be regarded as a "common purpose". He has also argued that even if it were otherwise, there was no need for the temple inasmuch as three temples already existed in the village.

In view of the provisions of clause (bb) quoted above, which specifically extend the meaning of the phrase "common purpose" to public places of religious and charitable nature, the contention of Mr. Punchhi must be turned down. Once the temple is shown to be a public place of religious nature which, it is conceded, it is, the extending clause beginning with the words "and includes the following purposes" at once makes the temple a "common purpose" and it need not further be shown that a temple would in the ordinary dictionary meaning of the phrase "common purpose" fall within its ambit or that it fulfilled a need common to all the inhabitants of the village.

In the above view of the matter, the petition fails and is dismissed with costs. Counsel's fee Rs. 100.

K. S. K.

INCOME TAX REFERENCE

Before D. K. Mahajan and Bal Raj Tuli, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, JAMMU & KASHMIR AND HIMACHAL PRADESH, PATIALA,—*Applicant.*

versus

HANS RAJ AND OTHERS,—*Respondents.*

Income Tax Reference No. 56 of 1965.

December 21, 1970.

Income-tax Act (XI of 1922)—Section 25(4)—Joint Hindu family disrupting in 1932—Members of the family constituting partnership—Partnership not dissolved but only reconstituted by adding members and redefining their shares—Members of such joint Hindu family—Whether entitled to the benenfit of section 25(4) in the assessment year 1956-57.

Held, that the term succession as used in section 25(4) of Income-tax Act, implies that there is the end of an entity carrying on business and its place has been taken by new entity. There is no succession to the person

carrying on the business because for succession the person carrying on the business has to cease to do anything with it. Where a joint Hindu family disrupts in 1932, its place is taken by a partnership firm consisting of the members of the joint family, the firm is not dissolved but reconstituted by adding new members and redefining their shares, the members of such joint Hindu family are not entitled to the benefit of section 24(4) of the Act in assessment year 1956-57, because there is no succession. The firm which was carrying on the business till 1956-57 did not cease to exist. Merely aa change in the constitution of the firm is not succession unless there is change in the entity of the firm as such. (Para 15)

Reference under section 66(1) *of the Indian Income-tax Act,* 1922, *made by the Income-tax Appellate Tribunal (Delhi Bench) on* 17*th June,* 1965 *for opinion on the following questions of law arising out of I.T.A. Nos.* 7449, 7450, *and* 7451, *of* 1961-62 *in R.A. Nos.* 1123, 1124, *and* 1125, *of* 1962-63, *re. The Commissioner of Income-Tax* v. *Shri Hans Raj, etc., for the assessment year* 1956-57 *and I.T.A. No.* 10795 *of* 1958-59 *in R.A. No.* 192 *of* 1961-62 *re: M/s. Muni Lal Moti Lal* v. *The Commissioner of Income-tax, regarding assessment year* 1956-57:—

IN THE CASE OF THE FIRM:

"*Whether on the facts of the case, there was merely a change in the constitution of the partnership of the firm M/s. Muni Lal-Motilal and, therefore, they were not entitled to the relief under section* 25(4) *of the Income-tax Act,* 1922?"

IN THE CASE OF PARTNERS:

(1) '*Whether on the facts of the case, the Hindu undivided family of Shri Muni Lal was entitled to the relief under section* 25(4) *of the Income-tax Act,* 1922?'

(2) '*Whether on the facts of the case, the Hindu undivided family of Shri Hansraj was entitled to the relief under section* 25(4) *of the Income-tax Act,* 1922?'

(3) '*Whether on the facts of the case, the Hindu undivided family of Shri Motilal was entitled to the relief under section* 25(4) *of the Income-tax Act,* 1922?'

D. N. AWASTHY AND B. S. GUPTA, ADVOCATES, for the appellant.

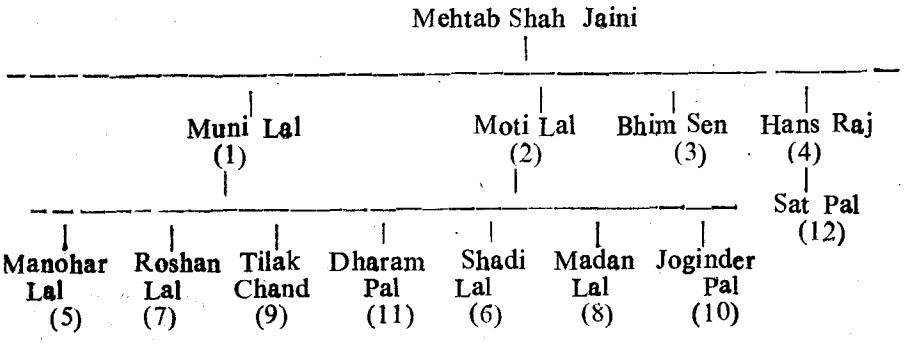
BHAGIRATH DASS, ADVOCATE, WITH B. K. JHINGAN, S. K. HIRAJEE AND S. S. MAHAJAN, ADVOCATES, for the respondents.

JUDGMENT

The judgment of this Court was delivered by :—

Mahajan, J.—In order to appreciate the answers which we propose to give to the questions referred to us, it would be proper to

set out the relevant undisputed facts in the chronological order. For a proper understanding of the facts, a short genealogical table of the parties may be stated :—



(2) All these members of the family of Mehtab Shah have been given numerical numbers for facility of reference as the narration of facts will show. The four sons of Mehtab Shah Nos. 1 to 4, constituted a joint Hindu family at the time when the Income-tax Act, 1918 was in force. In the year, 1932, after the coming into force of 1922-Act; these four sons effected a partition whereby the joint Hindu family ceased to exist. After the dissolution of the joint Hindu family, these four sons constituted themselves into a partnership. On the 25th of March, 1950, Nos. 5 and 6, Manohar Lal and Shadi Lal, sons of Muni Lal and Moti Lal, respectively, were taken as partners. The consequence thereof was that the share of each of the partners was re-determined. It may be mentioned that Muni Lal, Moti Lal and Hans Raj, constituted joint Hindu Families with their respective sons. On the 14th of April, 1956, the joint Hindu families of Muni Lal, Moti Lal and Hans Raj disrupted. As a consequence thereof, the remaining three sons of Muni Lal, Nos. 7, 9 and 11, and two sons of Moti Lal, Nos. 8 and 10; and Sat Pal No. 12; the only son of Hans Raj, were taken as partners of the firm. The shares of the partners were again re-determined.

(3) For the assessment year, 1956-57, Muni Lal, Moti Lal and Hans Raj made a claim under section 25(4) of the 1922-Act, and the firm made a claim under section 25(3) or 25(4). The claim of Muni Lal, Moti Lal and Hans Raj was that their joint Hindu families having dissolved and the business carried on by them as representatives of the joint Hindu families having been succeeded to by the members thereof who have become partners in the business, there

is a case of succession within the meaning of section 25(4) and, therefore, they are entitled to relief under that provision. So far as the firm is concerned, its claim was that the firm that carried on business up to 14th of April, 1958, dissolved by reason of the introduction of the new partners and, therefore, the newly constituted firm was entitled to the benefit either under section 25(3) as having discontinued the earlier business or under section 25(4) there being succession to the earlier business.

(4) So far as the firm is concerned, though the question has been referred by the Tribunal for our opinion, it is conceded by the learned counsel for the assessee-firm that the answer to the question referred to us has to be in the affirmative. The question that was referred in the case of the firm is :—

> "Whether on the facts of the case, there was merely a change in the constitution of the partnership of the firm M/s. Muni Lal-Moti Lal and, therefore, they were not entitled to the relief under section 25(4) of the Income-tax Act, 1922 ?"

(5) The controversy before us has merely been confined to the case of succession to the three brothers, Muni Lal, Moti Lal and Hans Raj. In the case of each one of them the same question has been referred and it is as follows in the case of Muni Lal :—

> "Whether on the facts of the case, the Hindu undivided family of Shri Muni Lal was entitled to the relief under section 25(4) of the Income-tax Act, 1922 ?"

This is the very question which will arise in the case of the other two, Moti Lal and Hans Raj. The answer that we propose to give to this question will cover all the three.

(6) The Income-tax Officer and the Appellate Assistant Commissioner, on appeal, rejected the claim of these three persons and refused the relief under section 25(4). The Income-tax Appellate Tribunal, however, took a contrary view of the matter and basing itself on *Dulichand Laxminarayan* v. *Commissioner of Income-tax, Nagpur* (1), it allowed the relief to these assessees under

(1) 29 I.T.R. 535.

section 25(4). The relevant parts of the order of the Tribunal are reproduced below :—

"4. (a) It will be necessary, for a proper appreciation of the case to recall certain features of the scheme of taxation which prevailed prior to 1939. Registered firms were taxed at the maximum rates (viz., the company rates of tax) : The partners were allowed refund when their personal assessments were made. (Sometime to avoid refund, no demand was raised against the firm but necessary adjustments were made). This cumberous procedure was discarded in 1939, when registered firms were not taxed, but demand was raised direct in the hands of the partners in respect of their shares of income in the firm.

(b) (i) The second important feature is that in the year 1918 (and up to 1922) tax was raised on businesses in the current year. In 1922, the previous year basis was adopted. There was therefore, necessarily a double taxation in 1922 one for the current year and one for the previous year. The Legislature consequently designed section 25(3), when it was stipulated that the assessee would not be taxed for a year in the year when the business was discontinued. This was designed to ensure a spread over in the national revenue.

(ii) There was no provision for succession, however, and in 1939, succession was also taken into account. The Act laid down in section 25(4) that all the businesses which were continuing in 1939 (and which on discontinuance, would be entitled to the relief under section 25(3), would get this relief even if there was a succession. In our opinion, this is a case under section 25(4) because there was a succession.

(iii) It is important to recollect that section 25(4) is a composed section wherein one portion is mandatory; 'where any person...was carrying on any business...is succeeded in such capacity by any person...no tax shall be payable by the first named person...'. The other portion given an option to the assessee and lays down that on an application from the assessee, if the succession takes place in the middle of the year, the Income-tax Officer

would substitute the income of the broken period for the income of the whole period of one year immediately preceding. The importance of this mandatory portion of section 25(4) is this and duty is cast upon the Income-tax Officer to refund the tax in the year of succession. In the absence of any order under section 25(4) in respect of business which was assessed in 1918 and which continued thereafter the assessee could claim that according to the Revenue no succession has taken place since 1939 (for otherwise, there would be an automatic relief under section 25(4).

5. Viewed in this background the question is not difficult to answer. We will pose the question thus : Did Shri Muni Lal (and his family) carry on the business prior to 1939 in partnership ? or did the firm, Muni Lal-Moti Lal, carry on the business and Muni Lal was only a partner therein? If the former, then, the assessee succeeds and if the latter, then, he fails.

6. (a) In our opinion, the first proposition is more correct, viz. that Shri Muni Lal (and family) carried on business in partnership. We are of this view because even though a firm is assessed to tax; it is not recognised as a juristic person as laid down in *Dulichand's case—Dulichand Laxminarayan* v. *Commissioner of Income-tax, Nagpur, reported in* (1). The firm, Muni Lal-Moti Lal, is a registered firm and it has always been a registered firm as such (barring for the small super-tax) but only partners are assessed. If a registered firm does not pay any tax, to say that only the firm is entitled to the relief is meaningless for the firm does not pay any Income-tax in any case. To make the relief effective, one has necessarily to go to the partners.

(b) After giving our anxious consideration to the case, the only just and fair interpretation of section 25(4), in our opinion, is that the assessee. Shri Muni Lal (and family) should get the relief as there was a succession in the family on 14th April, 1956."

(7) The Department being dissatisfied with this order moved an application under section 66(1) of the Income-tax Act, 1922, and

at its instance the questions already stated were referred for our opinion.

(8) Before we proceed to state our answer to the real question before us, it will be proper to reproduce certain relevant provisions of the Income-tax Act, 1922.

(9) Section 2(2) defines 'assessee' in the following terms :—

> " 'assessee' means a person by whom income-tax or any other sum of money is payable under this Act, and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the loss sustained by him or of the amount of refund due to him.

Section 3 is the charging section and is in these terms : —

> "Where any Central Act enacts that income-tax shall be charged for any year at any rate or rates tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association or persons or the partners of the firm or the members of the association individually."

(10) Sub-sections (3) and (4) of section 25, which deals with assessment in case of discontinued business or succession to it, are as under :—

> "25. (3) Where any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918 (VII of 1918), is discontinued, then, unless there has been a succession by virtue of which the provisions of sub-section (4) have been rendered applicable no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period.

Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

25. (4) Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), carrying on any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is succeeded in such capacity by another person, the change not being merely a change in the constitution of a partnership, no tax shall be payable by the first mentioned person in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession, and such person may further claim that the income, profits and gains of the previous year shall be deemed to have been the income profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and, if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference :

Provided that sub-sections (3) and (4) shall not apply—

(a) to super-tax except where the income, profits and gains of the business, profession or vocation were assessed to super-tax for the first time either for the year beginning on the 1st day of April, 1920, or for the year beginnning on the 1st day of April 1921;

(b) to a business, profession or vocation on which income-tax was at any time charged in the hands of a company under the Indian Income-tax Act, 1886 (II of 1886), or on which income-tax would have been charged in the hands of a company for the assessment year ending on the 31st day of March, 1918, if

the company having been in existence in that year had also been in existence in the year ending on the 31st day of March, 1917.

(11) Section 26, which is of some help in the interpretation of section 25(4), is in the following terms :—

(1) Where, at the time of making an assessment under section 23, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessment shall be made on the firm as constituted at the time of making the assessment :

Provided that the income, profits and gains of the previous year shall, for the purpose of inclusion the total incomes of the partners, be apportioned between the partners who in such previous year were entitled to receive the same :

Provided further that when the tax assessed upon a partner cannot be recovered from him it shall be recovered from the firm as constituted at the time of making the assessment.

(2) Where a person carrying on any business, profession or vocation has been succeeded in such capacity by another person, such person and such other person shall, subject to the provisions of sub-section (4) of section 25, each be assessed in respect of his actual share, if any, of the income, profits and gains of the previous year :

Provided that, when the person succeeded in the business, profession or vocation cannot be found, the assessment of the profits of the year in which the succession took place up to the date of succession, and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for either of such years assessed on the person succeeded cannot be recovered from him,

it shall be payable by and recoverable from the person succeeding, and such person shall be entitled to recover from the person succeeded the amount of any tax so paid."

(12) Besides these provisions, it will be necessary to keep in view section 3(42) of the General Clauses Act, 1897, which is reproduced below :—

"3. In this Act and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context—

(42) 'person' shall include any company or association or body of individuals, whether incorporated or not ;"

(13) In the present case, it will be proper to recapitulate the facts again. The joint Hindu family disrupted in 1932. Its place was taken by a partnership. That partnership has continued to do the business right up to the year of assessment with which we are concerned. At no point of time this partnership was dissolved. What has happened is that twice the constitution of the partnership was changed by adding members and redefining their shares, first by two and later on by six. We have deliberately recapitulated the facts for a particular purpose because Mr. Bhagirath Dass, learned counsel for the assessee, strongly contended that the Tribunal's decision was correct in view of the Full Bench decision of the Madras High Court in *Kotha Govindarajulu Chettiar* v. *Commissioner of Income-tax, Madras* (2). So far as this decision is concerned, the facts were that a joint Hindu family was dissolved and its place was taken by those very members as partners. While dealing with this situation *vis-a-vis* the applicability of section 25(4), their Lordships of the Madras High Court observed as follows :—

When a Hindu joint family separates and its members carry on the family business in partnership, there is change in ownership. The business is no longer owned by the joint family but by the firm, an entirely different entity, and the fact that as before the profits continue to be divided equally between the same persons makes no difference. When such a change takes place, there is succession

(2) 12 I.T.R. 97.

within the meaning of section 26(2). That being the case, the assessee here is entitled to the benefit of section 25(4)."

(14) If a reference is made to section 26(2), it will be found that it uses more or less the same phraseology which is used in section 25(4). For the applicability of section 25(4), the following four conditions have to be satisfied as was observed by their Lordships of the Supreme Court in *Sait Nagjee Purushotham and Co.* v. *Commissioner of Income-tax, Madras (Now Kerala)* (3)—

"(1) the business must have been charged to tax under the 1918 Act;

(2) the business must have been carried on April 1, 1939, by the person claiming the relief;

(3) the person carrying on the business on April 1, 1939, had to be succeeded by another person as the owner carrying on the business; and

(4) the succession was not merely a change in the constitution of the firm."

(15) In the present case, only the first condition is satisfied; the remaining three are not. Undoutedly, the business has remained the same from its very start whereas the person who carried it on on, the 1st April, 1939, is not the same which is claiming the relief. The person that was carrying on the business since April 1, 1939, is the firm whereas the relief is claimed by three of the partners of the firm. There is no succession to the person carrying on the business because for succession the person carrying on the business has to cease to do anything with it. The firm which is carrying on the business has not ceased to exist. The so-called succession in the present case is merely a change in the constitution of the firm. If these conditions had been kept in view by the Tribunal, we have no doubt that the assessee would not have been allowed relief under section 25(4). The view we have taken of the matter finds support from the decision of this Court in *M/s. Hoshiarpur Electric Supply Company* v. *The Commissioner of Income-tax, Patiala* (4), and the Supreme Court decision in *Commissioner of*

(3) 51 I.T.R. 849.

(4) I.T.R. No. 9 of 1965 decided on 26th February, 1970.

Income-tax, West Bengal v. *A. W. Figgies & Co.* (5). It may also be mentioned that in order to give relief to the assessee, we would have to split the business into four parts and then come to the conclusion that there is a succession *qua* that part of the bnsiness *vis-a-vis* the three claimants. The scheme of the section which allows relief is that the business has to be one and it is not to be divided for purposes of relief. Moreover, succession implies that there is the end of an entity carrying on business and its place has been taken by a new entity. If the facts of this case are kept in view, it would be apparent that there has been no change in the entity as such the change has been merely in the constitution of the firm and that by itself does not permit relief under section 25(4).

(16) Mr. Bhagirath Dass drew our attention to *O. Rm. M. Sp. S. V. Meyyappa Chettiar* v. *Commissioner of Income-tax, Madras* (6) and *Commissioner of Income-tax, Bombay,* v. *P. E. Polson* (7), for the contention that there is succession of the business by reason of the disruption of the joint Hindu family of the three claimants. These decisions have no application to the facts of the present case.

(17) The only case with which we may deal before parting with this judgment is *Dulichand Laxminarayan* v. *Commissioner of Income-tax, Nagpur* (1), on which the Tribunal has based its decision. The relevant passage, which seems to have influenced the mind of the Tribunal is at page 541 of the report and is quoted below :—

> "It is clear from the foregoing discussion that the law, English as well as Indian, has, for some specific purposes, some of which are referred to above, relaxed its rigid notions and extended a limited personality to a firm. Nevertheless, the general concept of partnership, firmly established in both systems of law, still is that a firm is not an entity or 'person' in law but is merely an association of individuals and a firm name is only a collective name of those individuals who constitute the firm. In other words, a firm name is merely an expression, only a compendious mode of designating the persons who have

(5) 24 T.R. 405.
(6) 11 I.T.R. 247.
(7) 13 I.T.R. 384.

agreed to carry on business in partnership. According to the principles of English jurisprudence, which we have adopted, for the purposes of determining legal rights 'there is no such thing as a firm known to the law' as was said by James, L.J., *in Ex parte Corbett : In re Shand* (8). In these circumstances to import the definition of the word 'person' occurring in section 3(42) of the General Clauses Act, 1897, into section 4 of the Indian Partnership Act will, according to lawyers, English or Indian, be totally repugnant to the subject of partnership law as they know and understand it to be. It is in this view of the matter that it has been consistently held in this country that a firm as such is not entitled to enter into partnership with another firm or individuals. It is not necessary to refer in detail to those decisions many of which will be found cited in *Jabalpur Ice Manufacturing Association* v. *Commissioner of Income-tax, Madhya Pradesh* (9), to which a reference has already been made. We need only refer to the case of *Bhagwanji Morarji Goculdas* v. *Alembic Chemical Works Co. Ltd. and others* (10), where it has been laid down by the Privy Council that Indian law has not given legal personality to a firm apart from the partners. This view finds support from and is implicit in the observations made by this Court in *Commissioner of Income-tax, West Bengal* v. *A. W. Figgies and Co. and others* (11)."

The mere fact that each one of the partners is entitled to carry on the business of the firm cannot lead to the conclusion that when one of the partners of the firm retires, there is succession to the firm as such by his heirs when they are taken in his place as partners. Such a situation only brings about a re-constitution of the firm. Thus, this case has no relevancy so far as the present controversy is concerned.

(8) 1880 L.R. 14 Ch. 122, 126.

(9) (1955) 27 I.T.R. 88.

(10) A.I.R. 1948 P.C. 100.

(11) (1953) 24 I.T.R. 405.

(18) For the reasons recorded above, we answer questions Nos. 1, 2 and 3, in the case of partners, referred to us, in the negative. We have already made it clear that all the three questions are identically worded. They are three in number because they relate to three individuals.

There will be no order as to costs.

K. S. K.

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