

(1957) 09 BOM CK 0023

In the Bombay High Court

Case No : Income-tax Reference No. 10 of 1957

Mahindra Kumar Mohanlal and Mohanand Kumar Mohanlal	APPELLANT
Vs	
Commissioner of Excess Profits Tax, Bombay City	RESPONDENT

Date of Decision : 19-09-1957

Acts Referred:

Citation : (1958) 33 ITR 360

Hon'ble Judges : Tendolkar, J; Desai, J

Bench : Division Bench

Advocate : N.A. Palkhivala, for the Appellant; M.P. Amin, for the Respondent

Judgement

Tendolkar, J.—This reference arises out of an order of the Tribunal dismissing the appeals filed by the assessee under the Excess Profits Tax Act. There were seven appeals in all, but they were consolidated as a common question was involved in all of them. The only point urged in the appeals before the Tribunal was that the assessments to excess profits tax were bad in law, as they were on a Hindu undivided family, which had been disrupted on the 4th of November, 1945. Notice u/s 13(1) of the Excess Profits Tax Act had been issued long after the date of disruption and the assessments consequently were made much later. It appears that an application u/s 25A of the Income Tax Act was pending before the Income Tax Officer at the time when the appeals were presented before the Tribunal against the excess profits tax assessment.

2. The Tribunal in the first instance remanded the matter to the Excess Profits Tax Officer to determine as a fact whether the family was disrupted on the 4th of November, 1945; but after receiving the remand report, the Tribunal came to the conclusion on a reconsideration of the matter that the proper time to decide the question as to whether there was a disruption of the family was in an appeal against the order made by the Income Tax Officer u/s 25A of the Income Tax Act. Therefore, the Tribunal did not determine the question as to whether there was disruption but dismissed the appeals and gave the following reasons :

"If the family was disrupted, as alleged, on 4th November ,1945, it is clear that the family cannot appeal. a disrupted Hindu undivided family cannot appeal against an excess profits tax assessment made on it. The coparceners of the erstwhile Hindu undivided family have no locus standi. They cannot appeal against an excess profits tax assessment made on the Hindu undivided family. If, on the other hand, there has been no complete partition, as alleged, the appeals must fail because the only ground urged in these appeals is that the assessment were bad in law because they were made on disrupted Hindu undivided family. In either view of the matter these appeals, in our opinion, should be dismissed."

3. We are not concerned on this reference with the position that may arise if on facts it was held that there was no disruption of the Hindu undivided family. That question of fact has not been determined; but what is challenged before us on this reference is the view taken by the Tribunal that if the family is disrupted, no appeal lies either by the disrupted family or by any coparcener thereof. With great respect to the Members of the Tribunal, the view appears to us to be somewhat revolutionary that an assessment made cannot be challenged in appeal by any person but becomes binding; and it is unfortunate that we should not have had the benefit of any reason that induced the Tribunal to take such a view. If the Tribunal's view is correct, an Excess Profits Tax Officer has merely to make an assessment on a disrupted Hindu family. No one has a right to appeal against such an assessment and yet the amount to which the Hindu undivided family is assessed can be recovered from the erstwhile coparceners of the Hindu undivided family. If such were the position in law, it would prima facie be a monstrous position; but we see nothing in the law to warrant the view that the Tribunal thought fit to take. If a disrupted Hindu undivided family is subjected to tax, undoubtedly an appeal lies against such an order on the ground that it was not liable to such a tax. It is true that after disruption the family does not exist; but if the taxing authorities chose to ignore this fact and treat it as an existing family, it must of necessity be treated as an existing family for the purpose of the right of appeal. Equally the only person who could appeal on behalf of the Hindu undivided family would be the erstwhile coparceners of that Hindu undivided family who are in law liable to pay any tax imposed on the Hindu undivided family; and this is why the coparceners of the divided Hindu family got the locus standi to appeal against an order under the Excess Profits Tax Act against a disrupted Hindu family. It may be that as a matter of form they should appeal in the name of the disrupted family and not in their own name. But that is matter of form and not of substance and the Tribunal should have given them an opportunity of amending the memorandum of appeal by adopting the proper form. But since the assessment was challenged in the appeal on the ground that the assessment under the Excess Profits Tax Act was incompetent, because the family was disrupted, in our opinion, the Tribunal was bound to determine first whether the family was disrupted and then to proceed to determine whether there can in law be an assessment on such a disrupted Hindu family under the Excess Profits Tax Act.

4. The Tribunal's view of the provisions of section 23A also appears to us, with respect to the Tribunal, to be wrong. In the first instance, it is clear that this section is not amongst the sections of the Income Tax Act which have been made applicable to the Excess Profits Tax Act by virtue of section 21 of the Excess Profits Tax Act; and, therefore, in dealing with an assessment under the Excess Profits Tax Act, section 25A of the Income Tax Act does not come in at all. Whatever happens to the application of the assessee u/s 25A is a matter that concerns their Income Tax assessment and not their excess profits tax assessments; and there shall be no occasion under the excess profits tax assessments to consider any finding that the Income Tax Officer may arrive at u/s 25A of the Income Tax Act. Obviously, the Tribunal apparently took the view that since there was no order u/s 25A of the Income Tax Act, the absence of such an order was a bar to the assessee's challenge to the assessment under the Excess Profit Tax Act. In this view, the Tribunal erred; and we are clearly of opinion that the Tribunal was not concerned in these appeals with the result of the application u/s 25A. It was their duty to determine themselves two question : (1) Whether there can be no assessment in law under the Excess Profits Tax Act on a disrupted Hindu family ? and (2) If so, whether, in this particular case, the family was disrupted ? It is for them to decide in what order they would determine these question but those are the questions that the Tribunal have to determine. In this view of the case, we do not propose to answer question (1) which has been referred to us, which is :

"Whether after disruption of Hindu undivided family under the above facts, the assessment levied under the Excess Profit Tax Act are legal and valid in law ?"

5. It is in the first instance for the Tribunal to determine this question, and thereafter a reference may lie at the instance of either party, if the decision involves a question of law. The other two questions are :

"2. Whether not passing an order u/s 25A is a bar to the assessee's challenge to the assessment under the Excess Profits Tax Act ?

3. Whether the Tribunal misdirected itself in law in not deciding the question whether the Hindu undivided family had disrupted and in holding that if it had disrupted the appeal were incompetent ?"

6. Our answers to these questions are : (2) in the negative and (3) in the affirmative.

7. The Income Tax Commissioner to pay the costs.

8. Reference answered accordingly.