
(1985) 07 RAJ CK 0041

In the Rajasthan High Court

Case No : Income Tax Cases No's. 65 and 74 to 79 of 1980

Duduwala and Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 17-07-1985

Acts Referred:

Income Tax Act, 1922 — Section 41
Income Tax Act, 1961 — Section 161, 256(2)

Citation : (1986) 160 ITR 463

Hon'ble Judges : Panachand Jain, J; Dwarka Prasad, J

Bench : Division Bench

Advocate : J.K. Singhi, for the Appellant; R.N. Surolia, for the Respondent

Judgement

Dwarka Prasad, J.—These seven applications have been filed by the joint receivers and managers of M/s. Duduwala and Company, Bhilwara, appointed by the Calcutta High Court by its order dated September 15, 1960, and the petitioner prays that the Income Tax Appellate Tribunal, Delhi Bench " B ", Delhi, be directed to state the case and refer the questions of law to this court for its opinion.

2. M/s. Duduwala and Company was a partnership firm which carried on mica business and consisted of the following partners :

1. Shri Rameshwar Nathani 12 annas share.
2. Shri Ram Kumar Agarwal 3 annas share.
3. Charity 1 anna share.

3. One of the partners, Shri Rameshwar Nathani, expired on January 18, 1957, leaving a widow, four sons and daughters. The sons of the deceased partner, Shri Rameshwar Nathani, filed a suit in the court at Bhilwara, while the surviving partner, Shri Ram Kumar Agarwal, filed a suit in the Calcutta High Court for a declaration that the firm, M/s. Duduwala and Company, be treated as dissolved

and for rendition of accounts after the death of Shri Rameshwar Nathani. On June 26, 1957, the Calcutta High Court appointed an official receiver of the firm and directed him to carry on the business of the firm with a view to pay off its liabilities and wind up the business. During the pendency of the suit, a compromise was arrived at between the parties, which was filed in the Calcutta High Court on June 4, 1960. The compromise was accepted by the High Court and a decree was passed on the basis of the compromise by the Calcutta High Court on September 15, 1960.

4. According to the compromise, M/s. Duduwala and Company was dissolved on and from January 18, 1957, the date on which one of the partners, Shri Rameshwar Nathani, died. It was agreed between the parties that they were entitled to the assets of the dissolved firm, after meeting all its liabilities, in five equal shares, one share going to Shri Ram Kumar Agarwal and four shares going to the four sons of the deceased partner, Shri Rameshwar Nathani. Shri Ram Kumar Agarwal and Shri Satya Narain Nathani were appointed as joint receivers, who were authorised to carry on the work of mica mining of M/s. Duduwala & Company and pay off the liabilities until the mica field of M/s. Duduwala and Company was divided into five equal blocks and five separate leases were executed by the respective parties with the Government. Thus, the business of M/s. Duduwala and Company continued to be run by the joint receivers and managers, Shri Ram Kumar Agarwal and Shri Satya Narain Nathani, during the accounting years relevant to the assessment years 1960-61 to 1966-67.

5. In the Income Tax returns filed for the assessment years 1960-61 and 1961-62, the status of the assessee was shown as a firm and similar was the case in the returns filed for the assessment years 1962-63 and 1963-64. However, in the assessment year 1964-65, although the status of the assessee was shown as a firm, the joint receivers signed the return as joint receivers of the dissolved firm M/s. Duduwala and Company. In the subsequent assessment year 1965-66, the column relating to status was left blank, while in the returns filed in respect of the assessment years 1966-67 and 1967-68, the status was shown as a dissolved firm.

6. The Income Tax Officer completed the assessments for the assessment years 1960-61 to 1966-67, treating the status of the assessee as an unregistered firm. The Appellate Assistant Commissioner also upheld the assessments made in the status of an unregistered firm. On further appeals filed by the assessee before the Income Tax Appellate Tribunal, Delhi Bench "B", Delhi, the main question raised was as to whether the business of M/s. Duduwala and Company was liable to be assessed in respect of the assessment years 1960-61 to 1966-67 as a firm or as an association of persons. The Tribunal held that the case of the assessee was covered by the decision of their Lordships of the Supreme Court in *N.V. Shanmugam and Co. Vs. The Commissioner of Income Tax, Madras*, and directed that the status of the assessee during the aforesaid assessment years should be changed from an unregistered firm to that of an association of persons by its

order dated August 7, 1975.

7. On an application by the assessee, the Appellate Tribunal considered the matter again and by its order dated August 31, 1978, held that although the assessments of the assessee relating to the assessment years referred to above may be made in the status of an association of persons, the tax liability would have to be determined to the same extent as in the case of beneficiaries directly or the erstwhile partners through their representatives, under the provisions of Section 41 of the Indian Income Tax Act, 1922, in respect of the first two assessment years and u/s 161 of the Income Tax Act, 1961, in respect of the remaining five assessment years.

8. Thereafter, the assessee filed applications u/s 256(1) of the Income Tax Act, 1961, before the Appellate Tribunal seeking a reference to this court of questions of law said to be arising out of the orders of the Appellate Tribunal dated August 7, 1975, and August 31, 1978. The Appellate Tribunal observed that the question as to what should be the correct status of the assessee during the assessment years in question was a question of fact and dismissed the applications for making a reference on the ground that no question of law arise out of the orders passed by the Tribunal. Hence, these seven applications under Section 256(2) of the Income Tax Act, 1961, have been filed before us.

9. It may be pointed out that before the Appellate Tribunal in the applications filed u/s 256(1) of the Act, the assessee desired only five questions to be referred to this court, namely :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding the status of the assessee as an association of persons ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in directing and/or affirming the assessments in the status of an association of persons, when the Income Tax authorities had made the assessment in the status of a firm ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in modifying the assessments made on a non-existent firm, dissolved after the death of Shri Rameshwar Nathani ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not directing the assessment and computation of tax in accordance with Section 161 of the Income Tax Act, 1961, as the shares of the beneficiaries are determined ?

5. Whether, on the facts and in the circumstances of the case, the assessment was valid in law, when a return has been filed by a non-existent person, the firm having come to an end after the death of Shri Rameshwar Nathani ? "

10. However, in the applications filed u/s 256 of the Income Tax Act, 1961, before us, eight questions are sought to be got referred, although some are

common, while others are overlapping.

11. It was urged by the learned counsel for the assessee before us that the firm, M/s. Duduwala and Company, stood dissolved as soon as one of the partners, namely, Shri Rameshwar Nathani, expired on January 18, 1957. This was also the date of dissolution of the firm according to the compromise dated June 4, 1960, entered into between the surviving partner and the legal representatives of the deceased partner. It was urged that after the dissolution* of the partnership firm, the assessee could not have been assessed in the status either of an unregistered firm or in the status of an association of persons, but as the provisions of Section 161 of the Income Tax Act, 1961, applied and the beneficiaries were the persons who are liable to make payment of tax, they should have been assessed in the status of an individual. On the other hand, it was argued on behalf of the Revenue that the Appellate Tribunal was justified in directing that the assessments of the assessee relating to the assessment years in question should be made on the basis that the status of the assessee was that of an association of persons, as the joint receivers had the control and management of the dissolved firm for a common object of carrying on the business of the firm for purposes of winding up and for discharging the liabilities of the dissolved firm and until the mining area of the firm was divided into five blocks and five separate leases were executed by the respective persons with the Government, in accordance with the compromise dated June 4, 1960.

12. We have considered the rival contentions and undoubtedly the questions as to whether on the facts, either admitted or proved, the assessee should be assessed as a firm or an association of persons or the constituents or beneficiaries should be assessed as individuals and as to whether the assessments relating to the assessment years in question were correctly made with regard to the status of the assessee, are certainly questions of law, which arise out of the orders passed by the Appellate Tribunal. As we have already observed above, the assessee initially desired that the Appellate Tribunal should refer five questions to this court, but in the applications before us, eight questions have been mentioned which the assessee desires that the Tribunal should be directed to refer to this court for its opinion. It appears to us that some of the questions which have been framed on behalf of the assessee are overlapping and repetitive. In order that the real dispute between the parties may be brought out clearly, we would like to reframe the questions as under :

" 1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in directing that assessments relating to the business of M/s. Duduwala & Company, during the assessment years 1960-61 to 1966-67, be made in the status of an association of persons ?

2. What was the status of M/s. Duduwala & Company according to law during the relevant assessment years 1960-61 to 1966-67, after the dissolution of the firm on January 18, 1957, and whether assessments could be made in respect of the assessee during the aforesaid years ?

3. Whether, on the facts and in the circumstances of the case, any change had occurred in the status of the assessee, after the joint receivers took over the business of M/s. Duduwala & Company and carried on the same, in accordance with the agreement dated June 4, 1960?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not directing the assessment and computation of tax in accordance with Section 161 of the Income Tax Act, 1961, as the shares of the beneficiaries are determined ? "

13. We, therefore, direct the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur, to state the case and refer the aforesaid four questions of law arising out of its orders dated August 7, 1975, and August 31, 1978, to this court for its opinion. The parties are left to bear their own costs.