income of the shares which they obtained at the partial partition of the property of the Hindu undivided family. There can be no doubt whatsoever that the partition of the joint family property cannot be regarded as a gift, donation or settlement on trust made by the Hindu undivided family. What has got to be seen is whether the partial partition could be regarded as a source made or created by the Hindu undivided family. It is contended by Mr. Joshi, learned counsel, who appears for the department, that since the Hindu undivided family is not disrupted and continues to exist, the partial partition could be regarded as an act of the Hindu undivided family creating different sources to be exclusively owned and possessed by the different coparceners of the Hindu undivided family, and, therefore, source made or created by the Hindu undivided family. Now, it must be remembered that the arrangement whereby the three sons have been given the shares possessed by the family for being owned and possessed by them separately, is not an arrangement made by way of convenience for the time being. It is as a result of an act of partial partition of the joint family property that the three sons have come to possess these shares. A partition in a Hindu joint family could be a partial partition with regard to some of the properties of the Hindu joint family without disrupting the joint family status of the family with regard to the rest of the properties, and without disrupting the coparcenery. The partial partition, however, is in pursuance of the right possessed by the members of the coparcenary to come to a partition under the Hindu law. What a coparcener gets on partition is not what is given to him by the joint family, but what he has a right to obtain by virtue of his birth in the family. It is not, therefore, possible to say that what a coparcener gets at the partition, even when the partition is partial, is something which is given to him by the family so as to constitute a source created by the family within the meaning of section 4(ii) of the Expenditure-tax Act. The circumstance that the joint family exists and continues with regard to the rest of the property does not have the result of what the coparceners have obtained on partial partition as something which has been given to them by the joint family. In our opinion, therefore, the expenditure incurred by the three sons in the present case cannot be considered as expenditure incurred by them out of the source made or created by the assessee-Hindu undivided family.

4. In the result, therefore, we answer the question which is referred to us in the negative. The department will pay the costs of the assessee.

5. Question answered in the negative.

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