PETITIONER:
KALOORAM GOVINDRAM

Vs.

RESPONDENT:
COMMISSIONER OF INCOMETAX, MADHYA PRADESH

DATE OF JUDGMENT:
05/04/1965

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1966 AIR 4 1965 SCR (3) 641
CITATOR INFO :
R 1972 SC2373 (11)

ACT:
Indian Income-tax Act, 1922 (11 of 1922), s. 10(2) vi--Partition. of Hindu joint family--Asset auctioned between dividing branches --Value on which depreciation to be allowed--Whether on auction price or on original cost to the erstwhile larger family.

HEADNOTE:
On partition being effected through a suit, a Hindu joint family who has only an interest in the entire joint family property acfamily. The preliminary decree passed by the Court determined 10/16 as the share of the appellant family and 6/16 as that of the other branch. Those assets of the erstwhile larger joint family which could not be physically divided were auctioned between the two branches and in this manner a sugar mill was purchased for 34 lacs by the appellant family. In Income-tax proceedings depreciation under s. 10(2) (vi) of the Indian Income-tax Act, 1922 was claimed on the above valuation of 34 lacs. The claim was rejected by the Income-tax Officer as well as the Appellate Assistant Commissioner, on the ground that the value for the purpose of depreciation was not the price determined at the family auction, but the original cost to erstwhile larger joint family. The Tribunal held that the 6/16 share of the other branch was purchased at the auction and its value had to be taken as the basis of the price determined at the auction, but the appellant family's own share of 10/16 was not purchased at the auction and therefore had to be valued at the original cost to the larger joint family. In reference, the High Court held that the distinction made by the Tribunal was wrong and that the shares of both branches had to be valued on the basis of the original cost to the larger family. Appeal was filed before this Court with certificate.
HELD: Per Subba Rao and Sikri, JJ. It may be that in strict legal theory partition may not involve a transfer, but the substance of the transaction is that an erstwhile member of a joint Hindu family who has only an interest in the entire joint family property acquires an absolute title to a

specific property. The cost of the property to the member at the date of partition would be the value given to it for the purpose of allotment. provided it was real, or the price at which he purchased it in auction, or the value of it ascertained otherwise. [647A-C]

In the case of assessees acquiring a property by purchase, gift, bequest, or succession, courts have held that the cost of the property to the assessee was not the original cost of it to his predecessor but its actual cost to him at the time of the purchase, gift, bequest or succession. In substance there is no difference in the matter of ascertaining the cost of an asset to an assessee whether he is a donee, purchaser, legatee, successor, or a divided member e.f a joint Hindu family. [646D; 647A]

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Commissioner of Income-tax, Madras v. The Buckingham & Carnatic Company, Ltd., Madras (1935)3 I.T.R. 384(P.C.), Jagata Coal Co. Ltd. v. Commissioner of Income-tax, West Bengal (1959) 36 I.T.R. 521 (S.C.), Indian Iron & Steel Co. Ltd. v. Commissioner of Income-tax, Bengal, (1943) 11 I.T.R. 328 (P.C.), Francis Vallabaravar v. Commissioner of Income-tax, Madras (1960) 40 I.T.R. 426 and Commissioner of Income-tax, Bombay v. Solomon & Sons (1933) 1 I.T.R. 324, referred to.

Commissioner of Income-tax, U.P. & C.P.v. Seth Mathuradas Mohta, (1939)7 I.T.R. 160, disapproved.

In the present case the valuation given to the property was not notional but a real one; indeed the property was sold in the open auction between the members of the larger joint family and the value fetched thereunder entered into the scheme of partition. [647 C-D]

Therefore, even in respect of the appellant's own share of 10/16, the valuation for the purposes of s. 10(2)(vi) had to be on the basis the price which the appellant bid at the auction.

Per Shah, J. (dissenting). By the preliminary decree the appellant family became entitled to a 10/16th share in every item of the property of the larger joint family; the other branch became entitle to the remaining i.e. 6/16th share in each item. The appellant being already owner of 10/16th share could not purchase the same at the auction. In substance the appellant purchased, by being declared the highest bidder, the remaining 6/16th share belonging to the other branch. [650 C-E]

The asset in question, viz, the sugar factory, at all material times remained a business asset. Acquisition of the interest of the other branch by the appellant did not alter the character or use of the asset; nor did it make any fundamental alteration in its value to the appellant so as wholly to displace its original value even in respect of its share which it continued to own. [654 B-D]

The Tribunal therefore, had rightly held that in respect of the 6/16th share of the other branch, depreciation had to be allowed to the appellant on the basis of the auction price. The High Court wrongly interfered with this finding the Revenue not having appealed against it.

On the appellant's 10/16th share, which the appellant could not be said to have purchased, depreciation had to be calculated on the basis of original cost to the larger family. [654 E-G]

Case law discussed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 41 of 1964.
Appeal from the judgment and order dated April 10, 1961 of the Madhya Pradesh High Court in Misc. Civil Case No. 154 of 1959.

N.D. Karkhanis, Rameshwar Nath, S.N. Andley and P.L. Vohra, for the appellant.

C.K. Daphtary, Attorney-General, R. Ganapathy Iyer and R.N. Sachthey, for the respondent.

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The Judgment of Subba Rao and Sikri, JJ. was delivered by Subba Rao, J. Shah, J. delivered a dissenting Opinion.

Subba Rao, J. The appellant is a Hindu undivided family carrying on business at Jaora. It was a branch of a larger joint Hindu family composed of two branches--one was Govindram and the members of his family and the other was Bachhulal and the members of his family. In the year 1942 there was a partition suit between the said two branches and under the decree made therein each item of the property was put up for sale by competitive bidding. One of the items of the said property, the sugar factory at Jaora, was knocked down in favour of Govindram for a sum of Rs. 34 lakhs. After all the items of the property were sold to one or other of the parties, final adjustments were made by cash payment. After the said partition Govindram and the members of his branch of the family continued to run the factory. For the assessment year 1950-51 the Income-tax Officer, Ratlam, assessed the appellant in respect of the income from the said factory. The appellant contended that it was entitled to depreciation as provided under s. 10(2) (vi) of the Income-tax Act, 1922, hereinafter called the Act, on the said amount of Rs. 34 lakhs, being the amount for which it purchased the factory in the auction that was held pursuant to the partition decree. The Income-tax Officer and, on appeal, the Appellate Assistant Commissioner rejected that contention and held that the value to be adopted for the purpose of depreciation would be the original cost of the said factory to the larger joint family. On a further appeal, the Income-tax Appellate Tribunal held that so far as the 10/16th share in the factory which belonged to the appellant was concerned the cost to the appellant was the original cost to the larger branch; and so far as the 6/16th share of Bachhulal's branch in the said factory was concerned the original cost was the amount for which the appellant's branch purchased the 6/16th share of the other branch, i.e., Rs. 12,75,000/-. The following question was referred by the Tribunal to the High Court of Madhya Pradesh:

> "Whether on the facts and in the circumstances of this case, the assessee Hindu Undivided Family is entitled to claim depreciation in respect of the assets of the old Hindu Undivided Family on the basis of the original cost to the family or on the basis of the valuation at which the assessee took over the assets".

The High Court held that the depreciation allowance should be computed on the basis of the original cost to the larger joint family and not on the basis of the valuation at which the assessee took over the assets. The assessee, by certificate granted by the High Court, has preferred the present appear to this Court against that order.

The only question that arises in this appeal is whether the depreciation allowance should be computed in respect of the

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10/16th share in the factory on the basis of the original cost to the larger joint family or on the basis of the valuation at which the assessee took over the factory. The answer to this question turns upon the relevant provisions of the Act and they read:

Section 10(2): Such profits or gains shall be computed after making the following allowances, namely:--

> (vi) in respect of depreciation of such buildings, machinery, plant or furniture being the property of the assessee, a sum equivalent, where the assets are ships other than ships ordinarily plying on inland waters, to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed and in any other case, to such percentage on the written down value thereof as may in any case or class of cases be prescribed:
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> Section 10(5) of the Act defines "written down value" thus:
>
> "written down value" means--
>
> (a) in the case of assets acquired in the previous year, the actual cost to the assessee:
>
> (b) in the case of assets acquired before the previous year the actual cost to the assessee less all depreciation actually allowed to him under this Act or any Act repealed thereby, or under executive orders issued when the Indian Income-tax Act, 1886 (II of 1886) was in force".

It is not disputed that no previous depreciation was allowed under any Act repealed by the Indian Income-tax Act, 1922, or under any executive order issued under the Indian Income-tax Act, 1886. Therefore, the appellant would be entitled to depreciation allowance on the original cost to it of the factory. What is the original cost of the 10/16th share in the factory to the appellant'? Two expressions in d. (vi) of sub-s. (2) of s. 10 give the clue to the answer, and they are, (i) "being the property of the assessee", and (ii) "the original cost thereof". Therefore. depreciation is given in respect of property of an assessee on the original cost of the said property to him. The factory is the property of the assessee. What was the original cost of the property to the assessee'? Admittedly Govindram purchased it in the auction for Rs. 34 lakhs. Ordinarily that would be the cost of the factory to the assessee. It was conceded that it would be so if a third party had purchased it. But as the auction was only a step in the partitioning of the property of the larger family among the branches composing it, Govindram did not purchase it but only got it in the partition. It was then

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contended that partition did not involve any conveyance or transfer, but it was only a process in and by which joint enjoyment was transformed into an enjoyment in severality and that, therefore, the. appellant did not get any new title to the factory or at any rate to the 10/16th share therein, but its title was traceable to the ownership of the larger joint family. On the said reasoning it was argued that the original cost of the factory to the larger joint family was the cost to the assessee within the meaning of the said provisions.

The entire argument is based on a misapprehension of the scope of partition under Hindu Law. Coparcenery is a

creature of Hindu law. The concept involves "community of interest, unity of possession and common enjoyment". Each coparcener's right extends to the whole joint family property; though each one of them has interest in the whole family property, he has no definite share therein. Partitioning is the ascertainment of individual shares and it can be brought about by an unambiguous declaration of their intention to divide, ie., by a conscious alteration of their status. Such a declaration brings about a division in status. At that stage' the members of an erstwhile joint family become tenants-in-common. The next step is the division by metes and bounds where under separate properties are allotted towards the said definite shares of the individuals. Whether the said process involves transfer or not within the meaning of the Transfer of Property Act, it certainly confers on a divided member an absolute title to a specified property, whereas before the partition he had only some interest in the entire joint family property. Though in one sense his interest in the property of the larger joint family has become crystallized into a specific property, in substance he acquires a title to a specific property. Even from a practical standpoint the legal fiction of "pre-existing title" cannot be stretched too far. Take the following illustration: A and B were members of a joint Hindu family in 1930 and continued to be so till 1960 when a partition was effected between them. They had 4 houses in 4 villages; and the original cost of each of the houses was Rs. 100/-. If a partition had taken place in 1930 or thereabout, each one of the two brothers would have got 2 houses each, and the partition would have been equitable and fair. But during these 30 years one village developed into a town and the value of the house therein had increased to Rs. 500/-. There was no appreciable rise in price in regard to the other 3 houses and they together would fetch only Rs. 500/- in the market. In the result at the partition that was effected in 1960 the house, in the town was given to one of the brothers and the other three houses together were given to the other brother. What would be the cost of the house in the town to the brother to whom it was allotted? Clearly it would be Rs. 500/-, though the original cost of the house at the time it was built or purchased was only Rs. 100/-. Because of the uneven rise in prices of the different houses, instead of two houses he got only one house at the partition. The cost to him, therefore. would be the cost at which the-

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property was valued at the partition or at which it was auctioned for the purpose of partition. Take another illustration: Instead of partitioning the properties by evaluation thereof, the houses were sold to a third party. So far as the third party was concerned the cost price would be the price at which he purchased them. If instead, the properties were sold by auction between the brothers and the difference in prices was adjusted by cash payment, it would be incongruous to say that in the former the cost of the houses would be the cost actually paid by the third party purchaser and in the latter the cost of the houses would not be the price for which they were auctioned but the nominal price they bore in a remote past. Other illustrations may be visualized. Barring the cases of fraud, collusion and inflation and deflation of values for ulterior purposes, cost of an asset to a divided member must necessarily be its cost to him at the time of partition, whether mentioned in the partition deed or ascertained aliunde.

Analogy drawn from comparable cases may also throw some

light on the question. In the case of an assessee acquiring a property by purchase, gift, bequest or succession, courts have held that the cost of the property to the assessee was not the original cost of it to his predecessor but its actual cost to him at the time of the purchase, gift, bequest or succession, as the case may be: see Commissioner of Income-tax, Madras v. The Buckingham & Carnatic Company, Ltd., Madras (1), and Jagta Coal Co. Ltd. v Commissioner of Income-tax, West Bengal(2)--purchase; Indian Iron & Steel Co. Ltd. v. Commissioner of Income-tax, Bengal("), and Francis Vallabarayar v. Commissioner of Income-tax, Madras(4)--succession; and Commissioner of Income-tax, Burma v. Solomon & Sons(5)--bequest. A Division Bench of the Nagpur High Court in Commissioner of Income-tax, U.P. & C.P.v. Seth Mathuradas Mohta(6) dealt with a case of partition. Therein, it held that the cost to the assessee, who was a divided member, of a property was the cost of it to the original joint Hindu family at the time it was acquired. The learned Judges gave various illustrations in support of their conclusion. It is true that, if the valuation of the properties was given nationally as a mode of choosing properties, there will be some plausibility in the contention that there is no change in the valuation between the date the property was purchased and the date when it was allotted to one of the members of the family. But, if the valuation of a property was not notional but was real and that was the basis for allocating properties to different shares, we do not see how the cost of a property allocated to a member would be that at which it was purchased in the remote past. We cannot agree with the view expressed by the Nagpur High Court.

(1) (1935) 3 I.T.R. 384 (P.C.)
(2) (1960) 40 I.T.R. 426.
(3) (1959) 36 I.T.R. 521 (S.C.).
(5) (1933) 1 I.T.R. 324.
(4) (1943) 11 I.T.R. 328 (P.C.).
(6) (1939) 7 I.T.R. 160.

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In substance we do not see any difference in the matter of ascertaining the cost of an asset to an assessee whether he is a donee, purchaser, legatee, successor or a divided member of a joint Hindu family. It may be that in strict legal theory partion may not involve transfer, but the substance of the transaction is that an erstwhile member of a joint Hindu family, who has only an interest in the entire joint family property acquires an absolute title to a specific property. The cost of the property to the member at the date of partition would be the value given to it for the purpose of allotment, provided it was real, or the price at which he purchased it in auction or the value of it ascertained otherwise.

It is nobody's case in the present appeal that the valuation given to the property was notional and not a real one: indeed, the, property was sold in open auction between the members of the larger joint family and the value fetched thereunder entered into the scheme of the partition.

> We, therefore, answer the question as follows: That depreciation allowance should be computed on the basis of the valuation at which the assessee took over the assets.

In the result, the appeal is allowed with costs here and in the High Court.

Shah, J. A sugar factory in the former Indian State of Jaora belonged to a Hindu undivided family of Govindram and his nephew Bachhulal. In a suit filed by Bachhulal in

1942 in the Civil Court at Jaora against Govindram for partition of the properties of the undivided family, Govindram was declared entitled to a 10/16th share in the property of the family and Bachhulal to the remaining 6/16th share. A Commissioner was appointed for dividing the properties. Certain properties of the family were incapable of division by metes and bounds, and by order of the Court in which the suit was instituted those properties were put up for sale by "competitive bidding between the parties". A sugar factory at Jaora--called 'the Govindram Sugar Factory'--was put up for competitive bidding, and the bid of Govindram for Rs. 34 lakhs being accepted, the sugar factory was allotted to his share. Other assets of the family were similarly allotted to Govindram or to Bachhulal according as he offered the higher bid. Account was then made between Govindram and Bachhulal of properties allotted on the basis of the bids accepted at the competitive bidding and Govindram was found liable to pay Rs. 11,26,200/-after taking into account a debit item of Rs. 12,75,000/- being the value of the 6/16th share of Bachhulal in the sugar factory. Govindram died in 1943, and the appellant is the Hindu undivided family which represents the branch of Govindram.

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The Indian Income-tax Act 9 of 1922 was applied to Part 'B' States by the Finance Act 25 of 1950. In the assessment year 1950-51 which was the first year of assessment after the State of Jaora became part of the Indian Union, the appellant Hindu undivided family claimed depreciation allowance under s. 10(2) (vi) of the Indian Income-tax Act in respect of the sugar factory computed on a valuation of Rs. 34 lakhs. The Income-tax Officer rejected the claim of the appellant and allowed depreciation only on the actual cost to the Hindu family of Govindram and Bachhulal before it was divided. The order of the Income-tax Officer was confirmed by the Appellate Assistant Commissioner in appeal. The Income-tax Appellate Tribunal held that the value for purposes of depreciation should be 10/16th share of the original cost to the larger Hindu undivided family plus Rs. 12,75,000/- (paid by Govindram on behalf of the assessee to Bachhulal for the latter's 6/16th share in the sugar factory). At the instance of the appellant, the Tribunal referred the following question to the High Court of Madhya Pradesh under s. 66(1) of the Income-tax Act:

> "Whether on the facts and in the circumstances of this case, the assessee Hindu Undivided Family is entitled to claim depreciation in respect of the assets of the old Hindu Undivided Family on the basis of the original cost to the family or on the basis of the valuation at which the assessee took over the assets?"

The High Court of Madhya Pradesh recorded the following answer:

> "that the depreciation allowance should be computed on the basis of the original cost to the joint family and not on the basis of the valuation at which the assessee took over the assets".

In so answering the question, the High Court committed a clear error of law. The Commissioner had acquiesced in the order of the Tribunal and had not claimed that the original value to the larger Hindu Undivided Family was the only amount on which depreciation allowance was to be computed. The Income-tax authorities had held' that for the purpose of

computing the depreciation allowance, the original cost to the joint family had to be the basis, but the Tribunal did not accept that view and held that the depreciation allowance in respect of the sugar factory was to be computed on the basis of 10/16th of the original value plus Rs. 12,75,000/-. The Commissioner having acquiesced in the order of the Tribunal, the only question on which the High Court was called upon to advise was whether in respect of the 10/16th share which fell to the share of Govindram, depreciation aIlowance may be computed on the basis of the original cost to the larger undivided family or on the basis of Rs. 34 lakhs being the value of the factory offered at the auction.

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In the computation of profits and gains of any business carried on by an assessee, under the head "Profits and gains of business" by s. 10 sub-s. (2) the assessee is entitled to an allowance for depreciation under el. (vi). The material part of sub-s. (2) cl. (vi) provides:

"(2) Such profits or gains shall be computed after making the following allowances, namely :--

(vi) in respect of depreciation of such buildings, machinery, plant or furniture being the property of the assessee, a sum equivalent, where the assets are ships other than ships ordinarily plying on inland waters, to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed and in any other case, to such percentage on the written down value thereof as may in any case or class of cases be prescribed:

The assets in respect of which the depreciation allowance is claimed being a factory, a percentage on the written down value as may be prescribed in respect of the buildings, machinery, plant and furniture therein is admissible as allowance. Sub-section (5) of s. 10 defines "written down value". It provided, insofar as it was material at the relevant time:

"written down value' means-

(a) in the case of assets acquired in the previous year, the actual cost to the assessee:

Provided

Provided further

(b) in the case of assets acquired before the previous year the actual cost to the assessee less all depreciation actually allowed to him under this Act or any Act repealed thereby, or under executive orders issued when the Indian Income-tax Act, 1886 (II of 1886), was in force:"

The depreciation allowance under s. 10(2)(vi) in respect of a factory has to be allowed in the manner prescribed on the actual value to the assessee limited to the buildings, machinery, plant and furniture. No previous depreciation has been allowed under any Act repealed by the Indian Income-tax Act, 1922 or under any executive order issued under the Indian Income,tax Act, 1886 and therefore the appellant is entitled to depreciation allowance under s. 10 (2) (vi) on the actual cost to the assessee of assets for which depreciation is admissible.

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The factory originally belonged to a larger Hindu undivided family. In the scheme of partition devised under

the preliminary decree the factory was allotted to Govindram, his bid of Rs. 34 lakhs having been accepted by the Court. The true effect of the scheme under which the properties were put up for competitive bidding under the order of the Court was that the interest of the other member was to be conveyed at a value based on the offer made by the higher bidder. In other words, each party was given an option to purchase the share of the other, but the option was exercisable only by the person who offered the higher bid for the asset. By the preliminary decree, the share of Govindram was defined at 10/16th and he became entitled to that share in every item of property and Bachhulal became entitled to the remaining 6/16th share in each such item. But some of the properties were found incapable of physical division and a scheme was devised under which one of the sharers was entitled to purchase the share of the other on a valuation based on the bid offered by him, provided it was the higher of the two bids. Value of the bid was however taken into account only for making up accounts. In substance the appellant purchased by being declared the higher bidder the 6/16th share belonging to Bachhulal in the sugar factory for Rs. 12,75,000/-. He was, and remained the owner of the 10/16th share, and that share was neither sold nor conveyed to him: he merely purchased the share of Bachhulal for Rs. 12,75,000/-. The Tribunal was therefore right in holding that in respect of the 6/ 16th share, Rs. 12,75,000/- paid by Govindram was the actual cost to him. On this part of the case apparently no dispute was or could be raised before the High Court. But the appellant contends that even for the purpose of the 10/16th share, the depreciation allowance should-be computed on the basis of a valuation of Rs. 34 lakhs bid by Govindram for the factory.

Our attention was invited to a large number of authorities in support of the contention raised by the appellant that the price of the sugar factory on the basis of which the share of Bachhulal was valued should be regarded as decisive of the value of the asset on which depreciation allowance is admissible. The argument in substance is that the actual cost of the sugar factory is Rs. 34 lakhs, that being the price at which the factory was acquired by Govindram.

An asset which is admissible to depreciation allowance may be obtained by gift, inheritance or succession. In such a case the person who acquires an interest in the asset pays no price for it, but on that account it cannot be said that he is not entitled to depreciation allowance. In respect of such an asset, in the absence of any statutory provision, depreciation would be computed on the market value on the date of acquisition of interest. An asset may be acquired by purchase, in which case in the absence of evidence to show that the valuation was unduly inflated, the value

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paid by the assessee is the actual cost to him, and not the value paid by his vendor for acquiring it. Again property which is owned jointly by more persons than one, by the acquisition of the interest of the other joint owners becomes the property of a single owner.

In Francis Vallabarayar v. Commissioner of Income-tax, Madras(1) a Division Bench of the Madras High Court held that an assessee is entitled in assessment of tax under s. 10 of the Income-tax Act, to depreciation allowance in respect of machinery or plant, which he acquires by inheritance, on the market value of such property at the date of inheritance. The same principle would apply to cases of gift and succession. The Legislature has by adding

cl. (c) in sub-s. (5) of s. 10 by s. 8 of the Indian Income-tax (Amendment) Act 25 of 1953, defined 'written-down value' in the case of assets acquired by the assessee by way of gift or inheritance as being the written-down value as in the case of previous owner or the market value thereof whichever is less. In the case of purchase, as we have already observed, in the absence of fraudulent over-valuation with a view to obtain an unfair advantage, the price paid by the purchaser would be regarded for the purpose of depreciation allowance as the actual cost to him, and not the original cost to the vendor: Commissioner of Income-tax v. The Buckingham Carnatic Company Ltd. C): Jogta Coal Company Ltd. v. Commissioner of Income-tax, West Bengal C). Cases in which full title to an asset, in respect of which depreciation is claimed, is obtained in consequence of partition of a Hindu undivided family introduce a complication, which is a peculiar product of the rules of Hindu law. Under the Mitakshara system the essence of a coparcenary is unity of ownership, and so long as the family remains joint no individual member can claim that he has a definite share in the joint property. Until partition takes place, there is community of interest and unity of possession between all the members: it is only on partition that the interest of each member becomes definite. "Partition ..... is really a process in and by which a joint enjoyment is transferred into an enjoyment in severalty. Each one of the sharers had an antecedent title and therefore no conveyance is involved in the process ..... "Gutta Radha kristnayya v. Gutta Sarasamma(4).

By the preliminary decree Govindram and BachhuIal acquired definite interest in the sugar factory proportionate to the shares declared by the decree in the entirety of the estate, and. the scheme by which Govindram became owner of the sugar factory was in truth one by which he purchased 6/16th share of Bachhulal. He was by the decree, which recognised his pre-existing title, entitled to 10/16th share and he purchased the remainder. The

(1) 40/.T.R. 426.
(2) 3/.T.R. 385.
(3) 36/.T.R. 521.
(4)I.L.R. [1951] Mad. 607.

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scheme of "competitive bidding" was adopted only for the purpose of valuing the interest of the other sharer at which the first sharer was to purchase it. The highest bidder took the entire asset and paid a share of the value bid by him equal to the share of the other sharer in the family estate. Govindram was the owner of 10/16th share: by offering the bid for Rs. 34 lakhs he did not purchase the 10/16th share. He merely purchased the 6/16th share of Bachhulal at a price based on total valuation of the sugar factory at Rs. 34 lakhs.

The dicta to the contrary in Commissioner of Income-tax U.P. & C.P.v. Seth Mathuradas Mohta (1) on which the High Court relied do not, in my judgment, lay down the correct rule. In that case coparceners of a Hindu family consisting of two members owning a Ginning Factory which was originally purchased for Rs. 23 lakhs decided to separate, and as the Ginning Factory could not be divided it was put to auction and purchased by 'A' for Rs. 28 lakhs. 'A' was debited in taking account with half the amount offered by him. Subsequently 'A' claimed depreciation allowance on the basis of Rs. 28 lakhs which he had paid alleging that that was the

original cost to him. The Income-tax authorities rejected the claim, and adopted the original value to the joint family as the actual value to 'A' for computing depreciation allowance under s. 10(2)(vi). In dealing with a reference made by the Tribunal on the question whether the Income-tax Officer had the power to ignore the valuation made by the parties in ascertaining the original cost of the machinery and building to the assessee, the High Court observed:

> " ..... the original cost is the cost of acquiring title. The cost of acquiring title is to be ascertained at the time when the property is acquired by the coparcenary. Thereafter one is not concerned with cost strictly so called but one is concerned with a mode of partition. As a result of the partition each (fraud, over reaching and the like being put on one side) is to be regarded as having got half by the mode of division adopted whether that mode be through Court, arbitration, private auction or drawing lots or any other mode agreed upon. The original cost of the property is not increased though one side might in the result get what a third person would regard as less than half though what the person concerned (at least in the case of private auction) thought at the time was at least equal to half; otherwise he would not have bid so much".

These observations were not necessary for the purpose of answering the question posed before the Court. The question posed before the High Court related not to what the true value for computing the allowance for depreciation was. but to the power of the

(1) 7 I.T.R.160.

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Income-tax Officer to ignore the valuation placed by the parties in the deed of partition in ascertaining the true value for the purpose of such computation.

Death or birth of coparceners does not alter the identity of the Hindu undivided family which utilizes an asset for earning income or profit. Death of a coparcener merely extinguishes an existing interest, but there is no devolution of that interest. But where the joint family status is severed and the rights of the parties are crystalised and a member acquires the interest of the other in any item of property though arbitration, agreement, decree of the Court or a private auction, there is a transfer of interest from one to the other in that property and the value paid or taken into account for acquisition of that interest would normally be regarded qua that share as the actual cost to the acquirer for the purpose of s. 10(2)(vi), but the value of his own share is determined by the actual cost to the family.

Counsel for the appellant placed strong reliance upon Commissioner of Income-tax v. Bai Shirinbai K. Kooka (1) which belongs to a different branch of the law of Income-tax. Where an assessee brings his investments into his business, the question arises whether in assessing income-tax payable on income earned by sale or disposition of such investment the original value at which they were acquired or the market value as at the date on which they were brought into the business has to be taken into account. In Shirinbai's case(1) the assessee who held by way of investment several shares in different companies commenced

a business in shares by converting the shares into stock-in-trade of the business. The assessee subsequently sold those shares in the course of the business at a profit. A majority of this Court held that the assessee's assessable profits on the sale of the shares was the difference between the sale price of the shares and the market price of the shares prevailing on the date when the shares were converted into stock-in-trade of the business, and not the difference between the sale price and the price at which the shares were originally purchased by the assessee. The Court in that case distinguished the earlier case decided by this Court Sir Kikabhai Premchand v. Commissioner of Income-tax(2) in which it was held that the assessee was entitled to value at cost price, certain business assets which were after withdrawal from the business settled upon trust. But neither of these cases has a bearing on the computation of depreciation allowance which is qua building, machinery, plant (not being ships) or furniture to be a percentage of the written-down value. A person who transfers his investments which are not part of his business into the stream of his business may value the investments at the prevailing market rate on the date on which they are brought into the business. In Shirinbai's case(1) the Court was

(1) 46 I.T.R. 86.

(2) 24 I.T.R. 506.

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called upon to ascertain commercial profits earned by sale of stockin-trade and in so doing regarded the owner as investor and as businessman as two different entities. S.K. Das, J., speaking for the majority observed that normally the commercial profits out of a transaction of sale of an article must be the difference between. what the article cost the business and what it fetched on sale. But it is difficult to appreciate how that principle would apply in the computation of depreciation allowance. The asset viz. the sugar factory at all material times remained a business asset. It was at one time owned by Govindram and Bachhulal, and if the Income-tax Act, 1922 had then applied, depreciation allowance would have been computed on the basis of the value to the family. Acquisition of the interest of Bachhulal by Govindram did not alter the character or use of the asset: nor did it make any fundamental alteration in its value to the appellant so as wholly to displace its original value even in respect of the share which Govindram continued to own. Superficial analogies are often misleading and more so in taxation laws. In computing profits assets brought into the business and subsequently sold may be regarded as inducted at the prevailing market rates, for the taxing authority is concerned to deal with the business profits, arising out of a transaction of sale to the business. When depreciation allowance is to be computed, the taxing authorities have to consider what the original cost to the assessee was and valuation of a business asset adopted for the purpose of valuing the share of one of the owners from whom his share was purchased cannot be regarded by any principle of commercial accounting as notionally altering the original cost of his own share in the asset to the acquirer. The assessee does not purchase his own share at the valuation put by him at the private auction: he merely purchases the share of the other sharer at a valuation made on the bid offered by him. I am unable therefore to agree with counsel for the appellant that for the purpose of valuing 10/16th share of Govindram the basis should be the valuation of Rs. 34 lakhs which was adopted for valuing Bachhulal's share.

therefore answer the question as follows:
That depreciation allowance should be computed on the basis of 10/16th share of the original cost to the joint family of the assets which are admissible to depreciation allowance plus an appropriate amount attributable to the assets admissible to depreciation allowance on the footing that the value of 6/16th share of Bachhulal
in the factory was Rs. 12,75,000/-.
The order passed by the High Court will accordingly be modified. There will be no order as to costs.

ORDER

In accordance with the majority judgment, the appeal is allowed with costs here and in the High Court.

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