

(1947) 08 PAT CK 0006
In the Patna High Court

S.C. Mazumdar, Receiver

APPELLANT

Vs

Commr. of Income Tax

RESPONDENT

Date of Decision : 29-08-1947

Acts Referred:

Income Tax Act, 1961 — Section 41, 66(1)

Citation : AIR 1948 Patna 385

Hon'ble Judges : Ramaswami, J; Manohar Lall, J

Bench : Full Bench

Judgement

Manohar Lall, J.—This is a reference u/s 66(1), Income Tax Act, at the instance of the assessee by the Income Tax Appellate Tribunal. The question referred to us is:

Whether in the facts and circumstances of the case, the amalgamated assessment on the receiver as the principal officer of an association of persons is valid in law?

2. The facts found are that the Trigunait are governed by the Mitaksbara School of Hindu Law in which the plaintiffs as representatives of Janardan Trigunait have one-third share, the representatives of Sham Lai Trigunait one-third share, and the remaining one-third belongs to the representatives of Santustamoni Trigunait. Bhubneshwar Trigunait and Mukteshwar Trigunait as representatives of Janardhan Trigunait instituted Title Suit No. 139 of 1906 for partition of the family estate consisting of certain collieries and royalty bearing lands. The Subordinate Judge of Purulia on 15-2-1907, passed an interlocutory order for the appointment of a receiver, but as the parties did not agree to the person to be appointed as receiver, he on 25th February tentatively appointed one Tewari as receiver, and after obtaining sanction of the Judicial Commissioner he appointed Tewari as a permanent receiver on 9-4-1907. It was directed by that order that the parties should deliver to the receiver all the stock-in-trade, books of accounts, etc., including coal-fields and mines and all other properties of the estate, and further that the tenants and occupiers of the estate do attorn and

pay their rents, royalties, price of coals in arrear etc., to the receiver. The appeal to the High Court was dismissed and a preliminary decree for partition was passed on July, 1908, by which inter alia it was decreed, after defining the shares of the parties as aforesaid, that:

The colliery at Angerpathra and the coal lands at Angerpathra be kept ijmāl under the management of the receiver and the distribution of profits by him to the parties in respect of their shares till such time as the parties may mutually agree to the division or any other course to be adopted in the matter.

Against the preliminary decree there was an appeal to the High Court, but the parties entered into compromise on 4-5-1909. The relevant terms of this compromise are that certain coal lands in Angerpathra which were in the occupation of the Union Coal Company should be taken out of the management of the receiver, but in other respects the decree of the trial Court was confirmed. The final decree in the partition suit was made on 16-2-1910 and this arrangement continued till 11-4-1931 when Mr. Mazumdar was appointed the receiver in place of Mr. Tewari, and since then the colliery at Angerpathra and other royalty bearing lands have been in his possession and management.

3. The income from these lands and collieries is the subject matter of the assessment in the present case. From 1925-26 right up to 1989-90 the assessments have been made on the Trigunait Brothers' estate through the receiver, but the total income was being distributed among the beneficiaries in proportion to their respective shares, and the tax applicable to each was recovered from the receiver in accordance with the provisions of Section 41, Income Tax Act.

4. In the year 1940-41, the assessment was made treating the assessee as an unregistered firm, but on appeal by the assessee the Appellate Tribunal cancelled the assessment and remitted the proceedings to the Income Tax Officer for a further investigation of the question as to what was the true status of the assessee and specially his objection the assessment should be done as in the past on defined shares. The Income Tax Officer after investigation made the assessment treating the Trigunaita as an association of persons through the receiver Mr. Mazumdar, but unlike the preceding assessment, he assessed the entire income in the hands of the receiver as one unit, and, therefore, necessarily at a higher rate. The assessment was made similarly for the year 1941-42.

5. The assessment year in the present case is 1942-43. The assessee raised the same contention that as the shares of the beneficiaries were defined and the collieries were kept ijmāl or under the management of the receiver, as division by metes and bounds was impracticable" and there was no jointness of interest as between the share-holders and the parties had no voice, in the management of the receiver, the tax should be held to be recoverable from the receiver separately for each of the beneficiaries in proportion to his share of the total

income. These contentions were overruled by the Income Tax Officer who found the taxable income to be Rs. 69,797, that is to say Rs. 21,747 the amount paid by the lessees to the receiver as royalty and Rs. 48,050 as the amount of profit made by the receiver who employed contractors to carry on the business of coal cutting and raising it on the pit head.

6. The Income Tax Officer says in his order that he gave Mr. Mazumdar, the receiver, an opportunity to show cause why he should not be treated as the principal officer of the association. The receiver made an objection in writing that he was subject to the control of the Court who appointed him and was independent of the coowners in all respects. The Income Tax Officer observed at p. 9:

That may be ho, but it is apparent that be is in charge of the management, competent to enter into contracts, to receive and pay cash and responsible for correct accounting and in fact for everything that is necessary for proper conduct of the business. I think there is no better person, who can be treated as the principal officer and u/s 2(12) of the Act he is so treated.

7. Against this decision, there was an appeal to the Appellate Assistant Commissioner who while reducing the income by a sum of Rs. 4,623 affirmed the order of the Income Tax Officer in the main.

8. The matter was then taken to the Appellate Income Tax Tribunal who by an order dated 19th August 1944 dismissed the appeal and observed at the end of the judgment that although the receiver was originally

appointed by the Court, but it appears that he has since been kept on by consent of parties. It is open to the parties to divide the estate by fixing valuation of shares but they have agreed to continue management through the receiver who is appointed by consent for the future management.

9. The Appellate Tribunal, who have now made the reference, have pointed out while stating the facts of the case at p. 4: "It is not a fact that the parties agreed before the High Court that Babu Suresh Chandra Tewari be appointed a receiver"--they have shown that this is the correct position by referring various orders of the Subordinate Judge and the High Court. It must, therefore, be taken that the receiver in the present case is in possession not with the consent of the parties but under the orders of the Court.

10. The critical question, therefore, to decide is whether the assessee is an association of persons and whether the provisions of Section 41 cannot be applied to the present assessment. To begin with, it may be at once stated that Rs. 21,747, which is the amount paid by the lessees, cannot be taxed in one lump sum as being the profits of any business carried on by an association of persons. Letting out property is not carrying on a trade or business the business would be carried on by the lessees to whom the property is let. The previous conflict of case law is now solved so far as income from property is concerned by

the insertion of Sub-clause (3) to Section 9 where it is clearly stipulated that where property is owned by two or more persons and their shares are definite and ascertainable, they cannot be assessed in respect of the income from such property as an association of persons. On this being pointed out, the learned standing counsel, as was to be expected, conceded the position.

11. With regard to the remaining sum, the question is whether the assesseees can be treated as an association of persons. There has been a conflict of decisions in the various High Courts as to whether the expression association of persons" should be construed ejusdem generis with the previous words which occur in the charging section, namely Hindu undivided family, company, local authority and firm, or whether it should be construed in its ordinary plain meaning. In support of the latter view, reference is made to the Oxford Dictionary where it is said that associate means "to join in any purpose or to join in an action" and, therefore, it was held that the persons can only be called an association of persons if they join together and remain so joined with the purpose of buying and holding properties. It is unnecessary to express a final view upon this difficult question in the present case.

11. All the High Courts are agreed that the question whether the assesseees are an association of persons depends upon the facts and circumstances of each case.

13. Now, what are the facts which have been found in the present case (1) that the receiver appointed by the civil Court is in possession of the collieries; he is employing contractors for coal cutting, and all the raising costs are paid by him, and (2) that the Trigunaitis have no hand whatsoever in the businees which produces royalty. On these admitted facts the inference that the Trigunaitis are an association of persons is not warranted in law-indeed the Trigunaitis have dissociated themselves from each other because a partition suit is pending between the parties in which each party may well be treated as a plaintiff.

14. That being the position it follows that this is one of those cases in which the receiver is carrying on a trade or business on behalf of the estate of which he has been appointed the receiver by an order of the civil Court. The assessment, therefore, should have been made and could only be made on the receiver see the Privy Council case in AIR 1934 116 (Privy Council) where the true effect of the decision in the well known House of Lords case in *William v. Singer* (1917) 7 Tax. Cas. 419 was explained and it was observed that there may be circumstances in which the assessment must be made upon the trustee. The present case, however, is unlike the Privy Council case in *Keshardeo Chamaria v. Commr. pf Income Tax, Bengal* where their Lordships found as a fact that no receiver was appointed by the Court, but the co-owners were allowed to realise their rents on giving joint receipts.

15. The learned standing counsel correctly argued that Section 41 was a machinery section, and the department is not bound to resort to it this is now specifically provided by Section 41(2) which entitles the department to assess a

person on whose behalf income, profits or gains are receivable. But the facts found here are that the Trigunaitis are not in possession of the estate, are not carrying on any trade or business themselves, are not an association of persons, and the profits and gains of the business are receivable and received by the receiver himself on account of the business which he himself carries on though he is ultimately accountable to the parties through the civil Court, who appointed him. The department may if they like assess the individual Trigunaitis separately for his share of the profits in the colliery business.

16. For these reasons, I am of opinion that in this case the assessment should have been made upon the receiver or upon each of the Trigunaitis separately for his share as there is no "association of persons" as contemplated by the Act.

17. The learned advocate for the assessee then relying upon Section 41(I) contended that the tax should be levied upon the receiver only to the same amount as it would be leviable upon and recoverable from each of the Trigunaitis. In support of his contention, he relied upon the case in Commr. of Income Tax, B. & O. v. Habibur Rahman AIR 1945 Pat. 494 where the mutwalli of a trust consisting of 24 beneficiaries was held taxable on the basis of the profits falling to the share of each of the beneficiaries and not on the footing of all the beneficiaries constituting an association of persons in this case the profits were derived from a distillery belonging to the wakf of which he made a wakf constituting himself as the sole mutwalli. In my opinion, the contention of the learned advocate is well-founded, and I would hold that the assessment should be made u/s 41(I).

18. For these reasons, the answer to the question is that on the facts and circumstances of this case the amalgamated assessment on the receiver as the principal officer of an association of persons is invalid. The assessee having succeeded is entitled to the costs of this reference which are assessed on a consolidated sum of Rs. 350.

Ramaswami J.

I agree.