

(1975) 06 CAL CK 0004

In the Calcutta High Court

Case No : Income-tax Reference No. 217 of 1973

Rama Devi Agarwalla and Others

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 18-06-1975

Acts Referred:

Income Tax Act, 1922 — Section 2(12), 3, 34

Income Tax Act, 1961 — Section 144, 147, 148, 282

Citation : (1979) 117 ITR 256

Hon'ble Judges : Dipak Kumar Sen, J; Deb, J

Bench : Division Bench

Advocate : Pranab K. Pal and R.N. Dutt, for the Appellant; B.L. Pal and A. Sengupta, for the Respondent

Judgement

Dipak Kumar Sen, J.—This reference u/s 256(2) of the I.T. Act, 1961, arises in respect of the assessment year 1947-48. The assessee is alleged to be an association of persons consisting of one Rama Devi Agarwalla along with Asrafi Devi Agarwalla, Gini Devi Agarwalla, Bimala Devi Agarwalla and Chameli Devi Agarwalla.

2. The facts as appearing from the statement of the case and the annexures thereto show that on the 8th August, 1945, the said five ladies purchased from one Regent Estate Ltd. half share in premises Nos. 31 and 32, Tincori Basu Lane and 38 and 39, Bhairab Dutt Lane, all in Salkia, Howrah, for a sum of Rs. 1,68,000. On the 2nd April, 1946, the said five ladies by a deed of conveyance sold their shares in the premises to one New India Building and Land Improvement Society Ltd. for a sum of Rs. 4,20,000 resulting in a surplus of Rs. 2,50,000 earned by them.

3. On the 27th January, 1978, the ITO, Special Circle-III, Calcutta, issued a notice u/s 34(1)(a) of the Indian I.T. Act, 1922, for the assessment year under reference upon Rama Devi Agarwalla and others. On receipt of the said notice, they moved an application under Article 226 of the Constitution before this court

challenging the legality and validity of the said notice. By its judgment and order dated 12th December, 1958, this court held the said notice u/s 34(1)(a) and also the proceedings thereunder to be invalid and bad.

4. Thereafter, on the 20th December, 1961, the ITO, Dist. III(2), Calcutta, issued a letter to Rama Devi Agarwalla whereby he intimated his intention to appoint her as the principal officer of the association of persons formed by the said five ladies u/s 2(12)(b) of the Indian I.T. Act, 1922, for taxing the said amount of Rs. 2,50,000 earned by the said association during the accounting year relevant to the assessment year in question.

5. By her letter dated 29th December, 1961, Rama Devi Agarwalla intimated the ITO that she never was nor is the principal officer of any association of persons, and as such, she cannot be appointed as the principal officer and that each of the ladies mentioned in the said letter was assessed by the ITO, I-Ward, Dist. III(2), Calcutta, individually.

6. The ITO, however, by his letter dated 23rd February, 1962, rejected the contentions of Rama Devi, who raised further objections by her letter dated the 28th February, 1962.

7. Thereafter, the ITO after obtaining the approval of the then Central Board of Revenue, issued a notice u/s 148 of the I.T. Act, 1961, on the 8th January, 1963, addressed to "Rama Devi Agarwalla and others".

8. By her letter dated the 21st February, 1963, Rama Devi Agarwalla again challenged the legality of the said notice and on the 13th November, 1963, she filed a return of income in her capacity as an individual.

9. Subsequently, on the basis of the said notice dated 8th January, 1963, the ITO made an assessment on Rama Devi Agarwalla and others in the status of an association of persons u/s 144 read with Section 147 of the I.T. Act, 1961, and taxed the said amount of Rs. 2,50,000 as capital gains arising out of the sale of the said property.

10. Being aggrieved by the order of the ITO, the said persons preferred an appeal to the AAC. It was contended before the AAC that the ITO failed to establish that the said five ladies had joined together in buying the said property with a view to sell the same with a profit and in the absence of such finding the assessment order was bad in law. It was further contended that as the said five ladies had contributed equally in the purchase of the said property by drawing from separate accounts, in view of Sections 47 and 48 of the Transfer of Property Act they should be presumed to have acquired an equal share in the said property and also be presumed to have received an equal share of the said consideration. The AAC accepted the contentions made on behalf of the said persons and cancelled the assessment by his order dated the 15th March, 1971.

11. The revenue came up in appeal against the order of the AAC before the Tribunal. The Tribunal by its order dated 26th July, 1972, set aside the order of

the AAC and restored the assessment made by the ITO. From this order of the Tribunal the following questions have been referred to us :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the assessment made in the status of an AOP is in order ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that there is no illegality either in the issue or the service of the notice u/s 148 or in the assessment as made u/s 144 ?

3. Whether, on the facts and in the circumstances of the case, Smt. Rama Devi Agarwalla can be treated as the principal officer of the alleged association of persons as alleged by the ITO ?"

12. Mr. Pranab Pal, learned counsel on behalf of the assessee, made his submissions first on question No. 2. He contended that the statutory notice in the instant case issued on the 8th January, 1963, by the ITO, "A" Ward, District III(2), Calcutta, was defective and did not conform with the provisions of the relevant sections of the I.T. Act, 1961. The defects in the notice, according to him, are respectively as follows:

(a) The notice it appeared was addressed to Rama Devi Agarwalla and others. It was not stated, apart from Rama Devi Agarwalla, which other persons were being addressed in this notice.

(b) It was not also stated in what capacity Rama Devi Agarwalla and the alleged others were being served with this notice. It was not stated whether Rama Devi Agarwalla was being served as principal officer of the said association of persons or whether she was being served only as a member thereof or in any other capacity.

(c) It was nowhere stated as to which persons constituted the said association.

(d) There was also some confusion in the notice as to whether the association or the addressees were assessable to tax for the income which was alleged to have escaped assessment for the assessment year 1947-48. He contended that, in the circumstances, the said notice was vague and invalid.

13. Section 148 of the I.T. Act, 1961, enjoins the issue of a notice for assessment of escaped income. The section requires that before making the assessment the ITO "shall serve on the assessee" a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 139.

14. Section 282 of the I.T. Act, 1961, provides for service of notices generally under the Act. Sub-section (2) of this section provides that any notice may be addressed in the case of any association or body of individuals to the principal officer or any member thereof.

15. On the basis of these sections Mr. Pranab Pal contended that in the instant case the notice suffers from the defects mentioned hereinabove.

16. Mr. Pranab Pal relied on several decisions of the Supreme Court as also of this court in support of his contentions. First, he cited a decision of this court in the case of SEWLAL DAGA Vs. COMMISSIONER OF Income Tax, CALCUTTA., . In this case an assessment had been made on one "Chandrabhan Johurmull" in the status of an individual. The individual concerned died in the year 1949. Thereafter, a notice u/s 34 of the Indian I.T. Act, 1922, was issued on Sewlal Daga, the son of the assessee. In the notice, the assessee was described as M/s. Chandrabhan Johurmull (karta Sewlal Daga). The notice did not state that it was being issued to Sewlal Daga as the legal representative of Chandrabhan Johurmull, deceased. It was found as a fact that in compliance with this notice Sewlal Daga filed a return showing his status as "Chandrabhan Johurmull, deceased, represented by Sewlal Daga". Thereafter, Sewlal Daga contended before the Income Tax authorities that the notice u/s 34 was not served on him as the legal representative of the deceased and, as such, it was illegal. The Tribunal found that the assessee had correctly understood the purpose for which notice u/s 34 was issued to him and that the assessee in compliance thereof had filed a return showing his correct status. The Tribunal held that this was a case of waiver of the defect in the notice following the decision of the Bombay High Court in the case of Commissioner of Income Tax, Bombay City I Vs. Ramsukh Motilal, Bombay, and following the decision of this court in the case of TARAK NATH BAGCHI Vs. COMMISSIONER OF Income Tax, BENGAL., . This court, however, followed the observations of the Supreme Court in the case of Y. Narayana Chetty and Another Vs. The Income Tax Officer, Nellore and Others, and held that the notice prescribed u/s 34 cannot be regarded as a mere procedural requirement. The proper service of the notice on the assessee confers jurisdiction on the ITO concerned to assess or reassess u/s 34 It was also held that if any notice was issued or if the notice issued was shown to be invalid then the validity of the proceedings taken by the ITO without a notice or in pursuance of an invalid notice would be illegal and void. This court held that in the facts before it the notice and the proceedings thereunder were illegal and void.

17. Mr. Pranab Pal next cited the decision in the case of Commissioner of Income Tax, Gujarat II Vs. Kurban Hussain Ibrahimji Mithiborwala, . In this case, before the Supreme Court, the ITO concerned had issued two notices on the 28th February, 1958, on the assessee, respectively, u/s 22(2) and u/s 34 of the Indian I.T. Act, 1922. In the notice u/s 22(2) the ITO had mentioned that he was going to reassess the assessee for the assessment year 1949-50. But in the notice u/s 34 the ITO stated as follows :

"Whereas I have reason to believe that your income assessable to Income Tax for the year ending 31st March, 1949, has escaped assessment....."

18. The notice u/s 34 referred to the assessment of the assessee for the accounting year ending 1947 whereas the notice u/s 22(2) referred to the

assessment of the assessee for the accounting year ending November, 1948. After the receipt of these notices, the assessee by his letter pointed out the discrepancy and requested the ITO to clarify the position. The ITO did not choose to reply and proceeded to reopen the assessment and reassess the assessee. The Tribunal held that mere irregularity in the notice did not in any manner prejudice the assessee. The High Court of Gujarat held otherwise and opined that there was material irregularity in the notice issued to the assessee u/s 34 and as such the irregularity vitiated the proceedings thereunder. The Supreme Court affirmed the decision of the High Court and held that if the notice issued by the ITO u/s 34 is invalid for any reason the entire proceedings taken by the ITO would become void for want of jurisdiction. In the notice u/s 34 the ITO sought to reopen the assessment of the assessee for the assessment year 1948-49, but in fact reopened the assessment for the year 1949-50. It was held that the ITO had no jurisdiction to revise the assessment for that year.

19. Next, Mr. Pranab Kumar Pal cited another decision of this court in the case of Shyam Sundar Bajaj Vs. Income Tax Officer, "A" Ward and Others, . In this case the notices were issued for reopening certain assessments of a HUF known as Messrs. Pannalal Bajaj Shyam Sundar Bajaj. Such notices were challenged on various grounds including that the notices were vague. The said notices were challenged under Article 226 of the Constitution. " It was the undisputed position that the ITO concerned came to know of this HUF, which had never been taxed before, from an affidavit of one Pannalal Bajaj affirmed and filed in Suit No. 2006 of 1963. In this affidavit it was also stated that the said HUF had been disrupted. There was no evidence to the contrary available to the revenue.

20. It was then contended that the notices suffered from an infirmity inasmuch as they did not indicate on whom the said notices were required to be served. The decision in the earlier case of SEWLAL DAGA Vs. COMMISSIONER OF Income Tax, CALCUTTA., was relied on. Sabyasachi Mukharji J. followed the decision in the case of SEWLAL DAGA Vs. COMMISSIONER OF Income Tax, CALCUTTA., and held that the fact of disruption being established such notices did not state that they were being served on the petitioner in any particular capacity and the same were liable to be quashed.

21. Lastly, Mr. Pranab Pal relied on a decision of the Delhi High Court in the case of Ravinder Narain Vs. Income Tax Officer, New Delhi and Others, . In this case notices for various assessment years were issued to eight individuals addressing them by their names and stating that their income were chargeable to tax which had escaped assessment within the meaning of Section 147 of the I.T. Act, 1961, and that such income would be assessed. The Delhi High Court noted that the words "association of persons" was not mentioned in the body of the notice nor was the notice addressed to any association. It was noted that there was no indication or mention in the notices of any association of persons which was sought to be assessed. Further, there was no indication in the notices that the assesseees were required to file a return in respect of the income of the particular

business or the purchase and sale of land in respect of which the said persons were alleged to be an association.

22. On such facts the Delhi High Court was pleased to hold that the notices u/s 148 must be issued and addressed in the name of and must be served in accordance with law on the assessee himself who is sought to be assessed and reassessed and is called upon to file a return. It was observed that if the intention was to proceed against the association, the business activity which was sought to be assessed should have been indicated in the notice. The Delhi High Court held that the notices were not directed against any association of persons and that the ITO concerned could not proceed to assess any association thereunder.

23. In the facts and circumstances of the case and in the light of the law as cited above, the contentions of Mr. Pranab Pal cannot be stated to be without substance. From the notice in this case it cannot be ascertained who is the assessee. Further, it cannot be ascertained whether the service is being effected as prescribed by Section 282 of the Act on the persons addressed in their capacity as principal officers or members of an association. No doubt, the A.O.P. appear in the body of the notice but there is nothing in the notice by which the assessee can be connected with this association. Lastly, from the language of the notice it is also not clear whether the association is sought to be assessed or the addressees. If it is presumed that it is the association which was sought to be assessed, there is no indication in the notice as to the particular item of business or activity regarding which the fresh assessment was sought to be made.

24. Mr. B.L. Pal, learned counsel on behalf of the revenue, contended that if this notice is read in the background of the earlier correspondence and various proceedings which were had between the revenue and the persons constituting this association, there would be no vagueness in the notice and the notice would be perfectly intelligible. He also contended that, in construing the statutory notice, extraneous evidence may be looked into to fill up any lacuna or cure the defects, if any, in such notice.

25. Mr. B. L Pal cited only one decision of the Supreme Court in the case of Balchand Vs. Income Tax Officer, Sagar, . In this case by a notice u/s 34 of the Indian I.T. Act, 1922, the assessee was called upon to file a return for the assessment year 1946-47. In the preamble of the notice it was recited: "whereas I have reason to believe that your income assessable to Income Tax for the assessment years 1946-47, 1945-46 has--(a) escaped assessment..... I, therefore, propose to assess the said income."

In the body of the notice it was clearly recited that the appellant was called upon to deliver a return of his total world income assessable for the year ending 31st March, 1946. Admittedly, this was for the assessment year 1945-46. The assessee contended that he had misunderstood the notice and had filed a return for the assessment year 1946-47.

26. On these facts the Supreme Court held that though there was some negligence in drafting the preamble of the notice, it did not affect its validity because the notice itself clearly informed the assessee that he had to file a return of income assessable for the year ending 31st March, 1946.

27. It does not appear to us that this decision of the Supreme Court is an authority for the proposition that if a statutory notice u/s 34 of the Indian I.T. Act, 1922, and/or u/s 148 of the I.T. Act, 1961, is ambiguous or defective or otherwise invalid, the same can be cured by taking into account and/or looking into other documents whereby such, defects can be rectified and/or omissions can be filled in. Mr. B.L. Pal did not cite any other authority on this point.

28. In this view of the matter, we do not accept the contentions of Mr. B.L. Pal and we hold that in the instant case the notice was invalid and that there was an illegality in the issue of the notice. We also hold that the issue of this notice being illegal and the notice being invalid, the ITO had no jurisdiction to proceed thereunder and the assessment which has followed therefrom is also necessarily illegal. To the extent as indicated above, we answer question No. (2) in the negative and in favour of the assessee.

29. On question No. 1, it was submitted by Mr. Pranab Pal, learned counsel on behalf of the assessee, that in the instant case, the said five ladies no doubt had joined in the deed of conveyance dated the 8th August, 1945, whereunder the property in question was purchased ; but they had purchased the property as tenants-in-common and in equal shares as recorded in the deed itself. He contended that in this view of the matter there was no case of joint tenancy and u/s 45 of the Transfer of Property Act, in the absence of a contract to the contrary, the purchasers were entitled to an interest in the property to the extent of their respective shares. He also relied on the finding of the Tribunal that the said ladies had drawn out from their separate funds to purchase the property.

30. He contended that on the facts found and considered by the Tribunal it could not sustain the finding that Rama Devi Agarwalla along with the other four ladies constituted an association of persons within the meaning of Section 3 of the Indian I.T. Act, 1922.

31. In support of his contention Mr. Pranab Pal cited a number of decisions. First, he cited the decision of this court in the case of B. N. ELIAS AND OTHERS, IN RE., . This case had been cited before and considered by the Tribunal. The facts of this case were that a property was acquired by a deed of conveyance dated the 9th of January, 1922, by four purchasers in different shares. The three of the original purchasers and the nominee of the fourth purchaser jointly appointed and/or empowered one of the joint purchasers as their attorney for the purpose of managing the property, collecting rents and doing all other acts in respect of the said property on behalf of all the purchasers. In these circumstances, the ITO assessed the four persons as an association of individuals, in respect of the income derived from the property. It was contended by the assessee that

individual assessments should have been made. The question which was referred to the High Court from the order of the Tribunal was: "(2) Whether, in view of the circumstances of the case, the petitioners will legally be treated as an association of individuals and whether the joint assessments of them had been rightly made?"

32. In his judgment Derbyshire C.J. construed the word "associate" on its dictionary meaning. He held that the said word means to join in a common purpose, or to join in an action. In the facts of that case he held that the individuals concerned had joined in a common purpose and common action by, (a) joining together in the purchase of the property; (b) remaining joint as owners of the property from the date of the purchase till the assessment; and (c) that they had joined together was evidenced by the power of attorney and its use for the purpose of earning income to the best advantage of them all.

33. It was held that the individuals constituted an association.

34. Costello J., agreeing with the decision of Derbyshire C.J., held that it would not be desirable to lay down a general definition of the expression "association of individuals". He found, however, in the case before him that there was a combination of persons, formed for the promotion of a joint enterprise, banded together as co-adventurers and that constituted an association of individuals within the meaning of Section 3 of the Indian I.T. Act, 1922.

35. Mr. Pranab Pal contended that in the facts of the case of B. N. ELIAS AND OTHERS, IN RE., there was a specific finding that the persons concerned not only had joined together in the purchase of the property but they continued to be joint to achieve a common purpose. The appointment of a common manager was clear evidence of their intention.

36. The next decision cited by Pranab Pal was in the case of Commissioner of Income Tax, Bombay Vs. Smt. Indira Balkrishna, , also cited before the Tribunal. The facts of this case before the Supreme Court were that one Balkrishna Purushottam Purani died leaving behind him three widows, who as legal heirs inherited the estate of the deceased consisting of immovable properties situate in Ahmedabad, shares in joint stock companies, money lying in deposit, and share in a registered firm. For the assessment years 1950-51 and 1951-52; the ITO issued notices to the legal heirs of the deceased, pursuant whereunto, returns were filed under the heading "Legal heirs of Balkrishna Purushottam Purani" in one case and in the name of the "estate of Balkrishna" in the other. The status was shown as "individual" in one case and "association of persons" in the other. For both the years the ITO decided the status of the assessee to be an association of persons and on that footing made two assessment orders. The Tribunal held that as the entire estate of the deceased was inherited and possessed by the three widows as joint tenants, its income was liable to be assessed in their hands in the status of an association of persons. The Tribunal further held that Section 9(3) of the Indian I.T. Act, 1922, did not apply in the facts and circumstances of

that case.

37. The question which was referred to the High Court was :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessment made on the three widows of Balkrishna Purshottam Purani in the status of an association of persons is legal and valid in law ? "

38. The Supreme Court considered the facts of that case and came to the conclusion that the widows succeeded as co-heirs and joint tenants to the estate with rights of survivorship and equal beneficial enjoyment. The Supreme Court also took note of the fact that it had been found by the Tribunal that the widows had not exercised their right to separate possession and enjoyment and that they had chosen to manage the property jointly, each acting for herself and the others and receiving the income of the property which they were entitled to enjoy in equal shares. The Supreme Court further found that with regard to the shares, dividends and interest on deposits which were receivable by the widows from the estate, there was no finding of any act of joint management except that it was noted that the widows had filed list of shares showing that the said shares stood separately in the name of each one of the three widows.

39. On such facts the Supreme Court considered the meaning of the term "association of persons". The Supreme Court cautioned that there could be no formula of universal application to determine whether a group of individuals could be considered to be an association of persons or not within the meaning of Section 3 of the Indian I.T. Act, 1922, and whether a group of individuals constituted such an association would depend on the particular facts and circumstances of each case. It was contended on behalf of the revenue that the real test was the existence of a common source of income in which two or more persons were interested as owners or otherwise and it was immaterial whether their shares were specified and defined or whether there was any scheme of management or not. The Supreme Court did not accept such contentions and held that the tests of the common source of income and general interest as owners were neither conclusive nor determinative. The Supreme Court held further that there was no finding by the Tribunal that the three widows had combined in a joint enterprise to produce income. The only finding was that they had not exercised their right to separate enjoyment, and except for receiving the dividends and interest jointly, it was found that they had done no act which had helped to produce income in respect of the shares and deposits. On such finding, the Supreme Court held that the three widows did not have the status of an association of persons within the meaning of Section 3 of the Indian I.T. Act, 1922.

40. The last decision cited by Mr. Pranab Pal was in the case of G. Murugesan and Brothers Vs. Commissioner of Income Tax , Madras, . In this case, one S. Nadar had executed a settlement deed in favour of his four grandsons. The properties

under the deed included a house which had been let out. Under the deed, the donees were to enjoy during their lifetime the properties gifted and thereafter the same was to devolve on their children. Certain shares were thereafter acquired in joint stock companies in the name of G. Murugesan & Brothers. The income from the house property and the dividend income from the shares were credited to the account of G. Murugesan & Brothers in the books of the firm of Nadar. In such books there were separate accounts for the four grandsons and the incomes and expenses of such persons were credited and debited to such individual accounts.

41. On the basis of the above facts, the ITO assessed the assessee during the relevant years in the status of an association of persons. This assessment was confirmed by the Commissioner ; but on further appeal the Tribunal held that the assessee should be assessed as individuals and not as an association of persons. The question which was referred to the High Court was: "Whether, on the facts and in the circumstances of the case, the department was justified in assessing the assessee in the status of an association of persons ?"

42. The Supreme Court considered the earlier decisions including the decision in the case of B. N. ELIAS AND OTHERS, IN RE., and its own decision in the case of Commissioner of Income Tax, Bombay Vs. Smt. Indira Balkrishna, referred to earlier. The Supreme Court reiterated that such decisions correctly laid down the law for determining what was an association of persons within the meaning of Section 3 of the Indian I.T. Act, 1922. The Supreme Court observed that "for forming an "association of persons", the members must join together for the purpose of producing an income. An "association of persons" could be formed only when two or more individuals voluntarily combined together for a certain purpose. Hence, volition on the part of the members was an essential ingredient. For receiving dividends from shares, there was no question of any management. An association could not be inferred from the mere fact that more than one person jointly owned shares, and jointly received the dividends."

43. In some of the relevant assessment years, the assessees themselves had submitted returns in the status of an association which were neither withdrawn nor revised. The Supreme Court found that such an admission was an important piece of evidence and could not be ignored; but for other assessment years where it was contended by the assessees that they were no more functioning as an association, this prior admission would not be conclusive.

44. Mr. Pranab Pal contended that in the instant case there was no finding that the assessees had combined to embark upon a joint enterprise to achieve or realise a common purpose. There was also no finding that there was any act of volition on the part of the individuals concerned which was an essential ingredient for the formation of an association as laid down by the Supreme Court.

45. Mr. B.L. Pal, on the other hand, contended that the Tribunal had found the basic facts from which all the necessary conclusions could be drawn to show that

the assessee in the instant case formed and constituted an association of persons within the meaning of Section 3 of the Indian I.T. Act, 1922. The facts, which according to Mr. B.L. Pal had been found by the Tribunal, may be summarised as follows :

- (a) The property in question was purchased on the 8th August, 1945.
- (b) The interest purchased was only a half share in the property.
- (c) The property was held by the assessee for barely eight months.
- (d) The property in question purchased from one limited company was sold to another limited company.
- (e) The transaction involved a large investment.
- (f) The property acquired was not utilised by the ladies either for receiving income by way of rental or for residential purposes.
- (g) The property was sold away after a very short period when a considerable surplus was received.

46. Mr. B.L. Pal contended that from these facts the inevitable conclusion followed that the assessee had voluntarily embarked on a joint enterprise with the object of making gains.

47. On a careful consideration of such facts we are unable to agree with the contentions of Mr. B.L. Pal. The facts on which he relies by themselves or jointly, in our opinion, cannot determine the question conclusively one way or the other. On the other hand, we find that there are other findings of the Tribunal which go to show the position to be the contrary. We note that all the conclusions which could have been drawn from such facts have not been so drawn or recorded.

48. The Tribunal had also found that the said ladies had drawn out their separate funds to purchase the property and that they had a distinct share in the ownership of the property. Reading the order of the Tribunal we find that there is no specific finding that the five ladies had intended to embark upon a joint enterprise. There is also no finding that there was any arrangement or agreement or any common aim or purpose or volition of the persons concerned. It is to be noted that after the purchase there is no evidence of any common management or use of the said property. It appears that except for the deed of purchase and the deed of sale where the five ladies joined respectively as purchasers and vendors there was no other material before the Tribunal. The ladies did not choose to separate and had remained joint but it does not necessarily follow from such fact that they remained joint with the object of forming an association or for the object of making income, profits or gains from the joint property.

49. We accept the contentions of Mr. Pranab Pal and hold that, in the facts and circumstances of this case, the Tribunal was not justified in law in holding that

the assessment in the instant case made in the status of an association of persons was in order. We answer question No. 1 also in the negative and in favour of the assessee.

50. Mr. Pranab Pal contended on question No. 3 that Rama Devi Agarwalla had asserted from the very beginning that she was not a principal officer of the alleged association of persons and as such there was no evidence before the Tribunal to find that there was such an association. This contention of Mr. Pranab Pal cannot be accepted. The ITO has discretion u/s 2(12)(b) of the Indian I.T. Act, 1922, to treat any person connected with an association as the principal officer and this has been done in the instant case.

51. Mr. Pranab Pal also contended that the ITO summarily rejected the submissions of Rama Devi that she was not connected with any association, or that she was not the principal officer of any association, without assigning any reason therefore and as such the decision to treat Rama Devi as the principal officer of the association was bad. This point was at no time urged by the assessee earlier.

52. Our answer to questions Nos. 1 and 2 disposes of the matter and as such question No. 3 has become purely academic. We do not answer the same.

53. In the facts and circumstances of the case, there will be no order as to costs.

Deb, J.

54. I agree.