Rewriting *CIT v. Indira Balakrishna*: A Feminist Approach to Defining a Tax Unit

By *Maithreyi Mulupuru**

Commissioner of Income Tax v. Indira Balkrishna
Civil Appeals Nos. 249 & 250 of 1958

AIR 1960 SC 1172

Delivered on: April 14, 1960

Maithreyi Mulupuru, J. (*dissenting*):

1. This judgment deals with two appeals by special leave, which arise from similar facts and raise the same questions of law, and have therefore been heard together. My colleagues on the bench have decided to dismiss this appeal. I dissent, for the reasons I state below.

2. The assessees, Indira, Ramluxmi, and Prabhuluxmi are the three widows of a Hindu man who died in 1947. They were his legal heirs, and inherited an estate consisting of immovable properties, shares in joint stock companies, deposits, and a share in a registered firm. They filed tax returns pursuant to notices issued by the Income Tax Officer, for assessment years 1950-51 and 1951-52, from which two separate cases arose.

3. The assessees were assessed as an 'association of persons' for both years by the Income Tax Officer. They appealed the assessment orders on two grounds: first, that the assessees ought to have been assessed separately and not as an association of persons, and second, that in any case, the income from immovable property ought to have been assessed separately in each of their hands due to the provisions of Section 9(3) of the Income Tax Act, 1922. *Per* Section 9(3), where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons should not be assessed as an association of persons in respect of that property. The Appellate Assistant Commissioner rejected the first contention that the assesses do not form an association of persons, but accepted the second, that in respect of the property in question, the assessees should be assessed separately.

4. Upon appeal, the Income Tax Appellate Tribunal, Bombay, held that the entire estate of the deceased was inherited and possessed by the widows as joint tenants, and the income of the estate was liable to be assessed in their hands in their status as an association of persons. The Tribunal also held that Section 9(3) would not apply to the assessees in respect

* Independent Researcher. I would like to thank Shreya Rao, who has written the accompanying commentary, for lengthy discussions and detailed feedback, and Aparna Chandra, one of the editors of this project, for her patience in carrying it through.

of their immovable properties. At the request of the assesses, the Tribunal referred four questions of law to the Bombay High Court. Of these, question (3) was phrased as follows: "*(3) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the assessment made on the three widows of Balkrishna Purushottam Purani in the status of an association of persons is legal and valid in law?"*

5. This question was answered in the negative by the High Court in its primary judgment, and the remaining questions before the High Court were answered accordingly.

6. It must be noted that while the question of Section 9(3) and its applicability appears to have been abandoned after the decision of the Tribunal, and has not been pleaded before us, the decision of the High Court is based upon this question.

7. The Tribunal had made a finding of fact that though the assessees had the right under law to separate possession and enjoyment of the inherited property, they did not exercise such right and instead "they chose to manage the property jointly, each acting for herself and the others and receiving the income of the property which they were entitled to enjoy in equal shares." However, the High Court has dismissed this finding on the grounds that the only property which the assessees could have managed jointly was the immovable property, which should be assessed under Section 9(3). Turning to the dividend, interest, and shares in the registered firm, the High Court has opined that the assessees merely received the said income, and did not earn it through any action of their own, thus negating the possibility of their being an association of persons.

8. The decision of the High Court is thus predicated upon (1) the applicability of Section 9(3) to the immovable property, and (2) the lack of any action on part of the assessees that constitutes earning the income as opposed to merely receiving it.

9. The department disputes the test laid down by the High Court for an association of persons to be liable to tax, which is that "they must have earned income in that capacity in which they are sought to be assessed." The question before us is whether this test is a correct one to determine whether a group of persons may be taxed as an association of persons, and considering the facts of the case before us, whether the assessees may be so taxed.

10. The majority of this bench has stated that an association of persons must be one in which two or more persons join in a common purpose or a common action, and since these words occur in a section which imposes a tax on income, the object of the association must be to produce income, profits or gains. In applying this test to the facts of this case, my learned colleagues have focused on a requirement of joint action or management on the part of the assessees, without regard to the legal limitations under which assessees operate. In this case, assessees wish to avail of the benefits of separate assessment. However, we must consider the limited choices available to the assessees and whether their actions would cause them to be considered as an association of persons.

11. Section 3 of the Income Tax Act, 1922 states that

> *"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 of persons or the partners of the firm or the members of the association individually."*

12. Of the taxable entities named in Section 3, we are concerned with the association of persons. The term 'association of persons' is not defined in the Act, and therefore must be understood in its plain meaning. A 'person' in the Act is different from an individual, as according to Section 2(9) of the Act, the term includes a Hindu Undivided Family (HUF)[1] and a local authority. Any test to define the term 'association of persons' must not exclude groups of HUFs and local authorities in its applicability, since they are also 'persons' under the Act. Since we are defining the term for the purposes of Section 3 of the Income Tax Act, 1922, which is the charging section of the Act, our definition must lay out the terms under which a group of persons becomes chargeable with income tax as an association of persons.

13. Derbyshire, C.J., in *In re: B. N. Elias and Others* (1935) 3 ITR 408 pointed out that the phrase "to associate" means to join in a common purpose or to join in an action. In that case, a group of individuals jointly purchased and managed property by drawing up a power of attorney in favour of one of them. The income from this property was under assessment and the Calcutta High Court was asked to decide whether they could be assessed as an association of individuals. The term "association of individuals" under consideration in that case has been replaced by the term "association of persons" by the Income Tax Amendment Act of 1939; however, the observations of the High Court in that case regarding the meaning of the term "association" may be noted as they are of continued relevance: *"When we find that there is a combination of persons formed for the promotion of a joint enterprise then I think no difficulty arises in the way of saying that these persons did constitute an association."*

14. This then raises the further question whether the formation of an association of persons must be impelled by the members of the association themselves. Would the fact

1 A "Hindu Undivided Family" derives from the family law concept of a Hindu joint family, which consists of a male *karta* (head), his male lineal descendants and their wives, widows, and unmarried female descendants. Such a joint family is presumed to be joint in "food, worship, and estate." In families governed by the *Mitakshara* school of law (*see* note 4 below), the *karta* and his male lineal descendants form a coparcenary - a group holding property in common in which members acquire an interest upon birth. The Income Tax Act, 1922 includes a Hindu Undivided Family as a taxable entity. See *J.B. Kanga* / *N.A. Palkhivala*, The Law and Practice of Income Tax, Chicago 2020. [Since 2005, daughters have been included as coparceners].

that the coming together of a group was impelled by external factors indicate that they had not "associated" for the purposes of the Income Tax Act, 1922?

15. In *Re Dwarakanath Harischandra Pitale*, (1937) 5 ITR 716, the origins of the alleged association are similar to the facts before us. In that case, the Bombay High Court dealt with the question of whether an association of individuals could exist when the association was not a voluntary act of the assessees – they had not purchased the property jointly, but had received it jointly under a will and had gone on to hold and manage it and received income from it. The Court held that:

> *"…it might be said that in the first instance they did not constitute an association of individuals, but as soon as they elected to retain the property and manage it as a joint venture producing income, they became an association of individuals for the purpose of the Income Tax Act, 1922."*

16. These cases, taken together, lay down the correct test for whether a group of persons may be said to be an association of persons for the purpose of the Income Tax Act, 1922: that such persons must come together, or having been brought together, they must continue to associate with each other, with the object of producing or enjoying income. A continuing association after having been involuntarily brought together can give rise to an association of persons under the Act.

17. In the matter before us, the assessees are widows succeeding to the property of their husband as legal heirs. Under the Hindu Women's Right to Property Act, 1937, they succeeded to a limited interest in the property of their deceased husband, and are entitled to hold it as joint tenants with a right of survivorship and equal shares in the income.[2] They have a limited right to partition or separate enjoyment granted by the statute.[3]

18. Upon inheritance, the assessees were brought together as a matter of law, becoming joint tenants for life with a right of survivorship, in regards to the immovable property, deposits, and shares, the income from which is under assessment. The actions they may take in respect of the inherited property are limited as a matter of law, and the most

2 In a Hindu Undivided Family governed by *Mitakshara* law, no single person owns the property, but the entire body of coparceners exercises ownership over the property together. The property of the family devolves by survivorship, i.e., the interest held by a coparcener in the property does not cease to exist on his death but is transferred to the surviving coparceners. The interest of a coparcener in the coparcenery is therefore not fixed - it fluctuates with the births and deaths in the family.

3 The Hindu Women's Right to Property Act, 1937 granted a widow (or all the widows together) a share equal to that of a son in the property of a deceased Hindu man. However, their interest in the property was a limited one, designated a "woman's estate", though they had the right to claim a partition of the estate. Due to the limited nature of their estate, widows could not alienate the property except in limited circumstances and could claim only a life interest, with the property reverting to the other heirs of the deceased upon their death. Any partition claimed by a widow would also only operate during her lifetime, reverting the property to the joint family upon her death.

significant right they possess in respect of the inherited property is the right of partition. They have chosen not to exercise this right, but to remain associated in respect of their income.

19. The Bombay High Court and my learned colleagues on the bench have decided that Section 9(3) of the Act is applicable to the immovable property in the inheritance, which would then be assessed separately. They have also opined that in respect of the movable properties, the assessees have not performed any act of management that would warrant their being assessed as an association of persons.

20. Section 9 of the Act charges income from (immovable) property, and sub-section (3) thereof states

> *"(3) Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with this section shall be included in his total income."*

21. Let us consider whether Section 9(3) applies to the income from properties inherited by the assessees. Assessees are bound by Hindu *Mitakshara* law,[4] under which two or more widows succeeding as co-heirs to the estate of their deceased husband do so as joint tenants with rights of survivorship and equal beneficial enjoyment. The assessees thus have a life interest in the properties with limited rights of ownership. They are entitled to equal shares of the income, and on the death of any of them, the others are entitled to the whole of the income by survivorship. They are entitled to enforce a partial partition among themselves by which they will no longer inherit by survivorship from each other, and instead, upon their death, their partitioned share would revert to their husband's heirs.

22. These principles have been established by a long series of decisions, one of the earliest of which is the case of *Bhugwandeen Doobey v. Myna Baee* (1867) 11 MIA. 487. In the course of his long and detailed judgment, Sir James Colvile said (p. 515): *"The estate of two Widows, who take their Husband's property by inheritance is one estate. The right of survivorship is so strong that the survivor takes the whole property, to the exclusion even of Daughters of the deceased Widow.... They are, therefore, in the strict sense, coparceners..."*

4 There are two main schools of Hindu Law, each of which is an uncodified set of rules and principles, mainly regarding succession. These are the *Mitakshara* and the *Dayabhaga* schools. While both schools recognize the Hindu joint family as joint in "food, worship and estate", they differ on how property is inherited. In the *Mitakshara* school, rights in joint family property are acquired at birth, and property devolves by survivorship to the other male members of the family. In the *Dayabhaga* school, the right to joint family property is acquired by inheritance, and legal heirs have definite shares in the property. See further, *D.F. Mulla / S.T. Desai,* Principles of Hindu law, Bombay 1978.

23. The essence of *Mitakshara* survivorship is unity of ownership. Irrespective of who the members of a survivorship may be, the shares of the members of a survivorship cannot be ascertained except by the enforcement of a partition.

24. Section 9(3) requires that (i) property is owned by two or more persons, and (ii) their shares in the property are definite and ascertainable for them to be taxed in accordance with that section. Since the shares of the assessees in the immovable property are not definite or ascertainable by the principles of *Mitakshara* law, even though their shares in the income are defined, they do not satisfy the requirements of Section 9(3). They would do so only if they themselves enforced a partition of the property.

25. Since Section 9(3) does not apply, the income from the inherited property must be assessed as a whole. In this respect, the Tribunal has made a finding of fact that the assessees have engaged in joint management of the inherited property. The Bombay High Court and my colleagues in the majority have both averred that this finding of the Tribunal could only apply to the immovable property. They do not dispute that assessees have in fact engaged in joint management, only aver that the finding of joint management could not have applied to the movable property. It must be kept in mind that earning dividends and interest, which were the income from movable properties, is a result of the act of investment. While it is tempting to assume that income from such assets is merely "received" and not "earned", there is in fact a continuation of the act of investment which constitutes earning. The assessees are not merely passive receivers of income; they jointly manage the immovable properties and continue the investment in the movable properties, which are the sources of the income under assessment. They thus exercise agency over such property.

26. In a case where the actions that assessees may take in respect of the inherited investments are limited by law, their decision to continue as joint holders of the property and not to enforce partition is yet another factor in deciding whether they are earning the income as an association of persons or as individuals. By holding the investments jointly and not enforcing a partition, assessees have actively continued the association that was constituted by the law, giving rise to an association of persons.

27. Appeals allowed.