

Sohan Pathak and Sons

Vs

Commissioner of Income-Tax, U. P.

(CJI M.Patanjali Sastri, B.K. Mukherjea, Vivian Bose, Ghulam Hasan, B. Jagannath Das JJ)

23.09.1953

JUDGMENT

PATANJALI SASTRI, C. J.-

This batch of appeals arises out of a reference made to the High Court at Allahabad by the Income-tax Appellate Tribunal, Allahabad Bench, under Section 21 of the Excess Profits Tax Act, hereinafter referred to as "the Act". The assessment challenged in these appeals relate to different chargeable accounting periods but the questions raised are the same in all the cases.

The appellants constitute a Hindu undivided family consisting of four branches representing the four sons of one Sohan Pathak deceased. The family carried on business at Banaras in money-lending and Banaras brocade under the name and style of Sohan Pathak & Sons. In the assessment relating to the chargeable accounting period ending on 8th October, 1943, the appellants alleged that there was a partial partition among the members of the family on 16th July, 1943, whereby the Banaras brocade business was divided in equal shares among the four branches and that, on the next day, the adult members of the family formed two partnerships admitting the minors to the benefits thereof, and thereafter carried on business in Banaras brocade under the respective firm names of Sohan Pathak Girdhar Pathak and G. M. Pathak & Co. The appellants claimed that the family as such ***** ceased to carry on business in Banaras brocade after 16th July, 1943, though they continued to remain joint in status and that the profits derive

"1. Whether in view of the fact that the partial partition had been accepted by the Income-tax Officer and the business was treated as having been discontinued for the purpose of assessment under the Income-tax Act, the same business could legally be treated as having continued unbroken in respect of the same chargeable accounting period for the purpose of Section 10A of the Excess Profits Tax Act read with Sections 4 and 5 of the same Act?

2. Whether in the circumstances of the case the effect of the partial partition of the Hindu undivided family on 16th July, 1943, and the formation of two different firms was a transaction within the meaning of Section 10A of the Excess Profits Tax Act?

3. Whether on the facts found by the Tribunal as stated in para 7 of the statement of the case, it was justified to draw the inference that the main purpose behind the partial partition was the avoidance or reduction of liability to excess profits tax?"

The Court answered these questions against the appellants but granted leave to appeal to this Court.

At a previous hearing of these appeals this Court was of opinion that the material facts ***** relating to the partial partition and the formation of the partnership and the findings of the Tribunal in regard thereto had not been clearly stated by the Tribunal in the original statement of the case. The Court said :-

"While it is true that in one place in the statement of the case the Tribunal speaks of the old family brocade business as continuing without a break after the partial partition, reference is made in another place to the assets of that business having been equally divided among the four branches forming the family. There is thus no clear finding as to how the partition of the brocade business was actually effected-whether by a division in shares, each branch holding its share in severalty and the business being carried on as before on a partnership basis, or whether by an actual distribution and allotment of specific assets and liabilities among the branches resulting in the disruption of that business."

The Court accordingly by its order of 12th January, 1953, called for a further and clearer statement of the facts on the points indicated.

The Tribunal has since submitted a supplementary statement of the case fully setting out the details of the partition arrangement and the constitution of the two firms by the members of the family after the partition. The statement reveals that the bulk of the capital as well as all "the stock-in-trade, the cash in hand, the cash in banks, all outstandings as on that date as also the sundry liabilities up to that day" were divided amongst each of the 14 coparceners each branch being allotted a four-anna share as stated in the schedule filed by the assessee and annexed to the statement, showing that the partition was by specific distribution of the assets and liabilities and not by a division of shares merely. With the assets and liabilities thus distributed, the two partnerships separately carried on brocade business similar to the one carried on by the joint family before the partial partition. The names of the partners of the two firms are mentioned and it appears that each firm consisted of members repre

On these facts it was contended by Mr. Pathak on behalf of the appellants that the finding of the Excess Profits Tax Officer that the main purpose of the partial partition and the formation of the new partnerships was to avoid or reduce the liability of the appellants to excess profits tax was not supported by any material on record. Secondly, assuming that there was material on which the officer could have come to such a finding, the old family business in Banaras brocade having been actually closed down, the officer had no power in assessing the profits of that business to make adjustments under Section 10A of the Act by adding the profits made by the two firms after 17th July, 1943. And lastly, and alternatively, there was undoubtedly a change in the persons carrying on the old business after 16th July, 1943, even if it were regarded as still continuing, the Hindu undivided family being a "person" ([Section 2 (17)]) distinct from the individuals composing it, and such business must, under Section 8 (1), b

The first contention can be disposed of in a few words. It appears from the facts found by the tax authorities as well as by the Appellate Tribunal that the partial partition and the formation of the partnerships were brought about at a time when the profits of the Banaras brocade business showed a definitely upper trend. If the main purpose of these transactions was not to evade liability to excess profits tax, the appellants were asked to explain what the purpose was, and they said that they

wanted to protect the interests of the minor members whose shares in the partnership assets would not be liable for the losses, if any, of the firms, while the entire family properties would be liable to any loss incurred in the family business. This explanation was not acceptable because such protection was not thought of when the family business was earning smaller profits and also because, according to the constitution of the partnerships, while each branch was given the same 4 annas interest, the responsibility for

The real and substantial question in the appeals is whether in view of the finding of fact that the old family business was wound up, its assets and liabilities having been actually distributed among the coparceners, and was no longer carried on by the joint family as such during the relevant chargeable accounting periods, Section 10A has any application to the case. Question No. 1, which is supposed to have raised this point, was not happily framed. As already stated, Mr. Pathak did not argue that the Income-tax Officer's finding as to the discontinuance of the old family business precluded the Excess Profits Tax Officer from considering the issue. It is now well settled that, for the purposes of the Act, a business is a unit of assessment and the charging Section 4 provides for the tax being levied in respect of the profits of "any business to which this Act applies." Section 5 specifies the business to which the Act applies, and they are businesses "of which any part of the profits made during the chargea

But, argues the learned Attorney-General, that result cannot follow by reason of Section 10A of the Act which runs as follows :-

"10A. Transactions designed to avoid or reduce liability to excess profits tax.-
(1) Where the Excess Profits Tax Officer is of the opinion that the main purpose for which any transaction or transactions was or were effected (whether before or after the passing of the excess profits tax (Second Amendment) Act, 1941) was the avoidance or reduction of liability to excess profits tax, he may, with the previous approval of the Inspecting Assistant Commissioner, make such adjustments as respects liability to excess profits tax as he considers appropriate so as to counteract the avoidance of reduction of liability to excess profits tax which would otherwise be effected by the transaction or transactions."

* * *

This provision, it is claimed, empowers the Excess Profits Tax Officer to ignore any transaction (s) the main purpose of which was the avoidance or reduction of liability to excess profits tax and to proceed on the footing that such transaction (s) had not been effected, and, in the present case, the partial partition as well as the subsequent formation of the partnerships having been found to be transactions the main purpose of which was the avoidance or reduction of liability to excess profits tax, the officer had authority to assess the appellant's old family business in Banaras brocade on the basis of its continued existence during the relevant chargeable accounting period. We are unable to accept this contention.

If, under Section 4 of the Act read with Section 5, the old joint family business cannot be regarded as one "to which this Act applies, " Section 10A, one of the provisions of the Act, can have no application to such business. The learned Attorney-General's argument that Section 4 and 5 must be read along with Section 10A in determining whether the Act applies to any particular business or not involves the fallacy that, in determining the initial issue whether the Act does or does not apply to a given business you have to look not merely at the provision which defines the scope and

application of the Act but other provisions also which presuppose its application. We are of opinion that the issue whether the Act applies or not to a particular business must be determined solely with reference to Section 5, and Section 10A must be construed as applicable only to cases where, the business being found to be one to which the Act applies, a transaction of the kind referred to in the section has been effected. The 1

Reference was made by the Attorney-General in the course of his argument to the proviso to Section 2 (5) which says that "all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act." We find it difficult to appreciate the bearing of this section on the point at issue. It is clear that the proviso can operate in respect of businesses to which the Act applies and not otherwise, and it carries the matter no further.

In the view we have expressed above, it is unnecessary to deal with the alternative contention based on Section 8 (1) of the Act.

We allow the appeals, set aside the answer made by the High Court to Question No. 1 and answer it as follows : In view of the finding of fact that the old joint family business in Banaras brocade was wound up and was no longer carried on by the joint family as such during the relevant chargeable accounting periods, the same business could not legally be treated as having been continued unbroken in respect of such periods for the purpose of Section 10A of the Excess Profits Tax Act ad with Section 4 and 5 of the same Act. The judgment of the High Court will stand in other respects. The appellants will have the costs of the appeals. Advocates' fee one set.

Appeals allowed.

ORDER OF REMAND

The Order of the Supreme Court (Patanjali Sastri, C. J., B. K. Mukherjea, N. Chandrasekhara Aiyar, Vivian Bose and Ghulam Hasan, JJ.) dated 12th January, 1953, calling upon the Tribunal to submit a clearer statement of the facts, was as follows :-

The Order of the Court was pronounced by

PATANJALI SASTRI, C. J.-

These are appeals from a judgment of the High Court at Allahabad on a reference under Section 21 of the Excess Profits Tax Act (hereinafter referred to as the Act). They relate to different chargeable accounting periods but the questions arising for determination are the same.

The assessee is a Hindu undivided family consisting of four branches representing the four sons of one Sohan Pathak. The family, besides owning considerable properties in Banaras, carried on business in money-lending and Banaras Brocade under the name and style of Messrs. Sohan Pathak & Sons. In the assessment to excess profits tax for the year 1944-45 the assessee claimed that there was a partial partition among the members of the family on 16th July, 1943, whereby the Banaras brocade business was divided among the members of the family in equal shares and that on the next day the members of the family formed two partnerships under the names of Sohan Pathak Girdhar Pathak and G. M. Pathak & Co. and carried on business in Banaras brocade though the family continued to remain joint in status. The assessee contended that the Banaras brocade business was not carried on by the family after the partial partition and that the Excess Profits Tax Officer could not tax the family as such under Section 10 A of the Act

"1. Whether in view of the fact that the partial partition had been accepted by the Income-tax Officer and the business was treated as having been discontinued for the purpose of assessment under the Income-tax Act, the same business could legally be treated as treated as having continued unbroken in respect of the same chargeable accounting period for the purpose of Section 10 A of the Excess Profits Tax Act read with Sections 4 and 5 of the same Act?

2. Whether in the circumstances of the case the effect of the partial partition of the Hindu undivided family on 16th July, 1943, and the formation of two different firms was a transaction within the meaning of Section 10 A of the Excess Profits Tax Act?

3. Whether on the facts found by the Tribunal as stated in para 7 of the statement of the case, it was justified to draw the inference that the main purpose behind the partial partition was the avoidance or reduction of liability to excess profits tax?

The High Court agreeing with the conclusions of the Tribunal answered the questions accordingly.

On behalf of the appellant assessee Mr. Pathak contended that the old family brocade business having ceased to be carried on in consequence of the partial partition whereby the assets and liabilities of the business were actually divided and distributed among the four branches of the family which subsequently formed the two partnerships, the Excess Profits Tax Officer had no power in assessing the profits of that business to make adjustments under Section 10 A by adding the profits made by the two firms after 17th July, 1943. In the alternative Mr. Pathak also urged that whether the family brocade business was in fact discontinued or not as a result of the partial partition, it must, by virtue of the provisions of Section 8 (1) of the Act, be deemed to have been discontinued, with the same result following.

The learned Attorney-General appearing for the Revenue objected to any argument being advanced on the footing that the family brocade business was actually disrupted by the partition and ceased to continue thereafter, as the Tribunal found on the facts that the continuity of the business was not broken as a result of the partial partition and the High Court also accepted that finding which, indeed, was not challenged before that Court. While it is true that in one place in the statement of the case the Tribunal speaks of the old family brocade business as continuing without a break after the partial partition, reference is made in another place to the assets of that business having been equally divided among the four branches forming the family. There is thus no clear finding as to how the partition of the brocade business was actually effected-whether by a division in shares, each branch holding its share in severalty and the business being carried on as before on a partnership basis, or whether by an actua

"We may mention here that we were put to a great deal of trouble by reason of the way the statement of case was drafted as well as by reason of the fact that the paper book contained nothing more than the statement of case. In paragraph 3 reference was made to paragraph 7 of the statement of case..... We are told that paragraph 7 was a mistake for paragraph 4, or paragraph 7 of the statement of case was a mistake for paragraph 7 of the order of the Appellate Tribunal. But neither in paragraph 7 of the order of the Appellate Tribunal nor in paragraph 4 of the statement of case are the findings of the Appellate Tribunal summarised on which we

are expected to give our answer. This unsatisfactory way of stating a case has always been a source of great inconvenience and we have more than once pointed out that it is not for this court either to record findings of fact or to collect the findings from the various documents on the income-tax file. The facts found by the Tribunal should be clearly set out in t

The criticism is well-founded. It is to be hoped that the Tribunal will, in future, bring to bear on this part of their work a better appreciation of their statutory duty than what had been disclosed in these proceedings.

As we are not satisfied that the statements in the case are sufficient to enable the Court to determine the question raised thereby, we refer the case back to the Tribunal to submit to us a clearer statement of the facts as found by them on the points indicated above within two months of the receipt of this Order.

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