
(1983) 12 MAD CK 0017

In the Madras High Court

Case No : Tax Cases No's. 1653 to 1665 of 1977 and 506 to 509 of 1981

Commissioner of Income Tax

APPELLANT

Vs

M.S. Menon

RESPONDENT

Date of Decision : 20-12-1983

Acts Referred:

Income Tax Act, 1961 — Section 143

Citation : (1987) 168 ITR 125

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : J. Jayaraman, for the Appellant; S. Swaminathan, for the Respondent

Judgement

1. Since all these tax cases practically relate to the same subject-matter between the same parties they are being dealt with together. The facts and

circumstances leading to all the above cases may briefly be noted. Pattu Padmanabhaiah Chetty & Sons owned a theatre called ""Shri Padmanabha

Theatre"", until January 18, 1968. The said firm was dissolved with effect from January 18, 1968, by an order of the High Court in C. S. No. 6 of

1968 dated February 3, 1972. The said suit was one for dissolution of the partnership. During the pendency of that suit at the instance of the

plaintiffs, that High Court had appointed Thiru M. S. Menon, advocate, as receiver to take charge of the said theatre and manage the same. After

the receiver took charge of the theatre in the assessment orders the name of the assessee was shown as ""Shri M. S. Menon"", advocate-receiver

(C.S. No. 6 of 1968). Shri Padmanabha Theatre Madras.

2. The Income Tax officer adapted the status of the assessee as an ""association of persons"" in the assessment orders 1970-71 to 1973-74.

According to him ""association of persons"" consisted of (1) P. P. Kannaiah Chetty, (2) P. Guruvittal (3) P. P. Mohanvittal (4) P. Lokanathan Vittal

and (5) P. Muralivittal. Aggrieved by the assessment orders passed by the Income Tax officer treating the status of the dissolved firm during the

receivership period as an ""association of persons"" the assessee went in appeal to the Appellate Assistant Commissioner but without success.

Thereafter, the matter was further taken in appeal by the assessee to the Tribunal contending that the status of the assessee should be that of an

individual"" and not of an ""association of persons"", that there has been dissolution of the partnership business by order of court that the receiver had

taken possession of the theatre on July 13, 1969, and had been hiring it for exhibition of pictures therein that the receiver not having been

appointed to carry on the partnership business but only to collect the rents in order to safeguard the interests of the plaintiffs there was no question

of the receiver carrying on the business of the firm and that therefore the assessment order treating the status of the assessee as an ""association of

persons"" cannot be legally sustained. Before the Tribunal the Revenue however contended that the business carried on originally by the firm was

continued to be carried on by the receiver on behalf of the erstwhile partners of the firm and therefore the decision of the Supreme Court in N.V.

Shanmugam and Co. Vs. The Commissioner of Income Tax, Madras, ,would squarely apply to this case and as such the assessee has to be

assessed only in the status of an ""association of persons"". The Tribunal after going through the order of the High Court dated July 10, 1969,

appointing Shri M. S. Menon as receiver and also the order of the High Court dated July 3, 1972,decreeing that the partnership stood dissolved as

and from January 18, 1968, held that as the receiver was not carrying on any business but was only collection rents from the theatre as well as

arrears, there was no unity of parties except to the extent of the common purpose of winding-up the business,that on the facts the principle of the

decision of the Supreme Court in N.V. Shanmugam and Co. Vs. The Commissioner of Income Tax, Madras, , will not apply and that therefore the

assessment in the status of an ""association of persons"" was not in order. In that view the Tribunal set aside the assessment and directed the Income

Tax officer to make assessment on the receiver separately with reference to each member of the partnership. Aggrieved by the decision of the

Tribunal the Revenue sought certain questions to be referred to the Tribunal as arising from the common order of the Tribunal. The Tribunal

referred the following common question in T.C. Nos. 1653 to 1655 of 1977 but refused to refer the other question referred to in the application

filed by the Revenue u/s 256(1) :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessment made on the receiver in

the status of an ""association of persons"" could not be sustained ?

Aggrieved by the order of the Tribunal refusing to refer the other question the Revenue came to this court u/s 256(2) and this court by its order

dated October 15, 1979, directed the Tribunal to state a case and refer the following three questions :

1. Whether, on the facts and in the circumstances of the case, the finding that the receiver was not appointed to carry on the cinema business of

Shree Padmanabha Theatre is sustainable in law ?

2. Whether, on the facts and in the circumstances of the case, and in the light of the returns filed by the receiver himself for the assessment years

1970-71 to 1972-73 admitting certain income as arising from business the Appellate Tribunal was right in holding that there is no material to show

that the receiver in fact has carried on the business in question ?

3. Whether, on the facts and in the circumstances of the case, the receiver could be said to have represented the individual interest of the various

co-owners of the business and the assessment made on the receiver as a single unit is not sustainable ?

3. The Tribunal has accordingly referred the above said three question T.C. Nos. 506 to 509 of 1981.

4. In all these above references the main question to be considered is whether the receiver who is in charge of the theatre and who realises the

income therefrom is to be assessed in the status of an ""association of persons"" or whether individual assessments are to be made on the quondam

partners through the receiver. The said question naturally involves the determination as to what are the duties assigned to the receiver by the court

and whether the receiver is expected to carry on and infact carried on the business of the partnership or whether the receiver could only be taken

to represent the individual individual of the various co-owners in the theatre.

5. As already stated a suit C. S. No. 6 of 1968 was filed before the High Court for dissolution of the partnership known as Pattu Padmanabiah

Chetty & Sons. There was a preliminary decree passed in the said suit on February 3, 1972, declaring that each of the partners of the said firm

was entitled to one-fifth share. Even before the passing of the said preliminary decree Thiru M. S. Menon, advocate, was appointed on July 10,

1969, by the court in Application No. 116 of 1968 in CS No. 6 of 1968. The portion of the order appointing the receiver which is relevant for our

discussion is as follows :

1. That Thiru M. S. Menon, advocate, who is in the panel of receivers be and is hereby appointed as receiver of the Padmanabha Theatre No.

155, Walltax Road Madras-1, and of the rents issued and profits of the said theatre with power to get in and collect the outstanding debts and

claims due in respect of the said theatre and with all the powers and duties provided for the Order XL of the CPC pending decision of this suit.

2. That the plaintiffs/defendant and all persons claiming under them to deliver up quiet possession of the said property movable or immovable

together with all lease agreement for lease account books the receiver continues to hire the theatre and receives the income therefrom he should be

taken to carry on the business on behalf on the co-owners. According to the Revenue once even after the decree for dissolution had been passed

so long as the reviver appointed by the court continues to hire the theatre for exhibition of films and realises the income he should be taken to carry

on business on behalf on the group of individuals who were co-owners and therefore the assessments have to be made in the status of an

association of persons. A reference is made by learned counsel for the Revenue to section 161 of the Income Tax Act. That section deals with the

liability of a representative assessee and the section says that every representative assessee as regards the income in respect of which he is a

representative assessee shall be subject to the same duties responsibilities and liabilities as if the income were income revived by or accruing to or

in favour of him beneficially and shall be liable to assessment in his own name in respect of that total income... and the tax shall subject to the other

provisions contained in the Chapter be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and

recoverable from the person represented by him. 'Representative assessee' is defined in section 160 of the Act as the "agent of a non-resident " in

respect of the income of such non-resident the guardian or manager of a minor lunatic or idiot in respect of latter's income or a trustee appointed

under a trust declared by a duly executed instrument in writing in respect of the income of a trust and in the case of a receiver, the income relating

thereto to the said receiver.

3. That the said reviver do take possession of the said Padmanabha Theatre movable and immovable and collect the rents issues and profits of the

said theatre and that the tenants and occupiers thereof do attorn and pay their rents in arrears and growing rents to the said receiver.

6. In pursuance of the order the receiver has taken delivery of the said theatre and has been leasing out the theatre and realising income therefrom.

In the meanwhile an order in the final decree proceedings has been passed in the said suit in and by which the partnership had been dissolved and

an advocate-Commissioner has been appointed to take an account of the assets and liabilities of the partnership business. On these facts the

Revenue contends that the status of the receiver has to be taken as that of an ""association of persons"" and not as that of ""group of individuals

owning property.

7. According to learned counsel for the Revenue the conclusions of the Tribunal in this case that the receiver is not carrying on any business much

less with the consent of the erstwhile partners and that on the other hand there was an intention to discontinue the business are all based on

incorrect appreciation of facts. So long as the executed instrument in writing in respect of the income of the beneficiary (sic).

8. According to the Revenue the receiver Thiru M. S. Menon, appointed by the court will have to be taken as a ""representative assessee"" in

respect of the entire income realised by him out of the property owned by the quondam partners. Learned counsel for the Revenue contends that

section 160 and 161 of the Act are enabling section in the sense that they leave the option with the Department to tax either the representative

assessee or the beneficial owner of the income that the language of section 161 is mandatory and that if the Revenue chooses to assess the

representative assessee irrespective of the question as to the head under which

the income falls the tax must be levied only on the basis

contemplated by section 161, that is, "in the like manner and to the same extent entitled to the income".

9. The principle underlying the assessment of a "representative assessee" has been stated by Viscount Cave J. in *Williams v. Singer* [1920] 7 TC

387 . Section 160 and section 161 are merely machinery section and do not affect the incidence of taxation. The Supreme Court had occasion to

review the scope of section 161(2) in the case of *C.R. Nagappa Vs. Commissioner of Income Tax*, wherein it has been expressed :

... it merely enacts that when a representative assessee is assessed to tax in exercise of the option of the Revenue he shall be assessed under

Chapter XV and shall not in respect of that income be assessed under any other provision of the Act...

10. According to the Supreme Court the necessity for such a provision arose because of the conflicting judgments of the Bombay High Court in

the cases of *Saifudin Alimohamed and Another Vs. Commissioner of Income Tax, Bombay City*, and *Commissioner of Income Tax, Ahmedabad*

Vs. Balwantrai Jethalal Vaidya and Others, , as is clear from the following passage (at page 631 of 73 ITR) :

Sub-section (2) of section 161 was presumably intended to remove the conflict of judicial opinion which arose in the interpretation of the

analogous provisions of sections 40 and 41 of the Indian Income Tax Act of 1922. In *Saifudin Alimohamed and Another Vs. Commissioner of*

Income Tax, Bombay City, , the Bombay High Court expressed the opinion (which was not necessary for the ultimate decision of the reference)

that section 41 conferred an option upon the Income Tax officer either to assess the income as the income of the beneficiary or as the income of

the trustee. The court observed at page 247 in dealing with the case in which the trustees appointed by the civil court in a suit were carrying on the

business on behalf of two minors :

"... it was open to the Department to have assessed the income of the guardians u/s 10 on the basis that the particular business was carried on by

the guardians in their own right and the taxing Department could have taken up the stand that they had no concern with what the guardians did with

the profits after they had paid the tax on the income from the business; or it was

open to the Department to proceed against the guardians u/s 41

and to tax in their bids only that income which they had received on behalf of the minors.

11. In this case the receiver has been assessed as an "association of persons" based on the decision of the Supreme Court in the case of N.V.

Shanmugam and Co. Vs. The Commissioner of Income Tax, Madras, , and that is questioned on the ground that since the receiver is a

representative assessee" and as the shares of the beneficiaries are definite the assessment in the status of an "association of persons" is not tenable

and that the correct method of assessment is to assess the receiver with reference to the definite share of each of the beneficiaries which had been

determined by the court and there is no scope to treat the receiver as an "association of persons" consisting of five members.

12. N.V. Shanmugam and Co. Vs. The Commissioner of Income Tax, Madras, , on the basis of which the reviver was assessed as an "association

of persons" by the Income Tax officer is a case where a firm consisting of three partners and a minor admitted to the benefits of the partnership

was carrying on business in the manufacture and sale of snuff. The deed of partnership provided that the firm could not be dissolved before August

31, 1955, but it was open to the partners to continue the partnership or enter into a fresh partnership. On September 17, 1956, one of the partners

filed a suit in the civil court for the dissolution of the firm with effect from August 31, 1956, and for taking of accounts. He also applied for the

appointment of a receiver. On September 21, 1956, the court appointed three receivers two of whom were partners and the third was an

advocate. Since the business had been stopped from September 1 to 21, the court directed the receivers to reopen and conduct the snuff business

for the propose of winding up subject to the terms inter alia that the receivers could carry on the business normally that the profits if any earned will

be treated as an asset of the firm subject to be divided between the parties in the manner set out in the partnership deed and that the receivers will

pay every month certain specified amounts to the partners. Some time later the court appointed a Commissioner for taking accounts and for

arranging the sale of the business as a going concern. The business yielded for the assessment years 1958-59 and 1959-60 certain profits and the

question was whether the profits could be assessed in the hands of the receivers in the status of an "association of persons". The Supreme court held (1) that the fact that there were three receivers did not make them an "association of persons"; (ii) that, however, the business was carried on by the receivers on behalf of the erstwhile partners with their consent and the control and management was in the hands of the receivers and that control and management was a unified one; and (iii) that the receivers had joined in a common purpose and they acted jointly on behalf of the persons who were the owners of the business and that therefore they cannot be taken to have represented the individual interests of the various owners of the business and the profits were earned on behalf of the persons who had a common interest created by the order of the court and were on that account an "association of persons". The Supreme Court also observed that the existence of a specific or definite interest in the profits did not make the earning any the less by an "association of persons" and in law the erstwhile partners of the firm carried on the business through their representatives and the profits were earned from a business carried on by an "association of persons". It was further pointed out in that case by the Supreme Court that liability to tax depends upon the earning of profits by a unit and not upon the ultimate division of the profits.

13. Dealing with the scope of the expression "association of persons" as used in section 3 of the Act the Supreme Court said that the expression will refer to an association in which two or more persons join in a common purpose or common action and as the words occur in a section which imposes a tax on income the association must be one the object of which is to produce income profits or gains and as all the erstwhile partners acquiesced in the continuance of the business by the receivers appointed by the court and were hearing the profits as per the terms of the partnership deed they cannot say that the business was not conducted on behalf of all of them.

14. The Supreme Court has referred to its earlier decision in *Mohamed Noorullah, Representing The Estate of Late Khan Sahib Mohd. Omer Sahib Vs. The Commissioner of Income Tax, Madras*, where under similar circumstances the receivers appointed by consent and who carried on the business on behalf of the heirs pending a suit for partition were held rightly

assessed as an "association of persons". The Supreme Court also referred to another earlier decision in Commissioner of Income Tax, Poona Vs. Buldana District Main Cloth Importers Group, , where also the assessment on receivers as an "association of individuals" was upheld. In that case a group of four persons were appointed as sole agents by the Government for the import of cloth from mills in various places in India and for its distribution to retailers. For different periods the group which imported cloth was differently constituted. However there was a common member who maintained the books relating to the business. Every time there was a change in the constituents of the group separate set of books was maintained and the profits from those enterprises were divided between the various persons who formed the group at the material time. Since the import and distribution of cloth was done on a joint basis and then distributed according to the capital contributed by each member of the group it was held that the group was an "association of persons" and could be assessed on its profits as such to Income Tax and that it made no difference that the business was carried on because the Deputy Commissioner of the district had appointed the members constitution the group to import and distribute the cloth and they did not join as a group voluntarily and they were put together by the Deputy Commissioner and asked to act together which they did.

15. Learned counsel for the assessee contends that those decisions cannot be applied to the facts of this case. In those cases business was carried on by the receivers while the partnership continued whereas in this case the receiver was appointed to manage the theatre and not the business after a decree for dissolution of the partnership has been passed in that suit. Learned counsel for the assessee referred to the preliminary decree

dated February 3, 1972, in C. S. No. 6 of 1968 and the following clauses therein :

1. That the plaintiffs are entitled to have the said partnership business of P.P.C. & Sons", Pattu Padmanabhaiah Chetty & Sons and all its business

viz., Padmanabha Talkies, Shri Padmanabha Lorry Service, Padmanabha Commercial Corporation, dissolved as and from the date of institution of

this suit, viz., January 18, 1968, and that each of the partners of the firm is entitled to one-fifth share :

2. That the said partnership business of "P.P.C. & Sons", Pattu Padmanabhaiah

Chetty & Sons, and all its businesses, viz., Padmanabha Talkies,

Shai Padmanaba Lorry Service, Padmanabha Commercial Corporation, do stand dissolved as and from the said January 18, 1968.

16. Based on the fact that the firm stood dissolved by an order of the court as and from January 18, 1968, it is contended by learned counsel for

the assessee that there is no violation or consent of the parties to the suit to carry on the partnership and therefore the receiver who merely

collected the rental income cannot be assessed as an "association of persons" and that the assessment can be made on the receiver with reference

to the individual interest of the erstwhile partners. Reference is made by learned counsel for the assessee in support of the above contention that the

assessment is to be made "individually" treating Commissioner of Income Tax, Bombay Vs. Smt. Indira Balkrishna, and Commissioner of

Agricultural Income Tax, Hyderabad Vs. Raja Ratan Gopal, .

17. Commissioner of Income Tax, Bombay Vs. Smt. Indira Balkrishna, was a case where the co-widows of a Hindu governed by the Mitakshara

law inherited his estate which consisted of immovable properties shares money lying in deposit and a share in a registered firm. It was found by the

Tribunal that they had not exercised their right to separate enjoyment and that except for receiving the dividends from the shares and the interest

from the deposits jointly they had done no act which had helped to produce the income. In those circumstances, the question was whether the

three widows could be assessed in the status of an "association of persons" within the meaning of section 3 of the Act, in regard to the income

derived from the properties inherited by them. The Supreme Court held that co-widows succeeded as co-heirs to the estate of their deceased

husband and took as joint tenants with rights of survivorship and equal beneficial enjoyment that they were entitled as between themselves to an

equal share of the income that though they took as joint tenants and none of them sought for partition of the estate that so long as the three widows

had not combined in a joint enterprise to produce income and had done no act which had helped to produce the income it could not be held that

they had the status of an association of persons within the meaning of section 3. The Supreme Court pointed out that the expression "association of

persons" used in section 3 means an association in which two or more persons

join in a common purpose or common action and as the words

occur in a section which imposes a tax on income the association must be one the object of which is to produce income profits or gains.

18. Commissioner of Agricultural Income Tax, Hyderabad Vs. Raja Ratan Gopal, was also case where four nephews of the Nizam of Hyderabad

became entitled to a one-fourth share in the estate. The estate was under the superintendence of the Nizam. Later it was handed over to one of the

nephews who realised the income from the estate and the said income was divided between the four nephews in equal shares. The question arose

whether the heirs could be assessed as an association of individuals under the Hyderabad Agricultural Income Tax Act, 1950, in respect of the

income from the estate. The Supreme Court held that to constitute an association of individuals two or more individuals should have joined in the

promotion of a joint enterprise with the object of producing income profits or gains that the four nephews did not from a unit for the promotion of

any joint enterprise to earn income profits or gains that the four nephews did not from a unit for the promotion of any joint enterprise to earn

income profits or gains that they were collecting the entire income from the estate through one of the shares that that income could not be said to be

an income from a joint venture and that therefore they could not be association of individuals.

19. The above two cases relied on by learned counsel for the assessee are sought to be distinguished by learned counsel for the Revenue on the

ground that in those cases there is no joint venture for producing the income profits or gains and the group of individuals were merely sharing the

income from properties jointly owned by them and that will not amount to a joint venture for the purpose of earning profit.

20. Learned counsel for the ASSESSEE on the other hand contends that here also the receiver is not carrying on any venture much less a joint

venture with the consent of the erstwhile partners in order to earn any income and that the receiver is merely receiving rental income from

immovable property by leasing out the theatre periodically which act of the receiver is just like any other owner of immovable property realising the

income by leasing out the immovable property.

21. Therefore one of the question to be considered is whether what the receiver

is doing amounts to a business or whether he is merely in receipt of the income from immovable property. On this question according to learned counsel for the assessee what the receiver is getting is rental income and therefore the receiver cannot be said to be carrying on any venture to earn profit on behalf of the erstwhile partners.

22. It is seen from the orders of assessment passed by the Income Tax officer that the receiver collected weekly hire for the theatre and after

paying the property tax etc., the net income was divided among the erstwhile partners. The Appellate Assistant Commissioner proceeded on the

basis that the receiver is running the cinema theatre in the name and style of Sri Padmanabha Talkies which was formerly owned by the partnership.

The Tribunal however found that the receiver was appointed not to conduct any business but to take over the theatre and collect rents therefrom

and therefore the case will not fall strictly within the principle laid down by the Supreme Court in N.V. Shanmugam and Co. Vs. The

Commissioner of Income Tax, Madras, , where the court had directed the receivers to reopen and conduct the snuff business and empowered the

receivers to carry on the business of the partnership. Thus the Tribunal has made a distinction between ""carrying on a business"" by the receiver as

per the orders of the court and mere collection of rents and profits from an immovable property by orders of the court and has treated the case on

hand as one falling under the category of receipt of income from immovable property by the receiver which would fall within the decision of the

Supreme court rendered in Commissioner of Income Tax, Bombay Vs. Smt. Indira Balkrishna, and the decision in Commissioner of Agricultural

Income Tax, Hyderabad Vs. Raja Ratan Gopal, . In support of its view and profits from the theatre - one of the assets of the partnership - and that

he was not authorised to carry on any partnership business it has referred to the order of the High Court appointing the receiver which is to the

following effect :

That the said receiver do take possession of the said Padmanabha Theatre movable and immovable and collect the rents issues and profits of the

said theatre and that the tenants and occupiers thereof do attorn and pay their rents in arrears and growing rents to the said receiver. That the said

receiver do out of the first money to be received by him pay the municipal and

other public changes due in respect of the said theatre and shall be entitled to retain in his hands a sum of Rs. 100 for current expenses but subject thereto shall pay his net receipts as soon as the same come to his hands into court to the credit of this suit.

23. As pointed out by the Tribunal the order of the court appointing receiver does not contemplate the receiver conduction any business which is in the nature of a joint venture to earn income. Therefore the Tribunal appears to be right in holding that the receiver cannot be assessed as an association of persons"".

24. In BOLLA TIRAPANNA AND SONS Vs. COMMISSIONER OF Income Tax, A.P., , there was a partition of a Hindu undivided family

consisting of the father and six sons which was recognised by the Department u/s 25A of the Act. However in respect of one of the assets namely

a rice mill as it could not be divided by metes and bound each one of them was allotted one-seventh share in it. One of the sons was a Government

servant and the father and other five sons formed a firm and took the mill on lease from the seven persons. One-seventh share of the rent paid by

the firm was separately credited to the individual accounts of the seven persons. The Income Tax officer assessed this rent in the hand of the seven

persons as an ""association of persons"" rejection the contention of the assessee that they have to be separately assessed on the one-seventh share

each. The appeals preferred by the assessee to the Appellate Assistant Commissioner as well as the Tribunal were unsuccessful. On a reference to

the Andhra Pradesh High Court a Division Bench of that court held that in view of the acceptance by the Department of the partition that took

place and also in view of the fact that the rent was being credited to the seven persons separately the shares of the seven persons were definite and

ascertainable and u/s 9(3) of the Act they were entitled to be assessed separately on their shares. Merely because the parties entered into a single

lease instead of seven separate agreements of lease the status of the assessee cannot be determined as an ""association of persons"" as long as the

intention of the parties which is evidenced by the crediting of rental receipts separately is otherwise. The court also has observed that an isolated

transaction of leasing out the mill which is only an exercise of one of the rights of ownership cannot be brought under the description of ""business

within the meaning of section 10 of the Indian Income Tax Act, 1922 ("the 1922 Act"), and as such the income has to be taxed only u/s 9 and not u/s 10.

25. In the case before us after the decree for the dissolution of the partnership has been passed the theatre which is one of the assets of the partnership is being leased out and the rental income realised by the receiver is being shared by the joint owners. The receipt of rents from one of the assets of a partnership by the erstwhile partners after the dissolution of the partnership cannot be brought under the description of "business" and therefore the rental receipts cannot be taken to be business income. If the rental income has been divided as between the joint owners then the joint owners have to be assessed separately as regards the income received by each one of them.

26. A.K. Gopala Pillai Vs. Agricultural Income Tax Officer and Another, was a case where this court held that a receiver appointed for an estate of a deceased person in a suit in which a preliminary decree was passed declaring the widow and the adopted son as being entitled to the estate equally has no status of his own for purposes of the Madras Agricultural Income Tax Act, except that he represents as an agent or trustee of the estate of another and when a receiver is assessed the status in which the assessment is to be made should follow the status of the person or persons who are entitled to possess the lands or to receive the income therefrom. In that case originally the widow and the adopted son were assessed as individuals in respect of the agricultural income that fell to their shares. However on account of certain audit objections to this method of assessment the Agricultural Income Tax officer invoked section 35 of the said Act and assessed the receiver as single unit. That was challenged by filing a writ petition before this court and this court allowed the writ petition holding that the receiver has no independent status of his own and, therefore, he is to be assessed either as an agent or a trustee for the beneficial owners. In support of the conclusion that the receiver in such a case can have no status of his own the court referred to section 8(1) of the Act, according to which the tax shall be levied upon and recoverable from the receiver in like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf such agricultural

income is received and all the provisions of the Act should apply accordingly.

27. In Commissioner of Income Tax, Bombay City II Vs. Court Receiver, , the Bombay High Court took the view that the liability of a receiver u/s

41 of the 1922 Act is a vicarious liability and it is co-extensive with the liability of the person of whose property he is the receiver. If the income

profits or gains received by the receiver are not specifically receivable on behalf of any one person or where the individual shares of the person on

whose behalf they are receivable are indeterminate or unknown then according to the proviso to section 41, the tax shall be levied and recoverable

at the maximum rate and if the case does not fall under the proviso then the receiver is liable to pay the tax in respect of the share which comes to

him on behalf of the various persons of whose property he is the receiver.

28. In A. RAZZAK Vs. COMMISSIONER Income Tax, WEST BENGAL., , the Calcutta High Court has also taken the view that where a

settler transfers business to a trustee for the benefit of his sons and the beneficiaries and their shares have been specified in the trust deed and the

income is divided according to the shares of the beneficiaries assessment must be made separately on the assesses and with reference to the shares

of income of each one of the assesses and the assessment of entire income on the trustee as ""individual"" is illegal. In that case the assessee's father

who carried on a business created a trust for carrying on the business for the benefit of the assessee and his three brothers in equal shares and

transferred the business to himself as trustee. Later on he appointed the assessee as the trustee in exercise of his powers under the trust deed. The

Income Tax officer assessed the trustee as an ""association of individuals"" but divided the income from the business into four equal shares for

purposes of taxation. The Commissioner in exercise of his powers of revision held that the trustee should be assessed as an individual on the entire

income u/s 10(1) and not u/s 41. When the matter came to the court on reference the court held that the income from the business was not

assessable u/s 10(1) in the hands of the trustee as an individual carrying on business that section 41 was applicable to the case and as the shares of

the persons on whose behalf the income was received by the assessee as trustee were determinate the assessment on the assessee should be made

as a separate assessment for each of the persons on whose behalf the income

was received by the assessee.

29. As could be seen from the facts set out above the firm which had been carrying on the business of exhibition of films had been dissolved by an

order of the court with effect from January 18, 1968. But the court has appointed a receiver to realise the income from the theatre which is one of

the assets of the partnership and to divide the same equally among the quondam partners. The order of the court appointing the receiver directs the

receiver to receive income from the properties and not to carry on any business. The rents collected by the receiver by hiring the theatre can only

be treated as income from property and not as income from business. The order of the court does not permit or enable the receiver to carry on a

business which was run by the partners before its dissolution. It merely directs the receiver to distribute the net rental income as between the

quondam partners equally. Thus the receiver should be taken to be collecting the rental income as an agent or as a trustee for the quondam partners

who are the joint owners of the theatre having equal shares. In such circumstances the receiver could not be assessed as an "association of

individuals" and he could be assessed only as an agent or as a trustee of the individuals who owned the theatre from which the income has been

received. As already seen individual shares had been specified by the court and the receiver is liable to pay the tax in respect of the shares which

come to him on behalf of various persons of whose property he is the receiver. In respect of the income received from the theatre which is in the

hands of the receiver the assessment has to be made on the receiver on the individual shares of the quondam partners who own the theatre. Thus,

the third question referred to us has to be answered in the affirmative.

30. On these facts we answer the common question referred to us in TC Nos. 1653 to 1655 of 1977 in the affirmative and against the Revenue.

We also answer the question referred to us in TC Nos. 506 to 509 of 1981 in the affirmative and against the Revenue as we have held that the

receiver should be held to have represented the individual interest of various joint owners of the theatre and assessed on that basis. The Revenue

will pay the costs of the assessee. Counsel's fee Rs. 500 (Rupees five hundred only). One set.