

Commissioner of Income-Tax, Punjab, Patiala

Vs

R. B. Jodha Mal Kuthiala

Civil Appeal No. 95 of 1964

(K. Subha Rao, J. C. Shah, S. M. Sikri JJ)

19.11.1965

JUDGMENT

SHAH, J. –

Hakam Mal Tani Mal a Hindu undivided family was assessed to tax under the Indian Income-tax Act, 1918, in respect of the income from business of the alia, in timber at Abdullapur. In 1934 there was the partition of the Hindu undivided family, and five members of that family entered into a partnership to carry on in the name of M/s Hakam Mal Tani Mal the business which was originally carried on by the undivided family. Accounts of this firm was settled till March 31, 1939, and the firm was dissolved. The timber business of the firm was taken over by two partners of the firm - Gajjan Mal and Jodha Mal, who entered into an agreement of partnership to carry on the business in the name of R. B. Jodha Mal Kuthiala - hereinafter called 'assessee'. An instrument of partnership recording the terms of the partnership and reciting the dissolution of the earlier partnership was executed on June 29, 1939. The assessee was dissolved in March, 1943.

In assessment proceeding for 1943-44 the assessment contented that the firm Messrs Hakam Mal Tani Mal was dissolved on March 31, 1939, before the Income-tax (Amendment) Act, 7 of 1939 had come into force and the first succession to the business after April 1, 1939, was in March 1943, when the assessee was dissolved and on that account the assessee was entitled to relief under s. 25(3), or in the alternative under s. 25(4) of the Indian Income-tax Act, 1922. The Income-tax Officer completed the assessment without giving the assessee the benefit of sub-ss. (3) or (4) of s. 25 of the Indian Income-tax Act, 1922. The Appellate Assistant Commissioner confirmed the order holding the succession to the family firm Messrs. Hakam Mal Tani Mal took place on April 1, 1939, and that firm alone was entitled to relief under s. 25(4) as to the second succession which took place on April 1, 1943, after Act 7 of 1939 was brought into force relief under the s. 25(4) was not admissible. The Income-tax Appellate Tribunal agreed with the view of the Appellate Assistant Commissioner. Thereafter directed by the High Court of Punjab under s. 66(2) of the Indian Income-tax Act, 1922, the Tribunal drew up a statement of the case and submitted the following question of law for the opinion of the High Court :

"Whether, in the facts and the circumstances of the case, the Tribunal is correct in law in holding that the assessee firm (R. B. Jodha Mal Kuthiala, Abdullapur Depot, Simla) was not entitled to the benefit provided in Section 25(3) or 25(4) of the Income-tax Act in relation to the assessment in question ?"

The High Court held that the assessee was carrying on business when Act 7 of 1939 was brought into operation and was on that account entitled to the benefit of s. 25(4) of the Act. With certificate

granted by the High Court, this appeal had been preferred.

Sub-section (4) was inserted in the s. 25 of the Indian Income tax Act, 1922, by the Income-tax (Amendment) Act 7 of 1939, It provides :

"Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), carrying on any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is succeeded in such capacity by another person, the charge not being a merely change "in the constitution of a partnership, no tax shall be payable by the first mentioned person in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession, and such person may further claim that the, income profits and gain of the previous year shall be deemed to have been the income, profit and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profit and gains of the said period, and, if an amount of tax has already been paid in respect of the income, profit and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be made of the difference :

Provided....."

There is no dispute that the Hindu undivided family of Hakam Mal Tani Mal was taxed under the Indian Income-tax Act, 1918, in respect of the timber business and the Messrs. Hakam Mal Tani Mal succeeded to that business in 1934. Accounts of Messrs. Hakam Mal Tani Mal were settled on March 31, 1939, and the business in timber which was carried on by that firm was taken over by the assessee. The departmental authorities held that the assessee was at the commencement of the Indian Income-tax (Amendment) Act 7 of 1939 not carrying on business, and that it succeeded to the business on April 1, 1943. The High Court disagreed with that view and opined that the assessee was at the commencement of the Act 7 of 1939 carrying on business, and the correctness of that opinion is challenged in the appeal.

The Indian Income-tax (Amendment) Act 7 of 1939 was brought into force on April 1, 1939. Section 5(3) of the General Clauses Act 10 of 1897 provides that unless the contrary is expressed, a central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement. Act 7 of 1939 must therefore be deemed to have come into operation at a point of time immediately on the expiration of March 31, 1939. The assessee contends, and the contention was found favour with the High Court, that the assessee was carrying on business at the commencement of the Indian Income-tax (Amendment) Act 7 of 1939. In support of the plea of the assessee reliance was placed only upon the instrument of partnership which was executed on the June 29, 1939. The question is dispute must, therefore be, determined on the true interpretation of the terms of the instrument of partnership. Insofar as it is material, the instrument recites :

"We, R. B. Jodha Mal Kuthiala, son of Lala Gopi Mal Sahib Sud of one part and Gajjan Mal Kuthiala son of Lala Hakam Mal Sahib Sud Kuthiala of the other part, residents of Haroli, District Hoshiarpur, and presently in Simla.

Whereas we, the deponents, were partners and shareholders in the firm of Lala Hakam Mal Tani Mal Simla and all the parties of the firm Lala Hakam Mal Tani Mal

understood the settled there account upto the 31st of March 1939, on the 31st of March, 1939, and all the parties have become separate from the 1st of April, 1939, and the business of the Abdullapur in the name of the firm Hakam Mal Tani Mal and R. B. Jodha Mal Kuthiala has fallen to our share to run which have by means or an oral agreement constituted a separate partnership styled R. B. Jodha Mal Kuthiala, Abdullapur from the 1st of April, 1939. Now the said oral (agreement) is being reduced to writing and we agree that :"

The instrument of partnership in the first instances recites that the account of Messrs. Lala Hakam Mal Tani Mal were settled on March 31, 1939, and upto March 31, 1939. It is then recited that all the partners had become separate from April 1, 1939. This is an ambiguous recital : it may mean that the dissolution had taken place on April 1, 1939, i.e., the business had continued for the whole or a part of the body on April 1, 1939, or it may mean that from the end of March 31, 1939 there had been separation. When a deeds recites that a transaction is effective from a particular date is has to be determined in the context in which that expression occurs, whether the date mentioned as to be excluded or to be included. The recitals in the instrument that the accounts were settled upto March 31, 1939, and that the partners were become separate, would imply that the firm of Messrs. Lala Hakam Mal Tani Mal did not do business after March 31, 1939. The date of the oral agreement constituting a separate partnership of the assessee is not set out in the instrument, and there is no other evidence in that behalf. But the assessee was constituted to carry on the timber business allotted to it at the time of dissolution from April 1, 1939. The timber business was an old and a running business and an intention to maintain continuity of the business and its transactions may reasonably be attributed to the assessee. It must therefore be held that the assessee commenced doing business immediately after the dissolution of the firm Messrs Hakam Mal Tani Mal become effective. In the absence of other evidence, it may be held that the business of Messrs. Hakam Mal Tani Mal continued till the midnight of March 31, 1939, and immediately thereafter the business of the assessee commenced.

The partnership therefore came into being at the precise point of time at which the Indian Income-tax (Amendment) Act 7 of 1939 came onto force and it could not be said that the assessee was not carrying on the business at the commencement of the Indian Income-tax (Amendment) Act 7 of 1939. The High Court was, therefore, in our judgment, right in holding that the assessee was entitled on the dissolution of that firm in March 1943 to the benefit of s. 25(4) of the Indian Income-tax Act.

The appeal fails and is dismissed with costs.

Appeal dismissed.

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