gratuity for other modes of termination of service. That was the method followed in the award that fell for consideration in Brahmachari's case. That method has however not been followed in the award that we have to consider here. In this case there is no specific reference in the award to retrenchment as such. The reasonable conclusion from the scheme as drawn up is that the gratuity that could be claimed under this award by retrenched workmen because of the fact that retrenchment is also one kind of termination of service within the meaning of the award was intended to be in addition to the retrenchment compensation and not in lieu thereof.

The decision in Brahmachari's case on the special facts of the award therein is therefore of no assistance to the appellant. We are bound to hold on an examination of the award in the present case that the gratuity which the respondent claims on the basis of the award is distinct from and in addition to the retrenchment compensation he has received. We are of opinion therefore that the Tribunal was right in holding that the respondent is entitled to such gratuity even though he has already received payment of compensation for retrenchment in accordance with the provisions of s. 25F of the Industrial Disputes Act.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

COMMISSIONER OF INCOME-TAX, BOMBAY

v.

(S. K. DAS, J. L. KAPUR and M. HIDAYATULLAH, JJ.)

1960
April 14.

Income-tax—Association of persons—Meaning of—Indian Income-tax Act, 1922 (*XI of* 1922), *s.* 3.

A Hindu governed by the Mitakshara School of Hindu Law died leaving three widows as his legal heirs. The widows took the estate as joint tenants and did not exercise their right to separate possession and enjoyment. The main income was from dividends and from immovable property. The latter was held under s. 9(3) of the Income-tax Act not to be assessable as income

1960

Commissioner of Income-tax, Bombay
v.
Smt. Indira Balkrishna

of an association of persons. The question was whether the three widows could be assessed as an association of persons in respect of the rest of the income:

Held, that the three widows did not have, the status of an association of persons within the meaning of s. 3 of the Income-tax Act. An association of persons is one in which two or more persons join in a common purose or common action and, for purposes of the income-tax law, one of its objects must be to produce income, profits or gains. It must be a combination of persons formed for the promotion of a joint enterprise for producing income. In the present case except for receiving the dividents and interest jointly the widows had done no act which helped to produce the income.

In re: B. N. Elias, [1935] 3 *I.T.R.* 408, *Commissioner of Income-tax, Bombay* v. *Laxmidas Devidas,* [1937] 5 I.T.R. 484 and *Re.Dwarakanath Harishchandra,* [1937] 5 I.T.R. 716, approved.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 249 & 250 of 1958.

Appeals by special leave from the judgment and order dated March 7, 1956, of the Bombay High Court in I.T.R. Nos. 52 and 53 of 1955.

K. N. Rajagopal Sastri and *D. Gupta,* for the appellant (in both the appeals).

N. A. Palkhivala, S. N. Andley and *J. B. Dadachanji,* for the respondent (in both the appeals).

1960. April 14. The Judgment of the Court was delivered by

S. K. Das J.

S. K. DAS, J.—These two appeals with special leave have been heard together. They arise out of similar facts and the question of law arising therefrom is the same.

The short facts are these. One Balkrishna Purushottam Purani died on November 11, 1947. He left behind him three widows and two daughters. The three widows were named Indira, Ramluxmi and Prabhuluxmi. These widows as legal heirs inherited the estate of the deceased, which consisted of immovable properties situate in Ahmedabad, shares in Joint Stock Companies, money lying in deposit, and share in a registered firm. For the two assessment years 1950-51 and 1951-52 (the corresponding account years being the Sambat years 2005 and 2006) the Income-tax Officer issued notices to the legal heirs of Balkrishna Purushottam Purani. Pursuant to those notices, returns were filed under the heading, "Legal heirs of Balkrishna Purushottam Purani", in one case

and in the name of the estate of Balakrishna in the other; the status was shown as "individual" in one case and "association of persons" in the other. They were signed by Indira, one of the three widows. For the assessment year 1950-51 the total income was shown as under—

	Rs.
Property ..	11,011
Share from registered firm ..	4,071
Dividends ..	51,796
Interest ..	22,343
Ground rent ..	125
Total ..	69,346

For the assessment year 1951-52, the total income was shown as—

	Rs.
Property ..	10,879
Share from registered firm ..	460
Dividends ..	80,426
Interest on deposits ..	536
Ground rent ..	125
Total ..	92,426

For both years the Income-tax Officer took the status of the assessee as an "association of persons" and on that footing made two assessment orders. There was an appeal to the Appellate Assistant Commissioner, and two of the points taken before him were—(a) that the three widows ought to have been assessed separately and not as an "association of persons", and (b) that in any event, the income from property ought to have been assessed separately in the hands of the three widows by reason of the provisions in s. 9(3) of the Income-tax Act, 1922. The Appellate Assistant Commissioner rejected point (a) but accepted point (b). Then, there was a further appeal to the

1960

Commissioner of Income-tax, Bombay
v
Smt. Indira Balakrishna

S. K. Das J.

Income-tax Appellate Tribunal, Bombay. The Tribunal held that the entire estate of deceased Balkrishna Purushottam Purani was inherited and possessed by the three widows as joint tenants and its income was liable to be assessed in their hands in the status of an association of persons. The Tribunal further held that the Appellate Assistant Commissioner was wrong in holding that the shares of the three widows were definite and determinable and s. 9(3) was applicable. The assessee then moved the Tribunal to refer certain questions of law which arose out of its orders to the High Court of Bombay. The Tribunal referred four such questions, but we are now concerned with only one of them, viz., question No. 3 which was in the following terms:

> "(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 Balakrishna Purushottam Purani in the status of an association of persons is legal and valid in law?"

Two references were made to the High Court in respect of the orders passed for two assessment years and they gave rise to Income-tax References Nos. 52 and 53 of 1955. The leading judgment was given in I. T. R. 52 of 1955. The High Court held that the Tribunal was in error in coming to the conclusion that the three widows could be assessed in the status of an association of persons with regard to the income which they earned as heirs of their deceased husband. Therefore, it answered question No. 3 in the negative. The department represented by the Commissioner of Income-tax, Bombay, then applied to this Court and obtained special leave to appeal from the judgment and orders of the High Court of Bombay in the two References. These two appeals have been filed in pursuance of the special leave granted by this Court. The appellant is the Commissioner of Income-tax, Bombay, and the assessee is the respondent.

The argument on behalf of the appellant is that the High Court was in error when it said that "what is required before an association of persons can be liable to tax is not that they should receive income but that

they should earn or help to earn income by reason of their association, and if the case of the Department stops short at mere receipt of income, then the Department must fail in bringing home the liability to tax of individuals as an asociation of persons." It is submitted that the High Court did not, in the statement quoted above, lay down the correct test for determining what is an "association of persons" for the purposes of the Income-tax Act.

Before we go on to discuss the argument presented on behalf of the appellant, it is necessary to clear the ground by stating what is the position of co-widows in Mitakshara, succession and what are the findings arrived at by the Tribunal. The position of co-widows is well-settled. They succeed as co-heirs to the estate of their deceased husband and take as joint tenants with rights of survivorship and equal beneficial enjoyment; they are entitled as between themselves to an equal share of the income. Though they take as joint tenants, no one of them has a right to enforce an absolute partition of the estate against the others so as to destroy their right of survivorship. But they are entitled to obtain a partition of separate portions of the property so that each may enjoy her equal share of the income accruing therefrom. The Tribunal found that the widows in this case did not exercise their right to separate possession and enjoyment and "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." Learned counsel for the appellant has emphasised before us the aforesaid finding of the Tribunal and has contended that on the finding of joint management, the widows fulfilled even the test laid down by the High Court and constituted an "association of persons" for taxing purposes. The High Court, however, rightly pointed out that the only property which the widows could have managed jointly was the immovable property which fetched an income of about Rs. 11,000, and as to that property, the Appellate Assistant Commissioner had held that s. 9(3) applied. There was no appeal by the Department against that finding and it was not

1960

Commissioner of Income-tax, Bombay
v.
Smt. Indira Balkrishna
S. K. Das J.

open to the Tribunal to go behind it. Even on merits the Tribunal was wrong in thinking that the respective shares of the widows were not definite and ascertainable. They had an equal share in the income, viz., one-third each, and the provisions of s. 9(3) clearly applied in respect of the immovable property.

With regard to the shares, dividends and interest on deposits there was no finding of any act of joint management. Indeed, the main item consists of the dividends and it is difficult to understand what act of management the widows performed in respect thereof which produced or helped to produce income. On the contrary, the statement of the case shows that the assessee filed lists of shares, copies, whereof are marked annexed C and form part of the case, which showed that the shares stood separately in the name of each one of the three widows and this was not denied by the Department.

We now come to the main question in this appeal. What constitutes an "association of persons" within the meaning of the Income-tax Act? It has been repeatedly pointed out that the Act does not define what constitutes an association of persons, which under s. 3 of the Act is an entity or unit of assessment. Previous to the year 1924, the words of s. 3 were "individual, company, firm and Hindu undivided family." By the Indian Income-tax Amendment Act of 1924 (Act XI of 1924) the words "individual, Hindu undivided family, company, firm and other association of individuals" were substituted for the former words. By the Income-tax Amendment Act of 1939 (Act VII of 1939) the section was again amended and it then said :

"Where any Act of the Central Legislature 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 associations of persons or the partners of the firms or members of the association individually."

By the same Amending Act (Act VII of 1939) subs. (3) of s. 9 was also added.

Now, s. 3 imposes a tax "in respect of the total income.....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 members of the association individually." In the absence of any definition as to what constitutes an association of persons, we must construe the words in their plain ordinary meaning and we must also bear in mind that the words occur in a section which imposes a tax on the total income of each one of the units of assessment mentioned therein including an association of persons. The meaning to be assigned to the words must take colour from the context in which they occur. A number of decisions have been cited at the bar bearing on the question, and our attention has been drawn to the controversy as to whether the words "association of individuals" which occurred previously in the section should be read ejusdem generis with the word immediately preceding, viz., firm or with all the other groups of persons mentioned in the section. Into that controversy it is unnecessary to enter in the present case. Nor do we pause to consider the widely differing characteristics of the three other associations mentioned in the section, viz., Hindu undivided family, a company and a firm, and whether in view of the amendments made in 1939 the words in question can be read ejusdem generis with Hindu undivided family or company.

It is enough for our purpose to refer to three decisions: *In re: B. N. Elias and Others* (1); *Commissioner of income-tax, Bombay* v. *Laxmidas Devidas and Another* (2); and *In re: Dwarakanath Harishchandra Pitale and Another* (3); *In re: B. N. Elias and Others*(1) *Derbyshire, C. J.*, rightly pointed out that the word "associate" means, according to the Oxford dictionary, "to join in common purpose, or to join in an action." Therefore, an association of persons must be one in which two or more persons join in a common purpose or common action, and as the words occur in

(1) [1935] I.T.R. 408 (2) [1937] 5 I.T.R. 484

(3) [1937] 5 I.T.R. 716

1960

Commissioner of Income-tax, Bombay v. Smt. Indira Balkrishna

S. K. Das J.

a section which imposes a tax on income, the association must be one the object of which is to produce income, profits or gains. This was the view expressed by Beaumont, C.J., in *Commissioner of Income-tax, Bombay* v. *Laxmidas Devidas and Another* (1) at page 589 and also in *Re*: *Dwarakanath Harishchandra Pitale and Another* (2). In *re*: *B. N. Elias* (3) Costello, J., put the test in more forceful language. He said: "It may well be that the intention of the legislature was to hit combinations of individuals who were engaged together in some joint enterprise but did not in law constitute partnership..... 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.....".

We think that the aforesaid decisions correctly lay down the crucial test for determining what is an association of persons within the meaning of s. 3 of the Income-tax Act, and they have been accepted and followed in a number of later decisions of different High Courts to all of which it is unnecessary to call attention. It is, however, necessary to add some words of caution here. There is no formula of universal application as to what facts, how many of them and of what nature, are necessary to come to a conclusion that there is an association of persons within the meaning of s. 3; it must depend on the particular facts and circumstances of each case as to whether the conclusion can be drawn or not.

Learned counsel for the appellant has suggested that having regard to ss. 3 and 4 of the Indian Income-tax Act, the real test is the existence of a common source of income in which two or more persons are interested as owner or otherwise and it is immaterial whether their shares are specific and definite or whether there is any scheme of management or not. He has submitted that if the persons so interested come to an arrangement, express or tacit, by which they divide the income at a point of time before it emanates from the source, then the association ceases; otherwise it continues to be an association,

(1) [1937] 5 I.T.R. 484 (2) [1937] 5 I.T.R. 716
(3) [1935] 3 I.T.R. 408.

1960

Commissioner of Income-tax, Bombay
v.
Smt. Indira Balkrishna

S.K. Das J.

We have indicated above what is the crucial test in determining an association of persons within the meaning of s. 3, and we are of the view that the test suggested by learned counsel for the appellant are neither conclusive nor determinative of the question before us.

Coming back to the facts found by the Tribunal, there is no finding that the three widows have combined in a joint enterprise to produce income. The only finding is that they have not exercised their right to separate enjoyment, and except for receiving the dividends and interest jointly, it has been found that they have done no act which has helped to produce income in respect of the shares and deposits. On these findings it cannot be held that the three widows had the status of an association of persons within the meaning of s. 3 of the Indian Income Tax Act.

The High Court correctly answered question No. 3 in the negative. Accordingly, the appeals fail and are dismissed with costs. There will be one set of hearing fee in the two appeals.

Appeals dismissed.

DARBAR SHRI VIRA VALA SURAG VALA, VADIA

v.

THE STATE OF SAURASHTRA (NOW BOMBAY)

1960

April 14.

(JAFER IMAM, S. K. DAS, J. L. KAPUR, A. K. SARKAR and M. HIDAYATULLA, JJ.)

Grant by Ruler to younger son as Bhayat—Son becoming Ruler —Whether grant resumable—"Bhayat", Meaning of.

In the Indian State of Vadia succession was governed by primogeniture. The Ruler in 1943 granted to his younger son, the petitioner, a village in the State in perpetuity and in heredity for enjoyment as 'Kapal-Giras' as 'Bhayat'. In 1947 the State of Vadia acceded to the Dominion of India and by subsequent constitutional developments it became merged in the State of Saurashtra. After the coming into force of the Constitution the elder son of the Ruler and then the Ruler died, and the petitioner was recognised as the Ruler. Thereupon the State of Saurashtra issued a notification resuming the grant as it was deemed to have lapsed and reverted to the former Vadia State. The petitioner contended that the grant was absolute and unconditional for