

(1950) 03 OHC CK 0005

In the Orissa High Court

Case No : Special Jurisdiction Case No. 16 of 1949

Nopram Ramgopal

APPELLANT

Vs

Commissioner, Income Tax, B. and O.

RESPONDENT

Date of Decision : 13-03-1950

Acts Referred:

Income Tax Act, 1922 — Section 25, 25(4)

Citation : AIR 1951 Ori 16 : (1950) 16 CLT 88 : (1951) 19 ITR 219

Hon'ble Judges : Ray, C.J;Panigrahi, J

Bench : Division Bench

Advocate : B.N. Mohanty and S.K. Ray, for the Appellant; G.C. Das, for the Respondent

Judgement

Panigrahi, J.—This is a petition u/s 66(2), Income Tax Act, against an order of the Income Tax Tribunal, Madras Branch, praying for an order calling upon the Tribunal to state a case for the petitioner and refer it to this Court for decision. The question arising for decision, according to the petitioner, is

"whether under the facts and circumstances of the case the provisions of Schedule 5 (4) are applicable to all the activities of a business or to those activities which suffered tax under the Income Tax Act, 1939."

2. The petitioner represented a joint Hindu family concern and was carrying on mercantile business in grains prior to 1918 and had been assessed to Income Tax under the Income Tax Act, 1918. During the assessment year 15-4-43 to 2-4-44, the joint family became separated and was succeeded by a partnership firm consisting of the members of the family. The petitioner claimed exemption from Income Tax under Schedule 5 (4), Income Tax Act, 1939. The Income Tax officer rejected his claim, but the Appellate Assistant Commissioner held that the provisions of Schedule 5 (4) would apply to the facts of the case and allowed the benefit of those provisions to the petitioner in two out of the six businesses carried on by him on the relevant date of succession. The Appellate Assistant Commissioner held that the petitioner could get relief only in respect of those

activities that were actually in existence in the year 1918 and suffered tax under the Act of 1918, but not in respect of the additional business activities which came into existence subsequent to that year. This view of the Assistant Commissioner was confirmed by the Income Tax Appellate Tribunal in their order, dated 24-11-48. It is against this order that the petitioner has filed the present revision petition.

3. The admitted facts are that the petitioner-firm had only grain business and head office business in the year 1918, when he was assessed to Income Tax under these two heads. In 1922, he started the business of salt manufacture and also established a cardboard factory. In addition, he purchased some shares in another partnership firm started after 1922. A branch office was opened at Calcutta sometime subsequent to that year. In 1918, assessments were being made in advance but this practice underwent a change in 1922 when it was decided to charge tax on the previous year's income. In order to prevent double taxation, relief was given to such persons as had been assessed under the Act of 1918. The Appellate Assistant Commissioner, therefore, held that those businesses which were not in existence in 1918 had never been assessed to Income Tax and that, therefore, the petitioner was not entitled to claim any relief in respect of the income of those businesses. The petitioner attempted to establish that he had also salt business in 1918, but that attempt failed for want of evidence. In fact, it was found that the salt-manufacturing business had been started only in 1926 or 1927 while the cardboard factory was started sometime later. The petitioner was called upon to satisfy the tribunal that salt was one of the commodities that were being dealt with by the Hindu undivided family in 1918. The books of account produced by him in support of his case were, however, not accepted and the tribunal found that, as a matter of fact, the petitioner did not have any dealings in salt in 1918 from which the alleged salt business could have grown.

4. Mr. Mohanty, learned counsel for the petitioner, contends that the Income Tax authorities and the Appellate Tribunal failed to properly appreciate the effect of the provision contained in Schedule 5 (4), Income Tax Act, 1939. That section reads as follows:

"Where a person who was at the commencement of the Indian Income Tax Amendment Act 1931, carrying on any business, profession, or vocation on which tax was at any time charged under the provisions of the Indian Income Tax Act 1918, is succeeded in such capacity by another person, the change being not merely a change in the constitution of the partnership, no tax shall be payable by the first-mentioned person in respect of the income, profits and gains....."

5. Mr. Mohanty's contention is that it is the person who is assessed to tax and not the business that he may be engaged in. In other words, he argued that a person is entitled to relief irrespective of the nature of the business he was conducting in 1918. Stretched to its logical limits, this argument would result in relief being given to every person who was assessed to tax in 1918, irrespective

of the nature of the business or the number of businesses he may be engaged in during the year of assessment. The section, in express terms, refers to "business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income Tax Act." On a plain reading of the section, it appears to me that the income from a particular business which was in existence in the year 1918 and had been assessed to Income Tax would not be taken into account and re-assessed. It was with a view to preventing double taxation on the same income that the remedial provision in Schedule 5(4) was enacted. If, therefore, the business which is now assessed to tax is not the same, nor could be said to have arisen from some other business which had been in existence in the year 1918, the petitioner cannot claim any relief under Schedule 5(4). It, is well established that whether a particular business has grown out of some business or whether two or more concerns constitute one business, is essentially a question of fact. The test for ascertaining whether two or more concerns constitute one business or not is to see whether the different businesses are so interlocked with one another or dovetailed into one another, that if one fails the others also fail. If on the other hand, each business can be carried on independently of the other, the finding would be that the businesses would constitute independent businesses. Mr. Mohanty's argument is that the concerns belong to one person arising out of common capital and should accordingly be considered to be no more than different branches of the same business. He cited the example of a shopping concern which has different items of business, such as shoes, wearing apparel, furniture and so forth; but, however varied the departments may be there is one fact that governs them all and that is the business of buying and selling. If, for instance, a shopping concern had also insurance business it can hardly be said that the two would constitute one business. In the present case, if the grain business which had been taxed under the 1918 Act and the cardboard factory which had been started in 1922 were so interdependent and so inter-connected as to constitute, in essence one business concern, the petitioner's contention can be upheld. But the fact is that the grain business consisted in buying and selling for profit whereas the cardboard factory business was started for the purpose of manufacturing cardboards and making a profit. I cannot, therefore, persuade myself to hold that the business concerns started after 1918 such as manufacture of salt or of cardboard, were so intimately connected with the purchase and sale of grains that had been in existence from 1918, as to constitute one business. The view taken by the tribunal is, therefore, correct and we see no reason to call upon, them to state a case for the petitioner.

Ray, C.J.

6. I agree.