(1935) 03 CAL CK 0041

In the Calcutta High Court

Case No : Reference No. 2 of 1935

B. N. ELIAS AND OTHERS, IN RE.

Date of Decision : 11-03-1935

Acts Referred:
Companies Act, 1956 — Section 4
Income Tax Act, 1922 — Section 66

Citation : (1935) 3 ITR 408

Hon'ble Judges : Derbyshire, C.J;Costello, J

Bench : Full Bench

Judgement

DERBYSHIRE, C. J. :- This matter arises of a statement of case under the Indian Income Tax Act, 1922, Section 66, by the Commissioner of Income Tax of Bengal. For the year of assessment 1933-34, the Income Tax Officers, for District III (1) made an assessment in respect of certain property in Calcutta, called the Norton Buildings. In the assessment the name of assessee was stated to be B. N. Elias for self and for B. S. Benjamin, Sir Victor Season and A. J. Raymond, 19-D, Bowbazaar Street. Status (whether individual, registered or unregistered firm, Hindu undivided family, company or other associations of individuals). Associations of individuals. Sources of income with exact nature of business - House property. It was stated that the members of the association have the following interest. B. N. Elias - One-third, B. S. Benjamin - One-third, Sir Victor Sasson - One-sixth and A. J. Raymond - One-sixth. The income returned was Rs. 68,209. On that the aforesaid individuals were charged to tax as follows : Income Tax - Rs. 8,881-6; Surcharge on income tax Rs. 2,220 6-0; Super Tax - Rs. 2,360-1-0; surcharge on super tax - Rs. 590 in all Rs. 14,051-13-0. It is said by the assessees that this assessment is wrong, because it assesses them as an "association of individuals" and thus exposes them to a higher rate, and a higher amount of both income tax and super tax.

The history of the ownership of this property, as far as it is relevant in this case, is as follows. By a deed of conveyance, dated the 9th January, 1920, this property was purchased by Ranchael Bekhor, Captain E. V Sassoon A. J. Raymond and B. N. Elias, and their respective shares in the property purchased were one third, one-sixth, one sixth, and one third. In the deed of purchase those four indivisuals were described as the purchasers. The deed says "the purchasers, which expression shall, unless excluded by or repugnant to the context include them and each of them and their and each of their heirs, executors, administrators, representatives and assigns of the third part." The deed also recites that the purchasers were to have and to hold the said premises.... absolutely and "for ever as tenants in common in the following shares or proportions." The Proportions have been set out above.

On the 15th September, 1921. Rachael Bekhor by a deed of that date declared that her share of the cost of the building had been provided by Mr. Benjamin and that share was conveyed to her in trust by Mr. Benjamin and that she undertook to convey the said property, or any part of it, to such person or persons as Mr. Benjamin might direct and that Mr Benjamin was then the owner of the one third share originally belonging to Rachael Bekhor. We are told that this property is let out as offices. In 1920, E. V. Sassoon, Rachael Bekhor, and A. J. Raymond executed a power of attorney which recited as follows : "Whereas we jointly or severally are now seized or possessed or may hereafter become seised or possessed of lands, messages and tenements at Calcutta and whereas we are desirous of appointing some fit, and proper person to transact, conduct and manage on our behalf affairs in relation thereto and have for such purpose selected Benjamin Nissim Elias of Calcutta, now know ye that we the said Ellice Victor Sassoon, Rachael Nissim Bekhor and Abraham Jacob Raymond jointly and severally do and each and every of us do the by these presents make, constitute and appoint the said Benjamin Nissim Elias our true and lawful attorney for us and in our name on for and in the name of any of us -

1. To conduct and manage all and singular our affairs in relation to lands, messuages and tenements of which we are or any of us may hereafter be jointly or severally seized or possessed at Calcutta."

2. For the purpose aforesaid to demand recover and take possession of all and singular the lands, messages, tenements now belonging or which may hereafter belong to us or any of us absolutely or by way or equitable mortgage or in which we have or any of us has a beneficial interest either along or jointly with others and to view the state thereof and to give proper notices and direction for repairing the same and to oversee, let, sublet and manage the same.

3. To pay or allow all taxes, rates, charges expenses and out going due and payable or to become due and payable for on account of the said lands and immovable properties.

4. To contract with any person for leasing all or any of our immovable properties and any such person to let into possession thereof and to set fines for new leases and to accept surrender of leases and for that purpose for us and in our name and for and in the name of any of us to make, seal, deliver and execute any lease or grant or other lawful deed and instrument whatsoever which shall be

necessary or proper in that behalf and also in our name or in the name of any of us to sign and give lawful notice to quit to any tenant of the said premises.

5. For us and in our name and for our benefit or for and in the name of and for the benefit of us to enter into sign, execute, seal and deliver such agreement or agreements with any firm or individual as may be necessary for the sale, exchange or letting on lease of any of our immovable properties and also to sign, execute, seal and deliver all conveyances, deeds, supplicates receipts and other documents required to be signed or executed and to carry such agreement or agreements into effect and to appear before such Collector, Special Collector and other authorities and to give all such consents and do all such acts in the premises as to the Attorney may appear to be necessary or desirable.

6. For us and in our name or for and in the name of any of us to ask, receive and recover from all receivers, tenants and all other occupiers whatsoever of any of our lands, houses, hereditaments and other immovable properties all rents, arrears of rent, services, issues, profits, emoluments and sums of money now due, owing and payable or at any time hereafter to become due, owing and payable in respect of same premises in any manner whatsoever and also on nonpayment of or of any part thereof to enter and distrain and the distress and distresses there found to retain and keep or to sell and dispose of according to law.

7. For us and in our name or for and in the name of any of us to sell all or any part of our lands, hereditaments, houses and other immovable properties and to give receipts for all or any part of the purchase or other consideration money.

Then follow other provisions : "9. For us and in our name and for and in the name of any of us to appear before any Registrar or Joint Registrar or Sub-Registrar of Assurances or other the proper officer or officers appointed under any Act for the time being in force for the registration of deeds, assurances, contracts or other instruments and there and then or at any time thereafter to present for registration and register or cause to be registered this Power of Attorney and any deed or document executed here under and answer such enquiries, make acknowledgments and sign such papers and documents as may be necessary and also to do and execute such further acts and things as may be deemed expedient for registering or otherwise giving validity according to law to any deed or deeds or instruments which may be necessary for effectuating any act empowered by these presents".

On the 14th January, 1924, Mr. B. S. Benjamin executed a similar power of attorney appointing Mr. B. N. Elias, his attorney in Calcutta. The property, we are told had been managed by Mr. Elias from the date of his appointment down to the present time, in accordance with those powers of attorney. Previous to the Year 1933-34, the Income Tax Officer had not assessed the owners of this property as an "association of individuals." The question that we have to decide is whether the petitioners, Mr. Elias, Mr. Benjamin. Sir Victor Sasson (as he now is) and Mr. A. J. Raymond constitute an "association of individuals" within the meaning of Section 3 of the Income Tax Act. Section 3 reads as follows : "Where any Act of the Indian Legislature enacts that income tax shall be charged for any year at any rate or rates applicable to the total income of any assessee, 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 all income, profits and gains of the previous year of every individual, Hindu undivided family, company firm and other association of individuals."

Previous to the year 1924, the words of the section in question 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. Those words "association of individuals" have to be construed in their plain, ordinary meaning. There is no difficulty about the word "individuals". "Associate" means, according to the Oxford Dictionary, "to join in common purpose, or to join in an action". Did these individuals join in a common purpose, or common action, thereby becoming an association of individuals ? In my view, they did. In the first place, they joined together in the purchase of this property on the 9th January, 1920. In the second place, they have remained joint as owners of this property from the date of the purchase down to the present time. Thirdly, they have joined together, as the power of attorney show, for the purpose of holding this property and of using it for the purpose of earning income to the best of their advantage of them all. Under these circumstances, it seems to me that looking at the position and construing the words of the Act in their ordinary common meaning, the four persons named are an "association of individuals". In arriving at that conclusion, I am fortified by the words of LORD JUSTICE COTTON in the case of Smith v. Anderson (15 Ch. 247, at page 282). There the learned LORD JUSTICE is discussing the meaning of the word "association" as used in Section 4 of the Companies Act of 1862. The word occurs along with the words "company or partnership". COTTON, L. J., says at page 282 : "I do not think it very material to consider how far the word "association" differs from company or partnership, but I think we may say that if "association" is intended to denote something different from a company or partnership, it must be judged by its two companions between which it stands, and it must denote something where the associates are in the nature of partners. It seems to me (not that I think it material) that it might have been intended to hit the case which we have frequently seen, of a number of persons or a number of firms joining themselves together for the purpose of carrying on a particular adventure in order to make gain by it". Then he goes on to describe instances of that.

In my view these persons have joined themselves together and remained joined together for the purpose of buying, holding, and using that property "Norton Buildings" in order to make gain by it. In so doing they have become and were, at the time of this assessment an "association of individuals" within the meaning of Section 3 of the Indian Income Tax Act.

Three specific questions were put before this court for answer in the statement of case by the Commissioner of Income Tax. They are as follows :-

(1) whether in view of the circumstances of this case the petitioners constituted an association of individuals within the meaning of Section 3 of the Indian Income Tax Act ?

In my view the answer to that question must be "Yes".

(2) Assuming that they constituted such an association of individuals whether in the circumstances of this case the said association can be said to be the owner of the property within the meaning of Section 9 of the Indian Income Tax Act ?

It was admitted by Mr. Banerji for the assessee that he could not contend to the contrary. The answer to the question 2, in my opinion, must be "Yes".

(3) If such an association of individuals cannot be treated as owners of the property, whether the said association can assessed u/s 12 of the Income Tax Act in respect of the income derived from the property in question ?

In my view, having regard to the answers that I consider should be given to questions 1 and 2, question 3 does not fall to be answered. The Commissioner of Income Tax will get the costs of this hearing 7 gold mohurs; for the Vakil and the two Advocates costs will be such fees as have already been paid to them.

COSTELLO, J. - The question which the assessee originally desired to have put before this Court was formulated by the assessee as follows "whether in view of the circumstances of the case the petitioners were legally treated as an "association of individuals" and whether the joint assessment on therein has been rightly made". The Commissioner of Income Tax, Bengal, thought fit, as he said, to dissect the issue and he formulated the three questions which have been referred to by my Lord the chief Justice; but actually having regard to the way in which this case has been by Mr. S. N. Banerji on behalf of the assessee all that we are required to do is to answer a question which can be stated in the terms originally put forward by the assessee. Put quite shortly the question is whether the combination composed of Mr. B. N. Elias, Mr. B. S. Benjamin, Sir Victor Sasson and Mr. A. J. Raymond can properly be described for the purpose of assessment of income tax as an "association of individuals" within the menaing either of Section 3 of the Income Tax Act, 1922, or of Section 5 of that Act. In point of fact one gathers that the assessee is rather more concerned about Section 55 than Section 3 because the former section is that dealing with super tax.

In my opinion it is of considerable importance to observe the conjunction and sequence of the descriptive words in both these sections. As my lord has already pointed out, these sections were amended by the Act of 1924. By Section 3 of that Act and by Section 7 of that Act the words as they originally stood in Section and Section 55 were transposed and the expression "association of individuals" was interpolated into the sections. It is of considerable significance, in my opinion, for our present purpose that as Section 55 now stands the expression "other association of individuals" immedialtely follows the expression "unregistered firm" the whole sentence being "There shall be charged levied an paid for that year in respect of the total income of the previous year of any individual, Hindu undivided family, company, unregistered firm or other association of individuals not being a registered firm an additional duty of income tax in this Act referred to as super tax." Mr. Banerji was at very great pains to demonstrate to us that the combination of individuals with which we are concerned could not properly be described as partnership and he emphasised the fact that they were co-owners of the property which is known as the "Norton Buildings". I have no doubt whatever that Mr. Banerji was perfectly justified and correct in inviting us to take the view that this was not a partnership but it seems to me bearing in mind the juxtaposition which I have mentioned, that although these four persons did not constitute a body which was the same as partnership it was in many respects similar to a partnership and was approximate to a partnership and it may well be that the intention of the legislature was it hit combinations of individuals who were engaged together in some joint enterprise but did not in law constitute partnership either as originally given in the Contract Act or as now given in Section 4 of the Partnership Act.

Mr. Banerji invited us to take upon ourselves the difficult but not indeed impossible task of laying down a general definition of the expression "association of individuals". In my opinion that is not desirable from any point of view whatever. Each case must be decided upon its own peculiar facts and circumstances. When we find, as we do find in this case, that there is a combination of persons formed for the promotion of a joint enterprise banded together if I may so put it, co-adventurers to use an expression then I think no difficulty whenever arises in the way saying that in this particular case these four persons did constitute an "association of individuals" within the meaning of both Section 3 and Section 55 of the Indian Income Tax Act, 1922.

I therefore entirely agree with what has fallen from my Lord the Chief Justice and I am of opinion that the first question propounded upon by the Commissioner of Income Tax, Bengal, should be answered in the affirmative. As has been pointed out by my Lord the other two questions scarcely need any answer from us because they have not been seriously discussed by Mr. Banerji. It really follows from the answer which we have given to the first question that the answer to the second question will also be in the affirmative and the third question does not arise for the decision,"

Reference answered accordingly.

