
(1961) 01 MP CK 0040

In the Madhya Pradesh High Court

Case No : Miscellaneous C.C. No. 153 of 1960

Saligram Nathani

APPELLANT

Vs

Commissioner, Income Tax

RESPONDENT

Date of Decision : 30-01-1961

Acts Referred:

Income Tax Act, 1922 — Section 25(4), 66(2)

Citation : (1961) JLJ 727

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen and A.H. Saifi, for the Appellant; M. Adhikari, for the Respondent

Judgement

K.L. Pandey, J.—This is a case stated by the income tax Appellate Tribunal, Bombay, in pursuance of an order issued by this Court under sub-section (2) of Section 66 of the Indian income tax Act, 1922. The question of law propounded by, and referred to, this Court is as follows:-

Whether there is material on record to support the finding that the businesses carried on in (1) Bhatapara hardware shop, (2) Belha shop, (3) Mungeli shop and (4) Ramanlal Mohanlal shop, Raipur, were not extensions of the old businesses but were separate and independent businesses ?

2. The facts of the case, briefly stated, are these. Long prior to the year 1918, two divided brothers, Balkishan and Ramkishan, carried on business in partnership under the name and style of Seth Balkishan Ramkishan Nathani. Tax was charged under the provisions of the Indian income tax Act, 1918, on the business which they carried on. On 31 December 1938. Balkishan and Ramkishan agreed to divide their business which had a head office and several branches. The arbitrator nominated by them made actual division by two awards dated 15 March 1939 and 11 October 1939. As a result of the division, each shop was taken over by one or the other of the two brothers as a going concern together with its books. Neither the books of the firm were balanced nor the

profits capitalised or distributed. Thus each brother continued the business that fell to his share. It appears that, following the dissolution of the old firm, Ramkishan and his four sons separated and then formed a new partnership and carried on business under various names including Saligram Nathani. Although Ramkishan died on 28 May 1939, the partnership continued upon terms and conditions incorporated in the partnership deed dated 11 April 1940 until it was dissolved on 21 July 1948. As before, the business carried on at several places did not go as a whole to one or the other of the four brothers but each shop was taken over by one or the other as a going concern. It may be mentioned here that; on 21 July 1948, the four sons of Ramkishan carried on business in eight shops and of these, Raipur Main shop (grain and hardware), Raipur Gunj shop (grain), Bhatapara shop (grain and sundries) and Noora shop (grain and sundries) were existing from before 1918 and Bhatapara shop (hardware), Belha shop (grain), Mungeli shop (grain) and Ramanlal Mohanlal shop, Raipur (hardware) were new shops opened between 31 December 1938 and 8 March 1941.

3. On 13 January 1950, Mohanlal son of Ramkishan, a partner of the firm Saligram Nathani, applied for relief u/s 25 (4) of the Indian income tax Act, 1922 (here, in after called the Act). Another line application signed by the four sons of Ramkishan was made on 11 April 1950. The assessment year was 1949-50, the previous Diwali year being 13 November 1947 to 21 November 1948. The applicants claimed relief on the ground that the business carried on in the 8 shops mentioned in the last paragraph was charged to tax under the provisions of the Indian income tax Act, 1918, that the business carried on in the four new shops was merely an extension of the business carried on in 1918 and that they had, as a result of the dissolution of the firm on 21 July 1948, succeeded to that business within the meaning of Section 25 (4) of the Act. The income tax Officer allowed the relief claimed only in respect of the business carried on in the four old shops and held that the applicants were disentitled to that relief in respect of the business carried on in the four new shops on the ground that the business was not an extension, or a slice taken out, of the old business and was not charged to tax under the 1918 Act. The Appellate Assistant Commissioner also took the same view, which was ultimately affirmed by the Appellate Tribunal.

4. Before we take up the question under reference, we may notice another aspect of the case which perhaps escaped attention. On a previous occasion, the applicants and their uncle Balkishan claimed that, upon the dissolution of the firm Balkishan Ramkishan Nathani on 31 December 1938, the business carried on by that firm was discontinued and thereafter each of the two brothers, Balkishan and Ramkishan, carried on the business which fell to his share separately. It was then held that there was succession, though it took place prior to the commencement of the Amending Act of 1939, and no discontinuance because the various branches were independent and neither the identity nor the integrity of any branch was impaired by the change in ownership, each branch having been taken over as a going concern: (1946) 14 ITR 191 . If that was the

true position, it would be readily seen that the 4 new branches did not exist before 31 December 1938, that no tax was charged on the business carried on in those branches under the 1918 Act and that the relief claimed is therefore not available in respect of such business. It is, however, urged that there has always been only one business and that the 4 new branches constitute merely a development or extension of that business. In our opinion, the claim for relief is unsustainable even on that footing. It would appear that, in year 1939, this business was divided between two partners, Balkishan and Ramkishan. Then, following the dissolution of the partnership of the four applicants on 21 July 1948, the business was further divided amongst them with the result that each applicant now has, broadly speaking, about one eighth part of the business carried on when the 1918 Act was in force and developed subsequently. There can be no succession to a business unless it devolves as a whole and substantially retains its identity and integrity. For example, when a business is split up and thereafter another person carried on part of the business, he does not succeed his predecessor in carrying on that business: Commissioner of income tax *Burma vs. N. N. Firm* (1934) 2 ITR 85 F. B., Commissioner of income tax, *Burma vs. A. L. V. R. P. Firm* (1940) 8 ITR 531 S. B., *Jittanram Nirmalram Vs. Commr. of Income Tax*, and *Kaniram Ganpatrai Vs. Commr. of Income Tax*, . Having regard to the authorities bearing on the point, there was, in this case, no succession and the applicants are disentitled to the relief u/s 25 (4) of the Act. In this view, the question under reference ceases to be of any practical importance.

5. In the statement of the case, the Tribunal pointed out that the applicants did not place any material on record to show that the business carried on in the 4 new shops was an extension of the business assessed under the 1918 Act and merely urged that the word "business" in Section 25 (4) of the Act should be construed in a broad and comprehensive sense. Against this, in accepting the conclusion of the Taxing Authorities that the business carried on in the 4 new shops was not an extension of the old business, the Tribunal relied upon the following facts and circumstances:

- (i) The business carried on in the 4 new shops was not assessed under the 1918 Act.
- (ii) No evidence was placed on record to show that the funds or goods for the new shops came, from the old business.
- (iii) It was admitted before the income tax Officer, and not subsequently challenged, that the business in the new shops was started without taking any stocks or outstandings from the old business.
- (iv) Separate account books were maintained for the business carried on in each shop.
- (v) When there was a dissolution of the partnership on 21 July 1948, the business carried on in the several shops did not go as a whole to one or the other of the four brothers but each shop was taken by one or the other as a going

concern. This went to show that "these business activities had separate and independent existence and did not form one whole activity".

6. The learned counsel for the applicants relied upon several authorities to support his main contention. *Arunachalam Chetti vs. Commissioner of income tax* ILR 52 Mad 296 S. B. dealt with a case of deduction u/s 10 (2) (iii) of the Act, of interest paid on capital borrowed and sunk in cloth business where the assessee had two branches of its trade, a cloth business and a banking business. *MESSRS. HIRALAL KALYANMAL AND ANOTHER Vs. RE.,* , is an authority for the view that the question whether any two businesses were separate businesses or were really two branches of the same business is a question of fact and, if there is any evidence enabling the Taxing Authorities to determine that question, their determination is final. *S. N. A. AL. CHIDAMBARAM CHETTIAR Vs. COMMISSIONER OF Income Tax, MADRAS.,* , related to a case where there was affirmative evidence to show that the banking and money lending business carried on by the assessee at Karaikudi in British India and in the Federated Malay States constituted one and the same business and therefore the loss suffered at Karaikudi and carried forward could be set off u/s 24 (2) of the Act. *MESSRS. GOVINDRAM BROS. LTD. Vs. COMMISSIONER OF Income Tax, CENTRAL, BOMBAY.,* , was also a case u/s 24 (2) of the Act. It was held that there was no evidence to sustain the finding that the speculation in cotton and the speculation in silver were not part of the same business. It was however pointed out that the question was one of fact, the test being an inter-connection, inter-facing and inter-dependence between, and a unity embracing, the two businesses. The case of *GOPI MOHAN AND SONS Vs. COMMISSIONER OF Income Tax, U. P. and C. P.,* , related to income from property and has no bearing on the question before us *Manilal Dahyabhai Vs. Commissioner of Income Tax, Bombay City,* , was also like the case of *Govindram Brothers Ltd.* (cit. supra) with this difference that it was held there that there was evidence to justify the finding that the business in speculation and the cloth business did not constitute one and the same business. It was also indicated that the important, though not conclusive, test in determining the question was whether one of the two businesses could be stopped without affecting the texture or the frame-work of the other. The last case, *Commissioner of Income tax vs. Chugandas and Co. (Securities)* 1960 ITR 241, dealt with a case u/s 25 (3) of the Act. It was held that the relief under that provision would cover interest on securities which constituted the stock-in-trade of the business. It was further observed that there was no warrant for giving a truncated and artificial meaning to the expression "income, profits and gains" used in connection with ""business" in Section 25 of the Act and that it would cover all income, profits and gains made in connection with business under whatever head the same might have to be shown. In taking that view, the majority of the Judges dissented from the earlier view of the Bombay High Court in *Ambalal Himatlal Vs. Commissioner of Income Tax and Excess Profits Tax, Bombay North,* , to the effect that where there were three separate businesses and tax was charged on only one of them under the 1918

Act, relief u/s 25 (4) of the Act must be restricted to it. In our opinion, none of these cases supports the contention that there is in this case no material for the conclusion reached by the Taxing Authorities and the Tribunal, It is true that, according to the construction placed on Section 25 of the Act in the last mentioned case, the question referred to us would not arise but that is clearly outside the scope of this reference which was made on the assumption that, if the business carried on in the 4 new shops was not an extension of the old business but was separate from, and independent of, the old business, the relief claimed could not be had.

7. In the instant case, the business carried on in the 4 new shops was not charged to tax under the 1918 Act but the applicants claimed relief even in respect of that business on the ground that it was merely a development or extension of the old business with the result that there was one and only one business. They had, therefore, to show that, according to the tests indicated in the last paragraph, there was but one business. As shown, they did not place any material on record to do so. On the other hand, the facts and circumstances mentioned in paragraph 5, which had in our opinion a material bearing on the question, indicated that there was no inter-connection or inter-dependence between the old and the new business and that either of the two could be stopped without affecting the texture or frame-work of the other. That being so, our answer to the question referred to us is that there is material on record to support the finding that the business carried on in the 4 new shops was not an extension of the old business but was separate from, and independent of, the latter.

8. The applicants shall pay the costs of this reference to the Commissioner of income tax, Hearing fee Rs. 100.