1953

Oct. 9.

SIR KIKABHAI PREMCHAND

*v.*

COMMISSIONER OF INCOME TAX (CENTRAL), BOMBAY.

PATANJALI SASTRI C.J., S. R. DAS, VIVIAN BOSE, GHULAM HASAN and BHAGWATI JJ.

*Indian Income-tax Act (XI of 1922), s. 13—Ascertainment of profits—Assessee adopting mercantile system and valuing stock at cost price at beginning and close of each year—Withdrawal of stock from business—Whether business should be credited with market price on date of withdrawal.*

The assessee who carried on business in bullion and shares kept accounts in the mercantile system and the method adopted by him for ascertaining his profits was to value stock at the beginning and close of each year at cost price. In the accounting year he withdrew some silver bars and shares from the business and settled them in trusts, and in the accounts of the business he valued them at the close of the year at cost price:

*Held*, per PATANJALI SASTRI C.J., S. R. DAS, VIVIAN BOSE and GHULAM HASAN JJ. (BHAGWATI J. dissenting)—that the assessee was entitled to value them at cost price and was not bound to credit the business with their market price at the close of the year for ascertaining his assessable profits for the year.

BHAGWATI J.—So far as the business was concerned it made no difference whether the stock-in-trade was realised or withdrawn from the business and the business was entitled to be credited with the market value of the assets withdrawn as at the date of the withdrawal, whatever be the method employed by the assessee for the valuation of its stock-in-trade on hand at the close of the year.

*In re Chouthmal Golapchand* (6 I.T.R. 733) and *In re Spanish Prospecting Co. Ltd.* ([1911] 1 Ch. 92) referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 144 of 1952.

Appeal by special leave granted by the Supreme Court on 3rd October, 1950, from the Judgment and Decree dated the 14th day of September, 1949, of the High Court of Judicature at Bombay (Chagla C.J. and Tendolkar J.) in its Original Civil Jurisdiction in Income-tax Reference No. 1 of 1949 arising out of the Order dated the 20th day of February, 1948, and 9th

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April, 1948, of the Income-tax Appellate Tribunal, Bombay Bench 'B', Bombay, in I.T.A. No. 894 of 1947-48.

*R. J. Kolah* for the appellant.

*M. C. Setalvad, Attorney-General for India,* (*G. N. Joshi,* with him) for the Commissioner of Income-tax.

1953. October 9. The Judgment of the Chief Justice and S. R. Das, Bose and Ghulam Hasan JJ. was delivered by Bose J. Bhagwati J. delivered a separate dissenting judgment.

BOSE J.—This is an appeal by an assessee against a judgment and order of the High Court at Bombay delivered on a reference made by the Income-tax Appellate Tribunal. The Bombay High Court refused leave to appeal but the assessee obtained special leave from this court.

The appellant deals in silver and shares and a substantial part of his holding is kept in silver bullion and shares. His business is run and owned by himself. His accounts are maintained according to the mercantile system. It is admitted that under this system stocks can be valued in one of two ways and provided there is no variation in the method from year to year without the sanction of the Income-tax authorities an assessee can choose whichever method he wishes. In this case, the method employed was the cost price method, that is to say, the cost price of the stock was entered at the beginning of the year and not its market value and similarly the cost price was again entered at the close of the year of any stock which was not disposed of during the year. The entries on the one side of the accounts at the beginning of the year thus balance those on the other in respect of these items with the result that so far as they are concerned the books show neither a profit nor a loss on them. This was the method regularly employed and it is admitted on all hands that this was permissible under this system of accounting.

The accounting year with which we are concerned is the calendar year 1942. The silver bars and shares lying with the appellant at the beginning of the year were valued at cost price.

In the course of the year the appellant withdrew some bars and shares from the business and settled them on certain trusts, three in number. The appellant was one of the beneficiaries in all three trusts retaining to himself a reversionary life interest after the death of his wife who was given the first life interest. After certain other life interests the ultimate beneficiaries were charities. The appellant was the managing trustee expressly so created in two of the trusts and virtually so in the third. In his books the appellant credited the business with the cost price of the bars and shares so withdrawn and there lies the crux of the issue which we have to determine. There is no suggestion in this case that the bars and shares were withdrawn from the business otherwise than in good faith.

According to the appellant, the act of withdrawal resulted in neither income nor profit nor gain either to himself or to his business, nor was it a business transaction, accordingly it was not taxable.

The learned Attorney-General raised two contentions. First, he said that as the bars and shares were brought into the business any withdrawal of them from the business must be dealt with along ordinary and well-known business lines, namely, that if a person withdraws an asset from a business he must account for it to the business at the market rate prevailing at the date of the withdrawal. He said that the mere fact that the appellant was the sole owner of the business can make no difference, for under the Act income is assessable under distinct heads and when we are working out the income of a business the rules applicable to business incomes must be applied whoever is the owner. His second contention was that if the act of withdrawal is at a time when the market price is higher than the cost price, then the State is deprived

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of a potential profit. He conceded that had the market rate been lower than the cost price, then the appellant would have been entitled to set off the loss on those transactions against his overall profit on the other transactions and thus obtain the advantage of a lower tax on the overall picture.

We are of opinion that the learned Attorney-General's second contention is unsound because, for income-tax purposes, each year is a self-contained accounting period and we can only take into consideration income, profits and gains made in that year and are not concerned with potential profits which may be made in another year any more than we are with losses which may occur in the future.

As regards the first contention, we are of opinion that the appellant was right in entering the cost value of the silver and shares at the date of the withdrawal, because it was not a business transaction and by that act the business made no profit or gain, nor did it sustain a loss, and the appellant derived no income from it. He may have stored up a future advantage for himself but as the transactions were not business ones and as he derived no immediate pecuniary gain the State cannot tax them, for under the Income-tax Act the State has no power to tax a potential future advantage. All it can tax is income, profits and gains made in the relevant accounting year.

It was conceded that if these assets had been sold at cost price the State could have claimed nothing, for a man cannot be compelled to make a profit out of any particular transaction. It was also conceded that if the silver and stocks had lain where they were, then again there would have been no advantage to the State because the appellant would have been entitled to enter their closing values at cost at the end of the year. The learned Attorney-General even conceded that if they had been sold at a loss the appellant would have been entitled to set that off against his other gains, but he said that that is because all those are business transactions and that is the way the law deals with such matters when they occur in the ordinary course of

business. But, he argued, when there is a withdrawal and no sale or its equivalent, the matter is different. As this is a business, any withdrawal of the assets is a business matter and the only feasible way of regarding it in a business light is to enter the market price at the date of the withdrawal and whether that happens to favour the assessee or the State is immaterial. We do not agree.

It is well recognised that in revenue cases regard must be had to the substance of the transaction rather than to its mere form. In the present case, disregarding technicalities, it is impossible to get away from the fact that the business is owned and run by the assessee himself. In such circumstances we are of opinion that it is unreal and artificial to separate the business from its owner and treat them as if they were separate entities trading with each other and then by means of a fictional sale introduce a fictional profit which in truth and in fact is non-existent. Cut away the fictions and you reach the position that the man is supposed to be selling to himself and thereby making a profit out of himself which on the face of it is not only absurd but against all canons of mercantile and income-tax law. And worse. He may keep it and not show a profit. He may sell it to another at a loss and cannot be taxed because he cannot be compelled to sell at a profit. But in this purely fictional sale to himself he is compelled to sell at a fictional profit when the market rises in order that he may be compelled to pay to Government a tax which is anything but fictional.

Consider this simple illustration. A man trades in rice and also uses rice for his family consumption. The bags are all stored in one godown and he draws upon his stock as and when he finds it necessary to do so, now for his business, now for his own use. What he keeps for his own personal use cannot be taxed however much the market rises; nor can he be taxed on what he gives away from his own personal stock, nor, so far as his shop is concerned, can he be compelled to sell at a profit. If he keeps two sets of books and enters

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in one all the bags which go into his personal godown and in the other the rice which is withdrawn from the godown into his shop, rice just sufficient to meet the day to day demands of his customers so that only a negligible quantity is left over in the shop after each day's sales, his private and personal dealings with the bags in his personal godown could not be taxed unless he sells them at a profit. What he chooses to do with the rice in his godown is no concern of the Income-tax department provided always that he does not sell it or otherwise make a profit out of it. He can consume it, or give it away, or just let it rot. Why should it make a difference if instead of keeping two sets of books he keeps only one ? How can he be said to have made an income personally or his business a profit, because he uses ten bags out of his godown for a feast for the marriage of his daughter ? How can it make any difference whether the bags are shifted directly from the godown to the kitchen or from the godown to the shop and from the shop to the kitchen, or from the shop back to the godown and from there to the kitchen ? And yet, when the reasoning of the learned Attorney-General is pushed to its logical conclusion, the form of the transaction is of its essence and it is taxable or not according to the route the rice takes from the godown to the wedding feast. In our opinion, it would make no difference if the man instead of giving the feast himself hands over the rice to his daughter as a gift for the marriage festivities of her son.

The appellant's method of book-keeping reflects the true position. As he makes his purchases he enters his stock at the cost price on one side of the accounts. At the close of the year he enters the value of any unsold stock at cost on the other side of the accounts thus cancelling out the entries relating to the same unsold stock earlier in the accounts; and then that is carried forward as the opening balance in the next year's accounts. This cancelling out of the unsold stock from both sides of the accounts leaves only the transactions on which there have been actual sales and gives the

true and actual profit or loss on his year's dealings. In the same way, the appellant has reflected the true state of his finances and given a truthful picture of the profit and loss in his business by entering the bullion and silver at cost when he withdrew them for a purely non-business purpose and utilised them in a transaction which brought him neither income nor profit nor gain.

There is no case quite in point. The learned Attorney-General relied on *Gold Coast Selection Trust Limited* v. *Humphrey* (*H. M. Inspector of Taxes*) (1), but there the assessee received a new and valuable asset in exchange for another in the ordinary course of his trade. It was held that he was bound to account for the receipt at a fair market valuation, for though the receipt was not money it was capable of being valued in terms of money. In the present case, the assessee's business received nothing in exchange for the withdrawal of the assets, neither money nor money's worth, therefore the only fair way of treating the matter was to do just what the appellant did, namely to enter the price at which the assets were valued at the beginning of the year so that the entries would cancel each other out and leave the business with neither a gain nor a loss on those transactions.

The learned Attorney-General contended that if that was allowed great loss would ensue to the State because all a man need do at the end of the year would be to withdraw all assets which had risen in value and leave only those which had depreciated and thus either show a loss or reduce his taxable profits.

This argument can only prevail on the assumption that the State can tax potential profits because, except for that, the State would neither gain nor lose in a case of this kind. Had the assets been left where they were, they would have been valued at the end of the year as they were at the beginning, at the cost price and we would still be where we are now. But the assumption that there would be a gain at some future

(1) 30 Tax Cas. 209.

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indefinite date is mere guess work for equally there might be loss. Apart, however, from that the learned Attorney-General's rule is equally capable of abuse. A man could as easily withdraw from the business assets which had depreciated and enter in his books the depreciated market value and leave at cost price the assets which had risen.

There are two cases which bear a superficial resemblance to this case. They are *In the matter of Messrs. Chouthmal Golapchand* (1) and *In re The Spanish Prospecting Company Limited* (2).

We refrain from expressing any opinion about them, especially as they appear to reach different conclusions, because the facts are not the same and the questions which arose on the facts there were not argued here. They raise matters of wider import which will require consideration in a suitable case. These cases were not cases of a business owned and run by a single owner and so the fiction of treating the business as a separate entity from its owner actually trading with him, which we are asked to apply here, does not arise. In the next place, the businesses there were not continuing as here.

In the Calcutta case, a partnership was wound up and the question related to the valuation of assets consisting of stocks and shares, on the dissolution. In the English case, a company with no fixed capital was under liquidation and the question was whether the market value of certain debentures which the company had purchased ought to be brought into the profit and loss account so as to augment the profits actually shown in the balance-sheet. The company wished to treat those debentures as of no value and thus show a much smaller profit than would otherwise have been the case. On the answer to that question hung the fate of two servants of the company who, under the terms of their agreement with the company, could only be paid their salaries out of the profits of the company. In our opinion, neither case is apposite here.

(1) [1938] 6 I.T.R. 733. (2) [1911] 1 Ch. 92.

The questions referred were :—

"(1) Whether in the circumstances of the case any income arose to the assessee as a result of the transfer of shares and silver bars to the trustees?

(2) If the answer to the question (1) is in the affirmative, whether the method employed by the Appellate Assistant Commissioner and upheld by the Appellate Tribunal in computing the assessee's income from the transfer is the proper method for computing the income?"

Our answer to the first question is that in the circumstances of this case no income arose to the appellant as a result of the transfer of the shares and silver bars to the trustees. In view of that the second question does not arise.

The appeal is allowed with costs.

BHAGWATI J.—This appeal by special leave from a judgment of the High Court of Judicature at Bombay on a reference by the Income-tax Appellate Tribunal under section 66(1) of the Indian Income-tax Act (XI of 1922) raises an interesting question as to the valuation of an asset withdrawn from the stock-in-trade of a running business.

The assessee was in the year of account (calendar year 1942) a dealer in shares and silver. On the 21st January, 1942, he withdrew from the business certain shares and silver bars and executed two deeds of trust and on the 19th October, 1942, he withdrew further shares and silver bars and executed a third deed of trust. The terms and conditions of the deeds of trust are not material for the purpose of this appeal.

The assessee kept his books of account on the mercantile basis and the method employed by him in the past for valuing the closing stock of his stock-in-trade was valuation at the cost price thereof. The deeds of trust were valued for the purpose of stamp at the market value of the shares and silver bars prevailing at the dates of their execution. The assessee however showed the transfer of these shares and silver bars to

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the trustees in the books of account at the cost price thereof thus setting off the debit shown in respect of the same at the beginning of the year of account. He contended that the market value of the said shares and silver bars on which the stamp duty was based could not be the basis for computing his income from the stock-in-trade thus transferred. The Income-tax authorities did not accept this contention and assessed the profit at the difference between the cost price of the said shares and silver bars and the market value thereof at the date of their withdrawal from the business. The Income-tax Officer, the Appellate Assistant Commissioner as also the Income-tax Appellate Tribunal rejected this contention of the assessee and the Income-tax Appellate Tribunal submitted at the instance of the assessee a case under section 66(1) of the Act referring the following two questions for the decision of the High Court :—

"(1) Whether in the circumstances of the case any income arose to the petitioner as a result of the transfer of shares and silver bars to the trustees ?

(2) If the answer to the question (1) is in the affirmative, whether the method employed by the Appellate Assistant Commissioner and upheld by the Appellate Tribunal in computing the petitioner's income from the transfer is the proper method for computing the income ? "

The High Court answered both the questions in the affirmative.

It was not disputed before the Income-tax Appellate Tribunal that the shares transferred were the stock-in-trade of the business. As regards the silver bars the Tribunal found that the assessee had been making purchases and sales frequently and that the silver also was stock-in-trade and not a capital investment. Both the shares and the silver bars were thus part of the stock-in-trade of the business. They had been purchased by the assessee from time to time and formed part of the stock-in-trade of the business and had been shown at the cost price thereof in the books of account of the previous years and also at the opening of the year of account.

If the shares and the silver bars which were thus withdrawn from the stock-in-trade of the business had continued to form part of the stock-in-trade at the closing of the year of account, the value of these shares and silver bars would also have been shown at the cost price in accordance with the system of accounts maintained by the assessee. The question however which falls to be determined is what is the effect of these assets having been withdrawn from the stock-in-trade of the business.

So far as the business itself is concerned the asset which has been brought in is of a particular value at the date when it has been so brought in and it is then valued in the books of account at its cost. In the course of the business however the asset appreciates or depreciates in value in accordance with the fluctuations of the market. If the cost price basis is adopted for the valuation of the stock-in-trade at the close of the year this appreciation or depreciation in the value as the case may be would not be reflected in the accounts. If however the market value basis is adopted for such valuation, the asset on being valued at the market rate thereof at the close of the year might show a loss and this loss would be allowed by the Income-tax authorities in computing the profit or loss of the business. In either event, the assessee would have to carry over the asset in the books of account of the subsequent year at the valuation adopted at the close of the previous year and the assessee would not be allowed to change the basis of valuation thus adopted unless he chose to adopt at the end of the subsequent year or years valuation at the cost price or the market value thereof whichever was lower. This process would continue until the asset is realised. When the asset is realised the assessee would have to show the actual price realised by the sale of the asset in the books of account and the difference between the price thus realised and the value shown in the beginning of the year of account would be the profit or loss as the case may be, in regard to that asset and that profit or loss

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would be allowed by the Income-tax authorities in the computation of profit or loss for that year of account. The adoption of the one or the other basis of valuation would not however make any difference in the ultimate result. On the cost price basis of valuation all intermediate fluctuations of price during the interval between the bringing of the asset in the business and the realisation of it would be eliminated and the only thing considered in the accounts would be the difference between the price of the asset when it was brought into the business and the price thereof when the asset was realised. On the other hand, the market value basis would bring into account each year the fluctuations in the market value of the asset as at the close of every year of account until the asset was realised with the result that in each and every year of account a rectification would have to be made in the result of the trading of the previous year which was not correctly reflected in the accounts by reason of the assessee having adopted the market value obtaining at the close of the previous year as the value of the asset. This process of rectification would continue from year to year until the asset was realised in a particular year of account when the actual price realised on the sale of the asset would be brought into account in that year. The ultimate result of these operations so far as the asset itself is concerned would be no different. Because if regard be had to the various fluctuations in the market value which have been reflected in the accounts of the intermediate period, what the business actually gains or loses would be the difference between the cost price of the asset when it was brought in and the price at which it was sold when it was actually realised. The only advantage which the assessee obtains would be that he would be able to anticipate in a particular year the loss that may be made on the asset in the following year or years, which however might have to be rectified in the following year or years if the prices rose again.

Is there any difference in the position when instead of the asset being realised is withdrawn from the stock-

in-trade of the business? So far as the business is concerned the asset ceases to be a part of the stock-in-trade whether it is realised or is withdrawn from the stock-in-trade. The asset after it has been brought into the business appreciates or depreciates in value in accordance with the fluctuations of the market and that appreciated or depreciated asset continues to be a part of the stock-in-trade of the business until it is realised or withdrawn. This appreciation or depreciation in value is not reflected in the books of account when the cost price basis is adopted for the valuation of the stock-in-trade at the close of the year of account, but is certainly reflected as above indicated in the books of account at the close of each year of account when the market value basis is adopted. In each case however the actual profit or loss to the business as the case may be in relation to the price at which the asset was brought into the business would be determined at the date when the asset is realised. That would be the measure of the appreciation or depreciation in value of the asset which till then formed a part of the stock-in-trade of the business, and would also be the measure of the ultimate profit or loss as the case may be of the business in regard to that particular asset. When the asset is withdrawn from the stock-in-trade of the business the position in my opinion would be no different. So far as the business is concerned the asset would go out and cease to be a part of its stock-in-trade and this again would be the measure of the profit or loss as the case may be of the business qua that particular asset. To my mind it makes not the slightest difference whether an asset is realised in the course of the business or is withdrawn from the stock-in-trade of the business. An asset which has appreciated or depreciated in value as the case may be in accordance with the fluctuations of the market ceases to be a part of the business, by the one process or the other. So far as the business is concerned it is entitled to credit in its goods account the price of that asset as has been realised by the sale thereof or the market value of that asset as at the date of its withdrawal.

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Looking at the matter from assessee's point of view also it does not make any the slightest difference whether he realises the asset in the course of the business or withdraws it from the business and utilises it in any manner he chooses. Having brought into the business an asset which was of a particular value at that time, he withdraws from the business that asset at a time when it has appreciated or depreciated in value. The business would be entitled to the appreciation or depreciation in value of that asset in so far as the asset had become a part of the stock-in-trade of the business. When the asset is withdrawn by the assessee, the assessee obtains in his hands by reason of such withdrawal an asset which at the time of the withdrawal has appreciated or depreciated in value as the case may be in comparison with its value at the time when it was brought into the business and the assessee on such withdrawal would be able to deal with or dispose of an asset which had thus appreciated or depreciated in value. In my opinion the manner of his dealing with the asset after he withdraws it from the stock-in-trade of the business is really immaterial. What is material to consider is what is the value of the asset which he was withdrawn from the stock-in-trade of the business and that value can only be determined by the market value of the asset as at the date of its withdrawal.

It was urged that the withdrawal of the asset from the stock-in-trade of the business was not a business operation and that an entry on the credit side crediting the cost price of the particular asset would therefore be enough. This argument however does not take into account the appreciation or the depreciation in the value of the asset on the date of the withdrawal as compared with its value when it was initially brought into the business. It also does not take into account the fact that the assessee might have adopted the market value basis for valuation of the stock-in-trade on hand at the close of the previous year or years of account. The entry on the debit side at the beginning of the year of account would not then represent the cost price of the asset but would represent

the market value of the asset at the close of the previous year of account. What would then be the rational basis on which the credit entry should be made at the date of withdrawal? Should it be the cost price of the asset which was not at all reflected into the accounts except at the initial stage when the asset was brought into the business or the market value of the asset when it was withdrawn? Surely the method of accounts keeping cannot make any difference to the actual position, whether an asset has appreciated or depreciated in value and what profit or loss if any accrued to the business when the asset was withdrawn from the stock-in-trade of the business. There is also a further fact to be considered and it is that when the asset is withdrawn from the stock-in-trade of the business there would be of necessity an entry in the account of the person withdrawing it debiting the price of that asset to him. If the assessee withdraws from the stock-in-trade of the business an asset which has thus appreciated or depreciated in value, is there any justification whatever for debiting him with the cost price of that asset and not the market value of the asset as at the date of withdrawal? In the event of the asset having appreciated in value the assessee should be debited in his account with the appreciated market value of the asset inasmuch as he withdraws from the stock-in-trade of the business an asset which is at that date of that market value. If however the asset has depreciated in value the assessee should certainly not be mulcted. He withdraws from the stock-in-trade of the business an asset which is of a depreciated value as compared with its value when it was brought into the business and he should not certainly be debited with a higher price even though it may be the cost price as appearing in the books of account according to the particular system of accounting adopted by the assessee.

I am therefore definitely of the opinion that even in the case of withdrawal as in the case of the realisation of the asset the business is entitled to credit in the goods account the market value of the asset as at the date of its withdrawal whatever be the method adopted

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by it for valuation of its stock-in-trade on hand at the close of a year of account.

Shri R. J. Kolah appearing for the appellant particularly relied upon a decision of the Calcutta High Court, *In the matter of Messrs. Chouthmal Golapchand* (1). The assessees there were the firm of Messrs. Chouthmal Golapchand constituted by four partners with equal shares, and they had at the beginning of the accounting year 1935-36 an opening stock of shares valued at cost price of Rs. 85,331. On the 8th January, 1936, the partners resolved to dissolve the firm with effect from the 30th March, 1936, and in view of the pending dissolution they divided amongst themselves on the 9th March, 1936, these shares which were then valued at the rates prevailing in the market at an aggregate sum of Rs. 51,966. There was a difference of Rs. 33,365 between the value of the opening stock, *viz.*, Rs. 85,331, and the then market valuation of Rs. 51,966 and this difference was claimed by the assessees as a loss in the assessment. This claim of the assessees was negatived on the ground that there was nothing to show that loss had occurred in the year of account. The assessees having adopted the system of valuing the shares at cost price at the end of every year and the opening of the next year, the cost price of the shares was taken to have been their value at the beginning of the year of account and the partition was taken as not amounting to a sale of the shares with the result that there was no evidence of any loss. With great respect to the learned Judges I do not see my way to agree with the reasoning of this judgment. Apart from the fact that this distribution of shares amongst the partners was in view of the impending dissolution of the firm and different considerations may arise when one considers the distribution of the assets of a dissolved partnership amongst its partners, the judgment does not take count of the fact that at the date of the partition the assets which had been brought into the business at the earlier dates had depreciated in value and it was these depreciated

(1) [1938] 6 I. T. R. 733.

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assets which were the subject-matter of partition between the partners. Even if the partition be not treated as a sale it was a transfer of property, the property of the firm being transferred to the individual partners thereof and each partner obtaining an absolute interest in the shares thus transferred to him by the firm to the exclusion of the other partners therein. So far as the firm was concerned it was certainly a transfer of the property to the individual partners and even as regards the partners themselves it was a transfer of the interest of the partners *inter se* in the shares respectively transferred absolutely to each of them. If it were necessary to do so I would certainly say that the case was erroneously decided. [See also the judgment of Fletcher Moulton L. J. in *In re Spanish Prospecting Co., Ltd.* (1)].

The result therefore is that the answers given by the High Court to both the questions referred to it were correct and the appeal must be dismissed with costs.

*Appeal allowed.*

Agent for the appellant: *Rajinder Narain.*

Agent for the respondent: *G. H. Rajadhyaksha.*

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Oct. 14.

## JAGADGURU GURUSHIDDASWAMI
*v.*
## DAKSHINA MAHARASHTRA DIGAMBAR JAIN SABHA.

[MEHR CHAND MAHAJAN, MUKHERJEA, and JAGANNADHADAS JJ.]

*Religious endowments—Permanent lease by head of* math*—Demise by lessee by way of gift—Decree obtained by succeeding head against heirs of lessee for recovery of possession—Whether binding on donee—Fresh suit against donee—Maintainability—Limitation—Limitation Act (IX of 1908), s. 10A, Art. 134B—"Valuable consideration" meaning of.*

(1) [1911] 1 Ch. 92 at p. 98.