(1957) 05 MAD CK 0003

In the Madras High Court

Case No : Case Referred No. 111 of 1953

Mohammad Oomer Sahib by Joint Receivers, and S. Arizuddin and Sridharan, Madras	APPELLANT
Vs	
Commissioner of Income Tax Madras	RESPONDENT

Date of Decision : 14-05-1957

Acts Referred:

Citation : (1957) 05 MAD CK 0003

Hon'ble Judges : Rajagopalan, J;Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; C.S. Rama Rao Sahib, for the Respondent

Judgement

Rajagopalan, J.—When Khan Sahib Mohamed Oomer Sahib died intestate on 17-12-1942, his heirs succe(sic) to his house properties and

to the business of manufacture and sale of beedies that he had carried on. The heirs were Noorullah, a son by his predeceased wife, Oomer''s

widow Luthfunnissa Begum, and his four children by her. The children were all minors when he died, Noorullah, represented by his maternal uncle

Dawood as his next friend, applied to this Court in Application No. 495 of 1943 for permission to institute a suit for partition in forma pauperis.

During the pendency of these proceedings, on 17th March 1943, two advocates of this Court, Mr. Azizuddin and Mr. Karunakaran, were

appointed. Joint Receivers of ail the properties of Oomer. That appointment was based on compromise on that point and at that stage between all

the heirs of Oomer. Since the widow Luthfunnissa anticipated delay in the disposal of the applications made by Noorullah. to institute his suit for

partition in forma pauperis, she filed C. S. No. 132 of 1943 for partition In that suit she. preferred Application No. 1162 of 1943 for the

continuance of the joint receivers. Why Noorullah opposed that application is not clear, but the fact remains that he did oppose it. Despite

opposition, this Court ordered the continuance of the receivers on 24th May, 1943. Sub-sequent to that Sri Karunakaran was replaced by Sri K.

K. Sridharan as one of the joint receivers.

2. There was never any dispute about the fractional share to which each of the six heirs of Oomer was entitled. In due course there was a

preliminary decree for partition in C. S. No. 132 of 1943.

3. It should be noted that there was no break in the continuity of business after the death of Oomer. None of the parties desired at any time to

break that continuity. First Luthfunnissa and Dawood carried on the business. Next it was carried on by the joint receivers appointed on 17th

March, 1943, and joint receivers were continued by the order'' of the Court dated 25th May, 1943 on Appln. No. 1162 of 1943. The receivers

continued in charge of the business till 25th November, 1946, when, in the proceedings in the suit for a partition, the business was put up for

auction before the co-heirs and Noorullah bought the business.

4. The calendar year was the year of account for the business for the four assessment years 1944-45 to 1947-48, the relevant accounting years for

which were 1943 to 1946. The profits of the business were assessed to tax in the hands of the joint receivers on the basis, that the profits accrued

to an association of persons, overruling the contention of the assessee, that the share of the profits of each of the co-heirs should be taxed

separately. That view was upheld successive by the Appellate Assistant Commissioner and by the Tribunal. It was only the assessment to tax of

the profits of the business that was in issue, as S. 9(3) of the Act covered the assessment to tax of the income from the properties.

5. Under S. 66(1) of the Act, the Tribunal referred the following question to this Court:

Whether the income tax assessment of the business of ''Spade Clover Beedies'' belonging to the estate of the deceased and carried on during the

previous years 1943 to 1946 on an association of persons for the assessment years 1944-45 to 1947-48 is valid?

Before we deal with the contentions of the learned counsel"" before us it may be desirable to set out the relevant findings of the departmental

authorities and the tribunal.

6. All of them agreed that the further appointment of the joint receivers ordered by the Court on Appln. No. 1162 of 1943 in C. S. No. 132 of

1943 was with the consent of the parties, and it was not therefore really an appointment of receivers by Court within the meaning of S. 41(1).

They appear to have overlooked the fact, that in the proceedings in Appln. No. 1162 of 1943 one of the co-sharers Noorullah opposed the

continuance of the receivers. That was one of the points specifically taken by the assessee even at the stage of assessment by the income tax

Officer. That was put in issue again in the appeal to the Appellate Assistant Commissioner. We shall examine a little later the scope and effect of

that opposition of Noorullah to the continuance of the receivers. It was, however, on the application of S. 41(1) of the Act that the assessment was

ultimately upheld by the Tribunal. The income tax Officer recorded :

The assessment will be made on the receivers as representing an association of persons consisting of Luthfunnissa Begum and the five children.

After stating in paragraph 10 of his order ""I therefore hold that the provisions of S. 41 are not at all applicable to this case"" the Appellate Assistant

Commissioner recorded in paragraph 11 of his order :

Even assuming without admitting that S. 41 is applicable, there would still be no change in the mode of assessment as the beneficiary is the entire

body of heirs as a single unit and as it is on behalf of this unit or association of persons that income, profits and gains were received by the

receivers.

The Tribunal recorded in paragraph 7 of its appellate order :

For purpose of these appeals, the assessments presently under appeal have to be considered as having been made involving S. 41 as the

department has apparently invoked the section and as the procedure has not been challenged in these appeals, it does not appear to us to be

necessary to discuss the propriety of the assessment on the joint receivers. The assessees in these appeals are essentially the various beneficiaries

comprising of the parties of the first and second parts, who have also accepted this fundamental position by filing the present batch of, though, overlapping appeals.

7. Which was the association of persons whose income or profits the departmental authorities purported to assess is the next question. We shall

advert again to the relevant findings. The income tax Officer held that the widow and the five children of the deceased Oomer constituted an

association of persons, which association the receivers represented. In paragraph 9 of his order the Appellate Assistant Commissioner recorded'':

I therefore hold that after the death of Mohamed Oomer, Luthfunnissa Begum and the five minor children were a body or association of persons

joined together for the common purpose of earning income. They inherited the estate of the deceased jointly and were undoubtedly conducting the

business as an association of persons. When the Receivers were appointed on 24th March, 1943 they were merely representatives of the

association and not of the heirs individually."" In paragraph 15 the Appellate Assistant Commissioner summed up the position thus :

I hold that the widow, and the five minor children inherited jointly the estate of Khan Sahib Md. Oomer Sahib as an ''association of persons'' with

definite shares under the Muhammadan law. that as such they carried on the business jointly till 24th March, 1943 that thereafter the business was

conducted on their behalf as a single unit by two joint receivers, that the receivers were appointed by the High Court on the basis of a compromise

arrived at by all the heirs....that even under S. 41 it is the association of all the heirs which is the real beneficiary.

8. The Tribunal held on alternative grounds that, the basis of the assessment should be that the profits of the business that the joint receivers carried

on accrued to an association of persons.

In paragraph 10 of its appellate order the Tribunal recorded :

The beneficiaries in this case are, no doubt, entitled to defined shares in the business as forming part of the intestate estate, but in the absence of an

agreement among them bringing their mutual relationship into existence, they can only constitute an association of persons and not a partnership or

a firm among themselves."" The alternative basis was set out in paragraph 12 of its order :

the business source has been assesses as one unit on the two receivers as an association of persons. Though the proper course will be to assess the joint receivers on behalf of all the beneficiaries as constituting an association of persons even alternatively considering the receivers only as the

contemplated assessee the two receivers have to be held as having jointly carried on the business in question.

The Tribunal was thus of the view, that either the heirs of Oomer constituted an association of persons whom the receivers represented, or

independently of that, the joint receivers themselves constituted an association of persons. The relevant portion of S. 41(1) runs :

In the case of income, profits or gains chargeable under this Act which... any receiver or manager appointed by or under any order of a court, are

(is) entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from such receiver or manager in the like manner and

to the same amount as it would be leviable upon and recoverable from the person on whose behalf such income, profits or gains are receivable,

and all the provisions of this Act shall apply accordingly.

9. The provisos to S. 41(1) have no bearing on the questions at issue before us. S. 41(2)

provided:

Nothing contained in sub-s. (1) shall prevent either the direct assessment of the person on whose behalf income, profits or gains therein referred to

are receivable, or the recovery from such person of the tax payable in respect of such income, profits or gains.

It was common ground that it was not under S. 41(2) that the assessment was made.

10. The first question is, were the joint receivers ""receivers appointed by the court"" within the meaning of S. 41(1). We have pointed out that the

assumption of the departmental authorities which apparently the tribunal adopted, that the order dated 25th May 1943 was based on the consent

of all the co-sharers, could not be strictly accurate, if the proceedings of this court in Appln. No. 1162 of 1943 were examined. Noorullah

objected to the continuance of the receivers. The ""appointments"" which in effect was a case of continuance of the joint receivers, was ordered by

the court. Therefore the joint receivers were receivers appointed by the court within the meaning of S. 41(1).

11. It is not therefore necessary for us to consider whether in A. JAINULABDEEN

SAHIB Vs. COMMISSIONER OF Income Tax,

MADRAS., (A) the learned Judges of this court correctly interpreted the scope of the decision of the Privy Council in AIR 1939 163 (Privy

Council) . What was found in AIR 1939 163 (Privy Council) was that factually there was no order of a Court appointing any one as receiver. At

p. 401 (of ITR): (at p. 167 of AIR) of the report, after referring to the provisions of S. 41(1), their Lordships observed:

In their Lordships opinion the case does not come within the words of the section at all. The respondent and Ramprotap were never receivers or

managers by or under any order of the Court. The order of April 2, 1931, did not do so, nor did it purport to do so. It follows, therefore, that the

section has no application to the case.

12. In construing this passage, Leach C.J. observed in A. JAINULABDEEN SAHIB Vs. COMMISSIONER OF Income Tax, MADRAS., :

Their Lordships there held that an order of the Court appointing managers of an estate, the order being made in accordance with an agreement

entered into between the parties, did not bring the case within the section.

The liability imposed by S. 41(1) on a receiver appointed by Court is that the tax shall be levied upon and recoverable from such a receiver in the

like manner and to the same amount as it would be leviable upon and recovered from the person or persons on whose behalf. such income, profits

or gains are receivable. In this case the profits of the business were received by the joint receiver, but such receipts were on behalf of the six co-

sharers, heirs of the deceased Oomer. The liability imposed by S. 41(1) on the Joint receivers was co-extensive with that of the co-sharers, no

more and no less. If the co-sharers who owned the business conducted by the receivers in the relevant years constituted an association of persons,

S. 41(1) would undoubtedly authorise assessment on the basis, that the taxable income was that of an association of persons. That was specifically

adverted to by the income tax Officer at the earliest stage. The Departmental authorities, as we pointed out, were of the view, that the six co-

sharers did constitute an association of persons; and that was also apparently the view of the Tribunal. Was that conclusion correct is the question.

We shall set out again the finding of the Tribunal :

in the absence of an agreement among them bringing their mutual relationship into existence, they can only constitute an association of persons and

not a partnership or a firm among themselves.

If all that the Tribunal meant was that in the absence of agreement there could be no firm or partnership, no exception could be taken. Obviously

the Tribunal did not imply that absence of agreement with nothing more was enough to constitute a group of persons an association of persons for

the purpose of assessment to income tax. If all that was established was that the assessable income belonged to a group of co-shares with defined

shares with the earning of which income none of them had anything to do, that would not be enough to constitute'' them an association of persons.

Nor could the fact, that that group of co-sharers did not constitute a firm or partnership, have any real bearing on the question,, did that constitute

an association of persons. What then was it that made the co-shares in, this case ""an association of persons"" within the meaning of S. 3 of the Act.

Whether the heirs of Oomer as co-sharers of the business as one of his assets which they inherited, could be viewed as an association of persons

during the period between 17th December, 1942 and 17th March, 1943. when the business was managed by Luthfunnissa and Dawood, did not

arise for decision. Nor was any liability based on the determination of the question, whether the appointment of the receivers on 17th March, 1943

with the consent of the co-sharers was enough to imply the existence of an association of persons on whose behalf and with whose consent the

receivers were to conduct the business. The appointment of joint receivers on 25th May, 1943 was despite the objections, of Noorullah, one of

the co-sharers No attempt was made by the department to mark off any of these periods from the others for purposes of assessment even with

reference to the year of account 1943. The basis of assessment was apparently that all through 1943 and of course, thereafter the joint receivers

appointed on 25th May, 1943 received the income of the business on behalf of the co-sharers to whom it belonged. So the question, whether the

co-sharers constituted an association of persons, was really determined in this case with reference to the appointment of joint receivers on 25th

May, 1943.

13. As has been repeatedly pointed out, the Act does not define what constitutes an association of persons, which under S. 3 of the Act is an

entity or a unit for assessment to income tax. We shall not undertake what eminent Judges had declined to do, to evolve a formula of universal

application. Whether a given group of persons to whom assessable income accrued constituted an association of persons will have to be decided

primarily with reference to all the facts of that case. Our limited problem, therefore, is to decide whether the co-sharers who inherited the business

of Oomer constituted an association of persons in relation to that business and in the relevant years of account.

14. In the absence of any statutory definition, the word ""association"" has to be given its normal dictionary meaning. To ""associate"" is to join in a

common purpose of action. ""Association"" does not necessitate the exercise of volition of those who form the association; the exercise of that

volition can be by or on behalf of those who form the association. It should be taken as well settled now that an association of persons can include

minors.

15. In (1956) 30 ITR 61 the learned Judges observed :

when two or more persons unite together of their own free volition in some common purpose or action they can be deemed to have associated

together and formed an association."" In K. P. G. B. U. G. M. S. S. A. MOHAMAD ABDUL KAREEM and CO. Vs. COMMISSIONER OF

Income Tax, MADRAS., Yahya Ali J. stated,

But the dictionary meaning of the word associate is to join in common purpose or to join, in an action. Any combination of persons who have

joined together in a profit making enterprise would, according to ordinary parlance amount to an association.

Earlier than this, in B. N. ELIAS AND OTHERS, IN RE., , Derbyshire C. J. quoted as apposite the observations of Cotton L. J. in Smith v.

Anderson, 1880 15 Ch D 247 at p. 282 (F),

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.

16. To render an association of persons a taxable unit, for which S. 3 provides, the object of the association must be to produce Income, profits or

gains. In COMMISSIONER OF Income Tax, BOMBAY Vs. LAXMIDAS DEVIDAS AND ANOTHER., Beaumont C. J. observed at 589 (of

ITR): (at p. 42 of AIR) :

In my opinion, the only limit to be imposed on the words ''other association of individuals'' is such as naturally follows from the fact that the words

appear in an Act imposing a tax on income, profits and gains, so that the association must be one which produces income, profits or gains.

These observations were approved of by tills Court in K. P. G. B. U. G. M. S. S. A. MOHAMAD ABDUL KAREEM and CO. Vs.

COMMISSIONER OF Income Tax, MADRAS., (see the observations at pages 427-28) (of ITR): (at p. 514 of AIR)). The same idea was

expressed in different words by Chagla C, J. in Indira Balkrishna Vs. Commissioner of Income Tax, Bombay North, Kutch, Saurashtra,

Ahmedabad,

In our opinion what is required before an association of persons can be liable to tax is not that they should receive income but that they should earn

or help to earn income by reason of their association, and if the case of the department stops short of mere receipt of income then the department

must fail in bringing home the liability to tax of individuals as an association or persons.

Neither the fact that the heirs of Oomer inherited the business on his death and owned it thereafter as co-sharers with defined shares, nor the fact

that they were entitled to and did receive their shares of the profits, either each separately or both taken together constituted them an association of

persons liable to be taxed on that, basis. It is also true that the co-sharers themselves did not produce the income of the business. The business

was conducted by the receivers. They were receivers appointed by the Court within the meaning of S. 41(1) of the Act when they were appointed

on 25th May, 1943. If, however, these receivers represented an association of persons, that is, if the co-sharers already constituted an association

of persons before 25th May, 1943 and that association remained unbroken, the fact that the receivers were appointed by Court would not affect

the existence or the continuity of that association of persons.

17. We pointed out earlier that the business was continued without any interruption after the death of Oomer. The nature of the business was such

that unity of control was necessary. It could Sot be conducted in factional snares. The parties all through desired to preserve and did preserve that

unity of control. First Luthtunnissa and Dawood conducted the business. Between 17th March, 1943 and 25th May, 1943 the joint receivers

appointed with the consent of all the co-sharers conducted the business. When the co-sharers wanted receivers to be appointed to conduct the

business there was a unity of purpose and objective between them, which should suffice to constitute them an association of persons, the ultimate

object of which was that profits should be earned on their behalf. On 25th May, 1943 there was a fresh order of the Court, and the joint receivers

who had been appointed on 17th March, 1943 were continued in. office to conduct the business. We pointed out earlier that Noorullah opposed

the application preferred by Luthfunissa for the continuance of the receivers.

The opposition was apparently to the persons to be appointed receivers and not to the continuance of the business or to the unity of control that

was necessary. Noorullah himself had realised that when he applied earlier, for the appointment of receivers to conduct the business among other

things, (sic) Despite Noorullah''s opposition when Luthfunnissa asked for the continuance of receivers in her application No. 1162 of 1943, the

existence of the desire of all the co-sharers including Noorullah for the continuance of the business with proper persons to take charge of the

business under the orders of the Court was clear. That intention was material on which the departmental authorities and the Tribunal which agreed

with them could find that the co-sharers did constitute an ""association of persons.

18. As we pointed out earlier, if the heirs of Oomer constituted an association of persons, the profits of the business which belonged to them could

be assessed in the hands of the receivers under S. 41(1) on the same basis. We have held that there was material on which the Tribunal could find

that the co-sharers who owned the business constituted an association of persons. That should suffice to answer the question referred under S.

66(1) of the Act against the assessee.

19. In view of what we have recorded above, it may not be necessary to discuss the question, whether the Tribunal was right in holding

alternatively that the joint receivers themselves constituted an association of persons. If the assessment had been made on that basis, neither S.

41(1) nor S. 42(2) could have been invoked, in this case however, the Tribunal itself was of the view, that the assessment had been made under

the enabling provision. S. 41(1). In deciding what should be the oasis of assessment under S. 41(1) the question whether the joint receivers

themselves constituted an association of persons would not be relevant. In an assessment under S. 41(1) the liability of the joint receivers was the

same as that of the persons whom they represented.

In this case the liability of the co-sharers was to be assessed as an association of persons. It wag that liability that S. 41(1) authorised the

department to impose on the joint receivers. The learned counsel for the department contended that independent of S. 41, the department was

entitled to tax the profits of the business in the hands of the joint receivers who had earned its profits, treating them as forming an association of

persons. He relied on AIR 1930 929 (Lahore) which dealt with trustees appointed under a will to carry on the business of hotel management. As a

determination of that question is not strictly necessary for the disposal of this case, we express no opinion of ours.

20. We answer the question referred to us in the affirmative and against the assessee. The assesses will pay the costs of this reference. Counsel''s

fee Rs. 250/-.

