Firm Bhagat Ram Mohanlal

Vs

Commissioner of Excess Profits Tax, Nagpur, and Another

Civil Appeal No. 139 of 1953

(CJI S. R. Dass, T. L. Venkatarama Ayyar, N. H. Bhagwati JJ)

15.02.1956

JUDGMENT

VENKATARAMA AYYAR, J. -

The firm of Bhagat Ram Mohanlal, which is the appellant before us, was constituted on August 23, 1940, and registered under section 26A of the Indian Income-tax Act. The partners of the firm, according to the registration certificate, were (1) Bhagat Ram Mohanlal, Hindu undivided family, (2) Richpal and (3) Gajadhar, their shares being respectively 8 annas, 4 annas and 4 annas. Mohanlal was the karta of the aforesaid joint family, which consisted of himself and his two brothers, Chhotelal and Bansilal, and he entered into the partnership as such karta. The firm carried on business at Drug in Madhya Pradesh as the agent of the Government for the purchase of foodgrains, and during the accounting years ending 1943 and 1944, it made profits on which it was assessed to excess profits tax respectively of Rs. 10,023-5-0 and Rs. 13,005-5-0. During the year 1944-1945 it sustained a loss of Rs. 15,771, and adding it to the sum of Rs. 37,800 which was the standard profits for the business, the Excess Profits Tax Officer determined the deficiency of profits for the year at Rs. 53,571. Section 7 of the Excess Profits Tax Act, hereinafter referred to as the Act, provides that when there is a deficiency of profits in any chargeable accounting period in any business, the profits of that business during the previous year shall be deemed to be reduced eo extanti, and that the relief necessary to give effect to the reduction shall be given by repayment of the tax paid or otherwise. Acting under this section, the Excess Profits Tax Officer passed an order on December 23, 1946, whereby after setting off the profits of the firm for the year ending 1943 and 1944 against the deficiency of profits during the year ending 1945, he directed a refund of Rs. 23,028-19-0 which had been paid by the appellant as excess profits tax for those years.

It should be mentioned that at the commencement of the assessment year 1944-45 there was a partition in the joint family of which Mohanlal was the erstwhile karta, as a result of which he and his brothers, Chhotelal andBansilal, became divided in status. Consequent on this disruption of the joint family, the appellant firm was reconstitued under an agreement dated October 17, 1944. Under this agreement, the partners of the firm were five in number, Richpal, Gajadhar, Mohanlal, Chhotelal and Bansilal, the two former being entitled to 5 annas share each and the latter three to 2 annas each. There was thus a reconstitution of the firm both with reference to the persons who were its partners and the shares which were allotted to them. Now, section 8(1) provides, omitting what is not material, that "as from the date of any change in the persons carrying on a business, the business shall be deemed to have been discontinued and a new business commenced." If this section applied, then no relief could have been granted to the appellant under section 7 of the Act.

The facts relating to the reconstitution of the firm having come to the knowledge of the Commissioner of Excess Profits Tax on examination of the record, he issued a notice on February 19, 1948, calling upon the appellant to show cause why the order of the Excess Profits Tax Officer dated December 23, 1946, should not be set aside on the ground of mistake. This notice was issued under section 20 of the Act, which confers on the Commissioner authority to rectify "any mistake apparent from the record." The mistake, according to the Commissioner, consisted in the Excess Profits Tax Officer failing "to take into consideration the change in the constitution of the firm which took place on October 17, 1944, consequent on the disruption of the joint Hindu family of one of the partners." The appellant appeared in response to the notice, and contended that on the facts the proceedings under section 20 were misconceived. The facts on which the proceedings were taken were not themselves disputed. By his order dated March 15, 1950, the Commissioner held that on the facts disclosed on the record, there was a change in the persons carrying on the business, and that the award of relief under section 7 by the Excess Profits Tax Officer was a mistake. He, however, maintained the order dated December 23, 1946, with reference to Richpal and Gajadhar, and set it aside only so far as "Bhagat Ram Mohanlal, Hindu undivided family" which was registered as partner on August 23, 1940, was concerned. He further directed that Rs. 11,514-5-0 which had been refunded to it should be collected.

The appellant thereupon moved the High Court of Nagpur under article 226 for a writ of certiorari quashing the order of the Commissioner dated March 15, 1950, and for a writ of prohibition restraining the authorities from collecting Rs. 11,514-5-0 under that order. By their judgment dated August 22, 1950, the learned Judges agreed with the Commissioner that by reason of the partition there was a change in persons who carried on the business, and that the order dated December 23, 1946, was contrary to section 8(1) of the Act. They also held that as the mistake appeared on the face of the record, the Commissioner had jurisdiction under section 20 of the Act to pass the order which he did. In the result, the writs were refused. Against this judgment, the appellant prefers this appeal by special leave.

Two questions have been raised for our determination in this appeal : (1) whether by reason of the partition of the joint family and the reconstitution of the firm under the deed dated October 17, 1944, there was a change in the persons carrying on business within section 8(1) of the Act; and (2) whether the order of the Commissioner dated March 15, 1950, is bad on the ground that there was no mistake apparent from the record, as required by section 20 of the Act. On the first question, the contention of the appellant is that when Mohanlal entered into partnership with Richpal and Gajadhar on August 23, 1940, as karta of the joint family, the other members of that family, Chhotelal and Bansilal, also became in substance partners of the firm, and that when they were mentioned eo nomine as partners in the deed dated October 17, 1944 the change was more formal than substantial, and that further the fact that there was a re-allotment of shares among the partners would not amount to a change in the persons who carried on the business. We agree that if all the five persons who were mentioned as partners in the deed of 1944 were partners of the old firm, there would be no change in the persons carrying on the business within section 8(1) of the Act by the mere fact of reshuffling of shares among them. But the real question that has to be decided is whether Chhotelal and Bansilal were partners in the firm, which was constituted on August 23, 1940. The appellant contends that they were, both according to the Hindu law and even apart from it, under the general law relating to partnerships.

It is not in dispute that Mohanlal was the Karta of the joint family, and that he entered into the partnership on August 23, 1940, as such karta. It is well settled that when the karta of a joint Hindu family enters into a partnership with strangers, the members of the family decided on not ipso facto

become partners in that firm. They have no right to take part in its management or to sue for its dissolution. The creditors of the firm would no doubt be entitled to proceed against the joint family assets including the shares of the non- partner coparceners for realisation of their debts. But the is because under the Hindu law, the karta has the right when properly carrying on business to pledge the credit of the joint family to the extent of its assets, and not because the junior members become partners in the business. In short, the liability of the latter arises by reason of their status as coparceners and not by reason of any contract of partnership by them. It would therefore follow that when Mohanlal became a partner of the firm on August 23, 1940, Chhotelal and Bansilal could not be held by reason of that fact alone, to have become partners therein.

It is argued that when that firm was constituted on August 23, 1940, the persons who entered into the contract of partnership were not merely Mohanlal as karta of the joint family but also Chhotelal and Bansilal in their individual capacity, and that therefore thy became partners under the ordinary partnership law. But the registration certificate of the firm while showing "Bhagat Ram Mohanlal, Hindu undivided family" as a partner makes no mention of either Chhotelal or Bansilal as partners. The contention that they also became in their individual capacity partners appears therefore to be an afterthought, and is opposed to the findings of the learned Judges of the High Court. This is sufficient, without more, to dispose of this contention. But even apart from this, it is difficult to visualise the situation which the appellant contends for, of a Hindu joint family entering into a partnership with strangers through its karta and the junior members of the family also becoming at the same time its partners in their personal capacity. In Lachhman Das v. Commissioner of Income-tax, it was held by the Judicial Committee that the karta of a joint Hindu family could enter into partnership with an individual member of the coparcenary quoad his separate property. It was also held by the Privy Council in Sundar Singh Majithia v. Commissioner of Income-tax, that there was nothing in the Income-tax Act to prohibit the members of a joint Hindu family from dividing some properties, while electing to retain their joint status, and carrying on business as partners in respect of those properties treating them as its capital. But in the present case, the basis of the partnership agreement of 1940 is that the family was joint and that Mohanlal was its karta and that he entered into the partnership as karta on behalf of the joint family. It is difficult to reconcile this position with that of Chhotelal and Bansilal being also partners in the firm in their individual capacity, which can only be in respect of their separate or divided property. If members of a coparcenary are to be regarded as having become partners in a firm with strangers, they would also become under the partnership law partners inter se, and it would cut at the very root of the notion of a joint undivided family to hold that with reference to coparcenary properties the members can at the same time be both coparceners and partners.

To get over this difficulty, it was suggested that all the three coparceners might be regarded as having entered into the contract of partnership as kartas of the joint family. But even if that could be done consistently with the principles of Hindu law, the very pleadings of the appellant are against such a supposition being made, affirming as they do that it was only Mohanlal that was the karta, not the others. The contention, therefore, that Chhotelal and Bansilal should be held to have become partners in the old firm under the agreement dated August 23, 1940, cannot be maintained.

The question whether there was a change in the persons carrying on the business may now be considered independently of the principles of the Hindu law or the general law of partnership and with special reference to the provisions of the Indian Excess Profits Tax Act. Section 2(17) of the Act defines a "person" as including a joint family. Applying this definition, who were the members of the firm when it was constituted on August 23, 1940 ? Richpal, Gajadhar and "Bhagat Ram Mohanlal, Hindu undivided family" consisting of three coparceners, Mohanlal, Chhotelal and

Bansilal, it being immaterial for the present purpose whether the karta of the family was only Mohanlal, or all the three of them. Then, the family became divided in 1944, and the result of it was that one of the three persons who were partners in the old firm, "Bhagat Ram Mohanlal" ceased to exist. On October 17, 1944, the two surviving partners of the old firm, Richpal and Gajadhar, entered into a contract of partnership with Mohanlal, Chhotelal and Bansilal. The erstwhile joint family of which they were members not being a partner in the new firm, it having ceased to exist by reason of the partition, there was, having regard to the definition in section 2(17) of the Act, a change in the persons who carried on the business. That was the view taken in Shanmugavel Nadar and Sons v. Commissioner of Income-tax, and we agree with it. Whether the question is considered on the principles of Hindu law or on the provisions of the Excess Profits Tax Act, there was a change in the personnel of the firm on October 17, 1944, and the matter falls within section 8(1) of the Act.

(2) The next question for determination is whether the order of the Commissioner dated March 15, 1950, is not justified by the provisions of section 20 of the Act for the reason that there was no mistake apparent from the record. The argument in support of this contention is that the record in the excess profits tax proceedings consisted in the present case of only the order dated December 23, 1946, that the facts on which the proceedings were taken under section 20, namely, the constitution of the firm on August 23, 1940, and the changes effected therein on October 17, 1944, were not recited therein, and that, in consequence, there were no materials on which an order could have been passed under that section. It is true that the order of the Excess Profits Tax Officer dated December 23, 1946, does not mention these facts, but they appear from the record of the Income-tax proceedings which included the registration certificates of the firm under section 26A of the Income-tax Act and the returns made by the firm disclosing the names of the partners and their respective shares. It is argued for the appellant that these records were inadmissible for the purpose of proceedings under section 20 of the Act, because the record referred to and contemplated by that section must be the record of the excess profits tax proceedings, and that the records of the income-tax proceedings could not be used under that section. We are unable to agree with this contention. Section 22(1) of the Act provides that :

> "Notwithstanding anything contained in the Indian Income-tax Act, 1922, all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act may be used for the purposes of this Act."

Section 22(2) similarly makes the record of the excess profits tax proceedings admissible in proceedings under the Indian Income-tax Act. The fact is that the proceedings under the two Acts are interdependent. Assessment under the Excess Profits Tax Act are, subject to the special provisions of that Act, made on the basis of the assessments made under the provisions of the Indian Income-tax Act. The same officers are in charge of the proceedings under both the enactments. The order of the Excess Profits Tax Officer dated December 23, 1946, refers in terms to the order dated September 28, 1946, passed in the proceedings for assessment of income-tax on the appellant, and the deficiency of profits is worked out on the basis of the loss of Rs. 15,771 as ascertained therein. We see no substance in this contention which must accordingly be rejected.

It was finally contended that the particulars recited in the registration certificate as to who were all partners of the firm were not conclusive, and that the appellant was not estopped from proving that even on August 23, 1940, the real partners were all the five persons mentioned in the deed dated October 17, 1944, and the decision in Shapurji Pallonji v. Commissioner of Income-tax, was relied

on in support of the position. It is undoubted law that the Income-tax authorities are not estopped by the fact of registration from going behind the certificate and deciding who the real partners of the firm are. But can the assessee whose statement is the basis on which the registration is made and who has possibly been benefited thereby deny its correctness, when the facts mentioned therein turn out to his disadvantage ? It is unnecessary to consider this point, in view of our decision that on the facts as pleaded by the appellant, Chhotelal and Bansilal could not be regarded as partners in the old firm. We may add that this contention does not appear to have been put forward before the Commissioner when notice was issued to the appellant under section 20 of the Act. If any such contention had been raised, it would have been open to the Commissioner to have taken action under section 19 of the Act.

In the result, the appeal fails, and is dismissed with costs.

</html