

(1935) 07 CAL CK 0027

In the Calcutta High Court

Case No : Reference under sec. 66 (2) of the Indian Income Tax Act, 1922, No. 2 of 1935

In the matter of Messrs B.N. Elias and Others

Date of Decision : 11-07-1935

Acts Referred:

Citation : (1935) 07 CAL CK 0027

Judgement

1. This matter arises out of a statement of case under the Indian Income Tax Act, 1922, sec. 66, by the Commissioner of Income Tax of Bengal. For the year of assessment 1933-34 the income tax Officer, for district III(1) made an assessment in respect of certain property in Calcutta, called the Norton Buildings. In the assessment the name of the assessee was stated to be B N. Elias for self and for B S. Benjamin, Sir Victor Sassoon and A. J. Baymond, 19-D Bowbazar Street.

Status--whether individual, registered or unregistered firm, Hindu undivided family, Company or other association of individuals)--Association 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 Sassoon--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. 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.

2. 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 Rachael Beknor, 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 individuals 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 following shares or proportions." The proportions have been set out above.

3. 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 B. S. Benjamin and that 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 :

[His Lordship then set forth the power-of-attorney which was in the usual form, and gave the agent power to manage all affairs in relation to all properties in Calcutta which the principals jointly or severally held or might hold.]

4. 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, has 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 Sassoon (as he now is) and Mr. A. J. Raymond constitute an " association of individuals " "within the meaning of sec. 3 of the Income Tax Act. Sec. 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 an 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.

5. 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 II 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 joined as owners of this property from the date of the purchase down to the present time. Thirdly, they have joined together, as the powers-of-attorney show, for the purpose of holding this property and of using it for the purpose of earning income to the best 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. Div. 247 at p. 282 (1880). There the learned Lord Justice is discussing the meaning of the word "association" as used in sec. 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.

6. Then he goes on to describe instances of that.

7. 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 sec. 3 of the Indian Income Tax Act.

8. 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 sec. 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 sec. 9 of the Income Tax Act?

It was admitted by Mr. Banerji for the assessee that he could not contend to the contrary. The answer to 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 be assessed under sec. 12 of the Income Tax Act in respect of the income derived from the property in question?

9. 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.