

(1971) 01 MP CK 0008
In the Madhya Pradesh High Court
Case No : M.P. No. 243 of 1970

Sambhaji Rao

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 22-01-1971

Acts Referred:

Madhya Pradesh Vritti, Vyapar, Ajivika Aur Sevayojan Kar Adhiniyam, 1966 — Section 2(iii)

Citation : (1975) ILR (MP) 475 : (1971) JLJ 457 : (1971) MPLJ 557

Hon'ble Judges : Bishambhar Dayal, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : P.W. Sahasrabudhe and S.K. Kambale, for the Appellant; K.P. Munshi, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Bishambhar Dayal, C.J.

This is a petition by Sambhaji Rao who is a partner in a firm called "Krishna Concerns". He has 1/5th share in the partnership. This firm was assessed for two periods viz., July 1965 to June 1966 and July 1966 to June 1967, assessment years being 1967-68 and 1968-69. The firm was assessed under the M. P. Vritti, Vyapar, Ajivika Aur Sevayojan Kar Adhiniyam, 1966 (hereinafter referred to as the Act). The firm was assessed for each of the two assessment years to a maximum tax of Rs. 250 permitted under the Act and a penalty of Rs. 60 was imposed for not filing the return. Thereafter, the Petitioner has been personally taxed under the same Act on his own personal income including the share which he received from the profits of the partnership. He has been assessed to a tax of Rs. 200 and a penalty of Rs. 50 for the assessment year 1967-68 and to a tax of Rs. 150 and a penalty of Rs. 60 for the assessment year 1968-69. This writ petition has been filed challenging this personal assessment of the Petitioner.

Learned Counsel has raised two objections: (1) that the firm having been assessed, the partner could not be assessed on the same income and (2) that no

penalty could be imposed as the income of the Petitioner from house property alone was not taxable under the Act and there was, therefore, no question of filing a return. The second question is obviously answered in favour of the Petitioner if the first contention is correct so that if the Petitioner is not taxable over the share of his partnership income, then his income from property alone was not taxable and there was no question of his filing a return and that being so, no penalty could be imposed on him. We, therefore, consider the arguments on the first question.

The word "income" has been defined in Section 2 (iii) of the Act as follows:-

"income" means-

- (a) profits and gains ;
 - (b) salary including the value of any perquisite or profit in lieu of salary;
 - (c) dividend and interest;
 - (d) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid;
- accruing or arising to a person within the State from any profession, trade, calling, other than agriculture, or employment;

The word "person" also has been defined and it includes a Hindu undivided family, company, an incorporate body, a firm, a society or any other association of persons. Thus, a firm has been made a separate entity(sic) from its partners. The question, therefore, arises: when partners engage in some activity which comes within the phrase "any profession, trade, calling, other than agriculture, or employment" mentioned in the definition of income quoted above, as members of the firm and income thereby arises or accrues, can this income be said to be once the income of the firm and again the same income, when taken by the partners according to their share, be called an "income" within the meaning of the definition in the hands of the partners ? It may be noted that every income in the hands of an Assessee under this Act is not liable to tax but only that income which accrues or arises from any of the above-mentioned activities viz., profession, trade, calling or employment. All these terms are practically synonymous and refer to the activity which a person engages in as the principal activity for earning profits and livelihood. Therefore, any income which accrues to an Assessee otherwise than by such activity will not be covered by the definition and will not be considered for taxation.

The general rule of taxation of income is that an income earned once can only be taxed once in the hands of the person earning it and the same income, when distributed by the person earning, cannot be deemed to have been earned again

by the persons so receiving it on distribution. The matter was considered by their Lordships of the Supreme Court in Jain Bros. and Others Vs. The Union of India (UOI) and Others, . In paragraph 5 of the report, their Lordships observe as follows:

This Court has laid down in (1966) 60 ITR 95 (SC) that partners of an unregistered firm might be assessed individually or they might be assessed collectively in the status of an unregistered firm. But the same income cannot be assessed twice, once in the hands of the partners and again in the hands of the unregistered firm.

Their Lordships then quoted the dictum of Rowlatt J., in The Commissioner of Inland Revenue v. Frank Bernard Sanderson (1921) 8 T C 38, a part of which may be mentioned here which is very apposite:

That means that you cannot tax it more than once on one passage of money in the form of one sort of income. If a man earns ₹ 100 by his profession and gives it to his son to clothe himself, or to his daughter, for the year, the son or the daughter does not pay income tax; there is only one passage of the money in the form of that income.

Unless, therefore, there is a clear provision in the Act indicating that the same income can be assessed in the hands of more than one person, the principle must be accepted that two persons cannot be assessed for the same income derived from one activity of the nature specified in the definition.

In the present case, five persons combined together in the activity of earning profits. The profits so earned were taxed in the hands of the firm and when this income, less tax, is distributed among its partners by the firm, the tax is really paid by all the partners of the firm according to their share. Moreover the mere distribution of the profits between the partners does not amount to a second earning by the partners of the same income by any of the activities mentioned in the definition. The partners merely receive their share on distribution and their activity which earned the profit was the activity on behalf of the firm which has already been taxed. We are, therefore, of opinion that the contention of learned Counsel for the Petitioner has substance and the profit earned by the firm, when distributed to the partners, does not become an income taxable under the Act in the hands of the partners.

We accordingly allow the petition and quash the orders of assessment and penalty dated 3rd March 1970 (Annexures "C and "D" to the petition) and the notices of demand dated 3rd March 1970 (Annexures "CC" and "DD" to the petition). Parties will bear their own costs. The outstanding amount of the security deposit shall be refunded to the Petitioner.