
(1948) 08 MAD CK 0060
In the Madras High Court

M.V. Shanmugavel Nadar and Sons, by Partner, M.V.S.
Singaravel Nadar

APPELLANT

Vs

The Commissioner of Income Tax

RESPONDENT

Date of Decision : 02-08-1948

Acts Referred:

Citation : (1948) 61 LW 783 : (1948) 2 MLJ 409

Hon'ble Judges : P.V. Rajamannar, C.J

Bench : Division Bench

Judgement

P.V. Rajamannar, C.J.—The question for decision in this case is:

Whether there is a change in the persons carrying on the business within the meaning of Section 8 (1) of the Excess Profits Tax Act, 1940, when the business which was previously carried on and owned by the Hindu undivided family and a stranger is on disruption of the family being carried on and owned by a partnership composed of the members of the quondam family and the stranger.

2. The facts of the case which appear from the statement of the case are as follows:

The appellants are a registered firm of 8 partners. This partnership commenced from the 25th February, 1942. Prior to 25th February, 1942, there was a partnership between two parties of which one was P. Pachayappa Nadar and another was the Hindu undivided family of M.V. Shanmugavel Nadar Sons. This family consisted of 7 male members. A partition in the family took place and the seven members individually became partners along with P. Pachayappa Nadar on 25th February, 1942.

3. Section 8(1) of the Excess Profits Tax Act is as follows:

As from the date of any change in the persons carrying on a business, the business shall, subject to the provisions of this section, be deemed for all the purposes of this Act except for the purposes of determining the amount of the

statutory percentage to have been discontinued and a new business to have been commenced.

In Section 2, Clause (17) "a person" is defined as including a Hindu undivided family. The legal position in this case before the disruption of the joint family was that there were two persons carrying on a business, namely, (1) P. Pachayappa Nadar and (2) the Hindu undivided family of M.V. Shanmugavel Nadar Sons. After 25th February, 1942, the Hindu undivided family as such ceased to be the person carrying on the business along with Pachayappa Nadar. From that date, 8 persons began to carry on the business, namely, the seven members of the quondam family and Pachyyappa Nadar. There was therefore clearly a change in the persons carrying on the business within the meaning of Section 8(1) of the Excess Profits Tax Act.

4. It was contended on behalf of the petitioner that really there was no change in the persons carrying on the business because when the family was carrying on business in partnership with Pachayappa Nadar, it must be deemed that all the members of the family were also persons carrying on the business. This contention is obviously unsound having regard to well-established principles of Hindu Law. Their Lordships of the Judicial Committee in *Pichappa Chettiar v. Chockalinga Pillai* (1934) 67 M.L.J. 366 accepted as correct the following proposition of law in Mayne's Hindu Law (9th edition) at page 398:

Where a managing member of a joint family enters into a partnership with a stranger the other members of the family do not ipso facto become partners in the business so as to clothe them with all the rights and obligations of a partner as defined by the Indian Contract Act. In such a case the family as a unit does not become a partner, but only such of its members as in fact enter into a contractual relation with the stranger...

A further contention was sought to be raised that actually besides the managing member of the family other members also entered into contractual relationship as partners. This is a contention founded on facts and there is no trace of this contention before the tribunal at any stage of the proceedings. The petitioner cannot be permitted to raise this new ground at this stage.

5. The following observations of Leach, C.J., in *Govindarajulu v. Commissioner of Income Tax, Madras* (1944) 1 M.L.J. 112 : ILR 1944 Mad. 504 are apposite in this connection:

Where a Hindu joint family separates and its members carry on the family business in partnership, there is a change in ownership. The Business is no longer owned by the joint family but by the firm, an entirely different entity and the fact that as before the profits continue to be divided equally between the same persons makes no difference.

Though these observations were made in dealing with Sections 25(4) and 26(2) of the Income Tax Act, they apply a fortiori to this case in which the governing

words are of much wider import.

6. The Excess Profits Tax Officer as a matter of concession and in accordance with instructions from Government set off the share of the deficiency of Pachayappa Nadar against his share of excess profits, because he continued to be a partner even after the change in the persons carrying on the business. An application was made to us to extend such a concession to the case of the managing member of the family who though in different capacities was the same person both before and after the change. This is not a matter which has been referred to us nor could it be properly the subject of a reference, depending, as it does, entirely on the grant of a concession in accordance with instructions from the Government. We cannot accede to this request on behalf of the petitioner.

7. The answer to the question framed is that in the circumstances set out in the question, there is a change in the persons carrying on the business within the meaning of Section 8(1) of the Excess Profits Tax Act. The petitioner will pay the costs of the reference, Rs. 250.