
(1972) 04 OHC CK 0020
In the Orissa High Court
Case No : S.J.C. No's. 10 to 15 of 1969

Sri Ladukishore Das

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 18-04-1972

Acts Referred:

Orissa Agricultural Income Tax Act, 1947 — Section 2, 3

Citation : (1972) 38 CLT 636

Hon'ble Judges : G.K. Misra, C.J.; K.B. Panda, J

Bench : Division Bench

Advocate : S.C. Roy, for the Appellant; Standing Counsel, for the Respondent

Judgement

G.K. Misra, C.J.—The undisputed facts may be stated in short. The assessee, Ladukishore Das, before the relevant assessment years 1959-60 to 1964-65 partitioned his properties amongst himself, his wife and four sons of whom three were minors and one was a major reading in a college at Cuttack. The partition by metes and bounds was effected by a registered partition deed on 22nd of August, 1958. Even after the partition all of them continued in joint mess and the assessee was looking after the cultivation of the entire property. The assessee gave a return in respect of the income arising out of the parcels of land falling to his own share in the partition by metes and bounds. The assessing authorities and the Tribunal held that the assessee, his wife and sons constituted an association of individuals. The income from the entire agricultural land was assessed in the hands of the assessee as the income of an association of individuals. The assessee asked for a reference to the High Court u/s 29(2) of the Orissa Agricultural Income Tax Act, 1947 (hereinafter to be referred to as "the Act"), of the following questions :

"(i) Whether, on the facts and circumstances of the case, the assessment as an association of individuals is correct ?

(ii) Whether the petitioner should be assessed as an individual in respect of

Income Tax out of his share of the property ? "

2. The reference having been rejected by the Tribunal, the High Court called for a statement of the case on those two questions u/s 29(3) of the Act.

3. Appropriately those two questions were directed to be reframed for verbal changes and we reframe them in this judgment as follows :

" (i) Whether, on the facts and circumstances of the case, the assessment of the income of the entire property in the hands of the assessee as the income of an association of individuals is correct.?

(ii) Whether the petitioner should be assessed as an individual in respect of the income arising only out of his share of the property ?"

4. The finding of the taxing authorities that after the partition by metes and bounds by the registered document the various sharers constituted an association of individuals is obviously on the acceptance of the theory that the partition is real and is not a sham transaction. In Ramnath Panda Vs. Commissioner of Agricultural Income Tax, the legal position was critically examined. In paragraph 7 thereof a Bench of this court made the following observation :

" Even after effecting partition the erstwhile members of the joint family who have ceased to be coparceners may agree to live together for economy and convenience. Joint messing has got its own blessings, particularly when the family consists of the parents and the minor sons. When a minor exercises his juristic right to be separated through the volition of the guardian and yet decides to remain together for economy and convenience, the arrangement cannot be said to be sham merely because the taxing authorities under any taxing statute cannot reach the income or wealth of all the members taken together."

5. Thus the finding that the partition was a real one is in accordance with law.

6. The principal question for determination is whether after the partition by metes and bounds the erstwhile coparceners who are exclusive owners of separate parcels of land would constitute an association of individuals merely because they live together in joint mess and the assessee looked after the cultivation of the entire property.

This necessitates examination of the material provisions of the Act.

7. Section 3 of the Act is the charging section. So far as relevant, it runs thus:

" 3. Charge of agricultural Income Tax.--Agricultural Income Tax at the rate or rates specified in the Schedule shall be charged for each financial year in accordance with and subject to the provisions of this Act on the total agricultural income of the previous year of every person....."

8. "Person" has been denned in Section 2(i) of the Act. "Person" means any individual or association of individuals, owning or holding property for himself or

for any other, or partly for his own benefit and partly for another, either as owner, trustee, receiver, common manager, administrator or executor or in any capacity recognised by law and includes a Hindu undivided family, firm and company.

Thus an association of individuals can be charged with tax.

9. The expression " association of individuals " has received judicial construction both under the Indian Income Tax Act, 1922, as amended from time to time and the Agricultural Income Tax Acts of different States, the provisions of which are in pari materia with the provisions of the Act.

10. The earliest case which received the attention of the Supreme Court is Commissioner of Income Tax, Bombay Vs. Smt. Indira Balkrishna, .

11. That was a case under the Indian Income Tax Act, 1922. The short facts of that case were as follows : One Balkrishna Purushottam Purani died on November 11, 1947. He left behind him three widows and two daughters. The widows as legal heirs inherited the estate of the deceased, which consisted of immovable properties, shares in joint stock companies, money lying in deposit, and share in a registered firm. The widows were assessed as an association of individuals. On the facts found by the Tribunal there was no finding that the three widows had combined in a joint enterprise to produce income. The only finding was that they did not exercise their right to separate enjoyment and except for receiving the dividends and interest jointly they had done no act which had helped to produce income in respect of the shares and deposits. On these findings their Lordships held that the three widows cannot be said to have the status of an "association of persons" within the meaning of Section 3 of the Indian Income Tax Act.

12. Their Lordships accepted the following tests :

(i) The word " associate " means to join in a common purpose or to join in an action. An association of persons must be one in which two or more persons join in a common purpose or common action, and as the words occur in a section which imposes a tax on income, the association must be one the object of which is to produce income.

(ii) There is no formula of universal application as to what facts, how many of them and of what nature, are necessary to come to a conclusion that there is an association of persons within the meaning of Section 3 ; it must depend on the particular facts and circumstances of each case as to whether the conclusion can be drawn or not.

13. It is noteworthy that in paragraph 11 of the judgment an argument was advanced to the effect that the real test is the existence of a common source of income in which two or more persons are interested as owner or otherwise and it is immaterial whether their shares are specific and definite or whether there is any scheme of management or not and that if the persons so interested come to

an arrangement, express or tacit, by which they divide the income at a point of time before it emanates from the source, then the association ceases; otherwise it continues to be an association. The aforesaid test suggested by the learned counsel for the appellant in that case was repelled by their Lordships by an observation that the same was neither conclusive nor determinative of the question before them.

14. The aforesaid tests have been subsequently followed in all later decisions; but the conclusion varied according to the facts and circumstances of each case.

15. In *Mohamed Noorullah, Representing The Estate of Late Khan Sahib Mohd. Oomer Sahib Vs. The Commissioner of Income Tax, Madras*, the facts were as follows : One Khan Sahib Mohamed Oomer Sahib who was carrying on the business of manufacture and sale of spade clover brand beedies died in December 17, 1942, leaving a minor son, Mohamed Noorullah (appellant), by his predeceased wife, a widow and four children by her who were all minors at the time of the death of Oomer Sahib. Noorullah through his next friend applied to sue in forma pauperis and during the pendency of those proceedings two advocates of the Madras High Court were appointed joint receivers of the properties of the deceased on March 17, 1943. This appointment was by consent of parties. On 10th of May, 1943, the widow filed a suit for partition and also applied for the continuance of the joint receivers. By an order dated May 25, 1943, the receivers were ordered to be continued and they carried on the business as before. The High Court found that none of the parties wanted to break the continuity of the business after the death of Oomer Sahib. The profits of the business were assessed to tax in the hands of the receivers as the income of an association of persons. The nature of the business was such that it could not be divided up and had to be carried on as one whole with a unity of control and all the parties desired to preserve and did preserve this unity.

16. On such facts their Lordships held that the income was the income of a business which was carried on as a single business by the consent of all parties and the mere fact that a suit was pending at the time for the administration of the estate of the deceased or for the separation of the shares of the co-heirs did not affect the incidence of taxation as the business was carried on as one business with unitary control and by the consent of the parties. The income was held to be assessable as an income of an association of persons.

17. In *State of Madras Vs. S. Subramania Iyer and Other*, a Division Bench of the Madras High Court examined this point. The facts in one of the cases referred to therein were as follows: In a family partition, agricultural lands were partitioned by metes and bounds and specific parcels of land were allotted to the individual shares of different members of the family. After partition, every one of the members, to whom the lands were allotted, individually entrusted his or her lands to one of themselves to be cultivated and managed on his or her behalf. The manager so entrusted with the management of the individual items, for his own convenience, cultivated all the lands as a common pannai, incurring

common expenditure for all the lands, using the same set of ploughs, common heads of oxen, maintaining a common cattle shed, engaging a common accountant, maniyam and thalayari, keeping a common hay-stack, etc. After cultivating and managing the lands, as aforesaid, and deducting the expenses, the manager divided the net income from all the lands proportionately and paid the appropriate Share to everyone of the individual holders of the lands. On these facts, the agricultural Income Tax authorities held that there was an "association of individuals" as between the several divided members of the family and made a single assessment of the entire income from the lands, treating the common manager as the principal officer of the association. The High Court held that, in the facts and circumstances of the case, there was no association of individuals.

18. The Tribunal held that the different members were tenants-in-common. This was repelled by the High Court. The main incidents of such tenancy is that all the co-sharers have a right to joint possession over the entire property and no one co-sharer can claim for himself any specific part, in common property, except by obtaining partition. In that case from the proved fact that Subramania Iyer's daughter's son of the first part, Subramania Iyer's son and son's son of the second part, and Subramania Iyer of the third part, held definite and localisable items in the properties, there was no unity of possession, and, therefore; no question of a tenancy-in-common arose in that case.

19. Section 2(i) of the Madras Agricultural Income Tax Act, 1955, is more or less similar to Section 2(i) of the Act. After a thorough analysis of the legal position, their Lordships observed thus :

"But there is no evidence that, while Subramania Iyer was thus managing the several parcels of the property, his grandsons by the daughter, on the one hand, and his son and son's son, on the other, entered into an arrangement inter se among themselves for the purpose of common exploitation of their distinct properties. The arrangement could very well be consistent with the case put forward by the assessee that what in fact happened was a separate individual arrangement, between the different owners of the land and Subramania Iyer, without the owners themselves coming to an agreement inter se regarding joint cultivation.....

If the factum of common cultivation by a single agent or manager of different parcels of land owned by different persons could by itself be held to be sufficient to constitute the owners into an association of persons, it would lead to undesirable results. It is a common experience in this part of the country, where the system of absentee landlords prevails, that different owners of agricultural lands give them for cultivation to one lessee or manager or agent. The lessee or manager or agent thereafter, for the purpose of his convenience, uses the same set of ploughs and bulls and common pannai servants for cultivation, and after collecting the produce, he apportions it among the different owners in proportion to the yield from their lands. There is no scope for construing such owners as

having formed an association solely by reason of their having engaged one and the same lessee, or manager or agent for the purpose of cultivation. The fact that, in the present case, the different owners of the land formed members of one family or acquired their properties by settlement or partition from one person could not by itself lead to any alteration to this principle. Even in such a case it is necessary to prove the essential requirements, viz., that as between themselves they had associated together and decided upon the common exploitation of their lands for common benefit and that it was only in pursuance of that agreement a single person was selected to carry out the common purpose of joint cultivation. This essential requirement is absent in this case."

20. This decision directly applies to the facts before us. For identical reasons it cannot be said that the wife and four sons of the assessee entered into an arrangement amongst themselves to have the management of their specific agricultural lands through the assessee. Evidence is wholly lacking that as amongst themselves they had decided upon the common exploitation of their land for common benefit and in pursuance of that agreement the assessee was selected to carry out the common purpose of joint cultivation.

21. On the aforesaid analysis it would have been not necessary to examine further decisions but to make the cycle complete we consider it appropriate to refer to all the relevant Supreme Court decisions directly touching the point.

22. In Commissioner of Agricultural Income Tax, Hyderabad Vs. Raja Ratan Gopal, the facts were as follows : On the death of the Raja, the Nizam of Hyderabad issued a firman declaring the four nephews of the Raja to be his heirs, each one of them being entitled to a one-fourth share in the estate. The estate was under the superintendence of the Nizam and with effect from May 1, 1950, it was handed over to the respondent, one of the nephews. During that period each of the heirs was being given one-fourth share of the income of the estate. The question was whether for the assessment year 1359-F., the heirs could be assessed as an association of individuals under the Hyderabad Agricultural Income Tax Act, 1950, in respect of the income from the estate. Their Lordships followed Commissioner of Income Tax v. Indira Balkrishna and Mohamed Noorullah v. Commissioner of Income Tax and held that the four nephews did not form a unit for the promotion of any joint enterprise to earn income, profits or gains and could not, therefore, be assessed as an association of individuals.

23. In Commissioner of Agricultural Income Tax, U.P. Vs. M.L. Bagla, etc., . the facts were as follows : A was the owner of an extensive area of land. By a deed dated January 21, 1941, B took a lease for agricultural purposes of 316.3 acres of land and by a separate deed dated April 20, 1942, C took a lease for agricultural purposes of 326.1 acres of land. B and C appointed a common manager for cultivation of the lands. The manager maintained a common account of expenditure and income and after deducting from the receipts expenditure for management of the lands, divided the profits between B and C according to the

respective areas of their lands. The income of the two lessees, B and C, was assessed to tax in their hands under the U.P. Agricultural Income Tax Act, 1948, as the income of an "association of individuals ". The manager was not sought to be assessed. On a reference, the High Court held: (i) that there was an "association of individuals ", (ii) there was a holding of land by an association of men; (iii) but the land was not held by the association as owner, trustee, receiver, manager, administrator or executor or in any other capacity recognised by law.

24. The Supreme Court affirmed the decision of the High Court on different grounds. Without deciding the question, their Lordships proceeded on the assumption that there was an association of individuals. They, however, held that the fact that the two lessees might constitute an association of individuals did not make them persons holding property. The relevant passage may be extracted :

" The only facts found by the Board are that the lessees had appointed a common manager, that common accounts were maintained, and that the net profits, after deducting from the receipts, expenditure for management of the lands under the two leases, were divided. In our view, the conclusion recorded by the High Court that the lessees as an association of individuals were holding land cannot be justified."

25. This decision also directly applies to the facts of the present case on the ground that even if the assessee with his wife and sons might constitute an association of individuals they cannot be said to be holding property. The definition of "person" in Section 2(11) of the U. P. Agricultural Income Tax Act which came up for consideration is in pari materia with the definition of " person " in the Act.

26. In view of their finding that the association of individuals was not holding land, their Lordships considered it unnecessary to examine the third point as to whether the land must be held in any of the capacities mentioned in the definition, namely, as owner, trustee receiver, manager, administrator or executor or in any other capacity recognised by law.

27. A similar view of law was taken in *N.V. Shanmugam and Co. Vs. The Commissioner of Income Tax, Madras*, . In that case a firm consisting of three partners and a minor admitted to the benefits of partnership, was carrying on business in the manufacture and sale of snuff. The deed of partnership provided that the firm could not be dissolved before August 31, 1955, but it was open to the partners to continue the partnership or enter into a fresh partnership. On September 17, 1956, one of the partners filed a suit in the civil court for the dissolution of the firm with effect from August 31, 1956, and for taking of accounts. He also applied for the appointment of a receiver. On September 21, 1956, the court appointed three receivers two of whom were partners and the third was an advocate. Since the business had been stopped from September 1

to 21 the court directed the receivers "to reopen and conduct the snuff business for the purpose of winding up " subject to the terms, inter alia, that the receivers could carry on the business normally, that the profits, if any, earned, will be treated as an asset of the firm subject to be divided between the parties in the manner set out in the partnership deed, and that the receivers will pay every month certain specified amounts to the partners. Some time later the court appointed a commissioner for taking accounts and for arranging the sale of the business as a going concern. The business yielded for the assessment years 1958-59 and 1959-60 profits of Rs. 93,739 and Rs. 1,54,393 respectively, and the question was whether the profits could be assessed in the hands of the receivers in the status of an " association of persons ".

28. Their Lordships held that the fact that there were three receivers did not make them an "association of persons" and that the business was carried on by the receivers on behalf of the erstwhile partners, with their consent. The control and management was in the hands of the receivers and that control and management was a unified one. The receivers had joined in a common purpose and they acted jointly. When they did so they acted on behalf of the persons who were the owners of the business. The receivers did not and could not have represented the individual interests of the various owners of the business. The profits were earned on behalf of the persons who had a common interest created by the order of the court and where on that account an "association of persons ". The existence of a specific or defined interest in the profits did not make the earning any the less by an " association of persons ". In law the erstwhile partners of the firm carried on the business through their representatives and the profits were earned from a business carried on by an association of partners. The earlier Supreme Court decisions were followed but, in the facts and circumstances of the case, a different conclusion was reached.

29. We would sum up our conclusions as follows :

(i) The wife and sons of the assessee did not associate together and decide upon the common exploitation of their lands for common benefit and the assessee was not selected by them to carry out the common purpose of joint cultivation in pursuance of an agreement amongst them. The assessee, his wife and sons do not constitute an "association of individuals ".

(ii) After the properties were divided by metes and bounds they do not hold property as decided in Commissioner of Agricultural Income Tax v. M. L. Bagla.

On the aforesaid analysis, the reframed question No. (i) is answered in the negative and No. (ii) in the positive.

30. In the result, the reference applications are allowed with costs. Consolidated hearing fee of Rs. 200.

Panda, J.

31. I agree.