

M. M. Ipoh and Others

Vs

Commissioner of Income-Tax, Madras

M. Chettiappan

Vs

Income-Tax Officer, Karaikudi (Attorney-General for India by Notice)

Civil Appeals Nos. 1060 to 1064 of 1965 and 1103 to 1107 of 1966

(J. C. Shah, S. M. Sikri, V. Ramaswami I JJ)

26.07.1967

JUDGMENT

SHAH J. -

Meyyappa (I), Alagammal, his wife, and Chokalingam and Meyyappa (II) his two minor sons formed in 1940 a Hindu undivided family which traded in the name of "M.S.M.M.". The family carried on extensive business in money-lending, rubber plantations, and in real estates in the Federated States of Malaya, Burma and India.

The property of the family was divided between the three male members on February 22, 1940. To Meyyappa (I) were allotted at the partition "business of the family" at Rangoon and at Karaikudi in the Ramnad District and three rubber estates in the Federated States of Malaya and some houses. Even after the partition Meyyappa (I) continued to remain in management on behalf of himself and his two minor sons of all the properties and the business carried on by the family when it was joint, and the businesses were carried on in the name of "M.S.M.M."

The houses and the three rubber estates allotted exclusively to Meyyappa (I) were entered in the books of accounts opened in the name of "M.M. Ipoh" from the date of the division. In December, 1941, Alagammal gave birth to a son who was named Chettiappa. Meyyappa (I) and Chettiappa then constituted a Hindu coparcenary which owned the property and the business as allotted to Meyyappa (I) in the partition of 1940. On December 30, 1949, a deed of partition was executed between Meyyappa (I) and Chockalingam (who had by then attained the age of majority), in respect of the business carried on in the name of "M.S.M.M.". The businesses were thereafter carried on in partnership between Meyyappa (I) representing himself and the minor, Chettiappa, and Chockalingam. Meyyappa (II) was admitted to the benefits of that partnership. On April 13, 1950, partition was effected between Meyyappa (I) and the minor, Chettiappa, by posting entries in the books of account of M.M. Ipoh. It was agreed that the properties entered in the books of account of M.M. Ipoh shall be held by Meyyappa (I) and Chettiappa in two equal shares, and that the properties shall continue to remain in the management of the firm M.S.M.M. to the benefit of which Chettiappa was admitted. A deed of partition recording the terms of that partition was executed on May 28, 1953, by Meyyappa (I) and Alagammal acting as guardian of the minor, Chettiappa.

In 1951, Meyyappa (I) acceded to a demand made by Chockalingam on behalf of the M.S.M.M. firm for a half share in the "M.M. Ipoh properties". There was however no division of the properties by metes and bounds, and the management of those properties as a single unit continued to remain with the M.S.M.M. firm as before.

Meyyappa (I) was assessed under the Indian Income-tax Act, 1922, to tax, year after year, till the assessment year 1953-54, in respect of income from the "M.M. Ipoh properties" as a resident individual or as a karta of a Hindu undivided family. Later, the Income-tax Officer, Karaikudi, Ramnad District, issued notices under section 34(1) of the Income-tax Act for the assessment years 1951-52 to 1953-54 and under section 22(2) for the years 1954-55 to 1956-57 for assessment of the income of "an association of person styled M.M. Ipoh". The Income-tax Officer rejected the contentions raised by Meyyappa (I) that there was no association of persons of the nature described in the notices and brought to tax the income of the "M.M. Ipoh properties" as income received by an association of persons formed by Meyyappa (I) and Chettiappa in 1951-52, and by Meyyappa (I), the M.S.M.M. firm and Chettiappa in the years 1952-53 to 1955-57.

In appeals filed by M.M. Ipoh, the Appellate Assistant Commissioner confirmed the orders passed by the Income-tax Officer subject to the modification that the income from the houses be assessed under section 9(3) of the Income-tax Act in the hands of the members individually, and not as the collective income of the association of persons. The Appellate Tribunal confirmed the order of the Appellate Assistant Commissioner.

The Tribunal drew up a statement of the case and submitted, under section 66(1) of the Indian Income-tax Act, the following question for determination of the High Court of Madras :

"Whether the assessments on the 'association of persons' for the assessment years 1951-52 to 1956-57 are valid ?",

and declined to submit a statement of the case on five other questions, the first out of which alone is material in these appeals and need be set out :

"Whether, on the facts and in the circumstances of the case, there are any materials to hold the assessee as the principal officer of M.M. Ipoh assessed in the status of an association of persons ?"

At the hearing of the reference on the principal question, the High Court on the application of the assessee proceeded to deal apparently without any objection from the Commissioner with the additional question which had not been referred by the Tribunal.

The High Court held that the income brought to tax in the assessment years 1951-52 did not accrue to an association of persons, but the income in the years 1952-53 to 1956-57 accrued to an association of persons formed by Meyyappa (I) M.S.M.M. firm and the minor, Chettiappa. The High Court was of the view that Meyyappa (I) acted on behalf of Chettiappa in forming the association, that the affairs of the association were under the management of Meyyappa (I) during the account years relevant to the assessment years 1952-53 to 1956-57, that the association of persons was engaged in a joint enterprise for the purpose of producing income, that there being "unity of purpose and objectivity" the ultimate object of the association to earn income on behalf of the members of the association was "fully established". The High Court also held that by the notices for assessment of the income for the years 1952-53 to 1954-55, Meyyappa (I) did in fact have notice

of the intention of the Income-tax Officer to treat him as the principal officer of the association, and the proceedings for assessments and reassessment were properly commenced. The High Court accordingly by order dated April 3, 1961, answered the first question in favour of the assessee in respect of the assessment year 1951-52 and against the assessee for the subsequent five assessment years. The High Court recorded in answer to the second question that the Income- tax Officer was justified in holding Meyyappa (I) to be the principal office of "M.M. Ipoh".

On November 21, 1961, five petitions were moved in the High Court of Madras, under article 226 of the Constitution, for a writ of prohibition restraining the Income-tax Officer from enforcing the demands made by him in respect of the tax assessed against "the association of persons M.M. Ipoh". In support of the petitions it was urged that section 3 of the Indian Income-tax Act invested the Income- tax Officer with arbitrary and unguided power to assess to tax the income of an association of persons in the hands either of the association or of the persons constituting that association, and on the account section 3 offended article 14 of the Constitution, and was to that extent void. The High Court rejected the petitions. Against the orders passed by the High Court in the petitions for writs, Meyyappa (I) has appealed. Against the orders recorded by the High Court in references under section 66 the association of persons "M.M. Ipoh" has appealed.

Section 3 of the Income-tax Act invests the taxing authority with an option to assess to tax the income collectively of the association of persons, in the hands of the association or in separate shares in the hands of the members of the association. Counsel for the assessee contends that the Act sets out no principles and discloses no guidance to the Income-tax Officer in exercising the option : the Act therefore confers arbitrary and uncontrolled authority upon the Income-tax Officer to select either the association or its members for assessment to tax according to his fancy, and may on that account be discriminatively administered by subjecting persons similarly situate to varying rates of tax.

Counsel in support of that plea relied upon the judgment of this court in *Suraj Mall Mohta and Co. v. A.V. Visvanatha Sastri* [[1954] 26 I.T.R. 1; [1955] 1 S.C.R. 448.] but that case is of little assistance to the assessee. In *Suraj Mall Mohta's* case [[1954] 26 I.T.R. 1; [1955] 1 S.C.R. 448.] this court declared sub-section (4) of section 5 of the Taxation on Income (Investigation Commission) Act, 1947 (30 of 1947), and the procedure prescribed by that Act, in so far as it affected the persons proceeded against under that sub-section, invalid as a piece of discriminatory legislation and on that account offending against article 14 of the Constitution of India. The court held that sub-section (4) of section 5 of Act 30 of 1947, dealt with the same class of persons who fall within the ambit of section 34 of the Indian Income-tax Act, 1922, and whose income can be brought to tax by proceeding under that section. The result in the view of the court was that some assesseees who had evaded payment of tax by failing to disclose fully and truly all material facts necessary for assessment of tax could be dealt with under Act 30 of 1947, at the choice of the Commission, though they could also be proceeded with under section 34 of the Indian Income-tax Act. Persons discovered as evaders of income- tax during an investigation under section 5(1) of Act 30 of 1947, and persons discovered by the Income-tax Officer to have evaded payment of tax had in the view of the court "common properties and common characteristics", and since the procedure prescribed under Act 30 of 1947 was more drastic and deprived the assessee or valuable rights of appeal, second appeal and revision, section 5(4) of Act 30 of 1947 under which a person could be selected for discriminatory treatment at the choice of the Investigation Commission, was void as infringing the guarantee of equality before the law.

But here no question of application of a more drastic procedure, or deprivation of valuable rights of

appeal and revision, by the adoption of one of two alternative procedures arises. The procedure for assessment is the same whether the income is assessed in the hands of the association or the share of each member of the association is assessed separately. In *Shri Ram Krishna Dalmia v. Justice S.R. Tendolkar* [[1959] S.C.R. 279.] S.R. Das C.J. observed at page 299 :

"In determining the question of the validity or otherwise of..... a statute the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself."

In *Jyoti Pershad v. Administrator for the Union Territory of Delhi* [[1962] 2 S.C.R. 125.] this court observed that where the legislature lays down the policy and indicates the rule or line of action which should guide the authority, article 14 is not violated, unless the rules or the policy indicated lay down different criteria to be applied to persons or things similarly situate. It is not however essential for the legislature to comply with the guarantee of equal protection that the rules for the guidance should be laid down in express terms. Such guidance may be obtained from or afforded by, (a) the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well-known facts of which the court might take judicial notice or of which it is apprised by evidence before it in the form of affidavits, (b) or even from the policy and purpose of the enactment which may be gathered from other operative provisions applicable to analogous or comparable situations or generally from the object sought to be achieved by the enactment.

Section 3 of the Income-tax Act does not, it is true, expressly lay down any policy for the guidance of the Income-tax Officer in selecting the association or the members individually as entities in bringing to tax the income earned by the association. Guidance may still be gathered from the other provisions of the Act, its scheme, policy and purpose, and the surrounding circumstances which necessitated the legislation. In considering whether the policy or principles are disclosed, regard must be had to the scheme of the Act. Under the Act of 1922, the Income-tax Officer is required to issue a general notice calling upon all persons whose total income during the previous year exceeds the minimum not chargeable to tax to submit a return of income. The Income-tax Officer may also serve an individual notice requiring a person whose income in the opinion of the Income-tax Officer is liable to tax to submit a return of income. Primarily, the return of income would be made by an association, where the association has earned income, and the Income-tax Officer would also call upon the association to submit a return of its income, and would ordinarily proceed to assess tax on the return so made. But for diverse reasons, assessment of the income of the association may not be possible or such assessment may lead to evasion of tax. It would be open to the Income-tax Officer then to assess the individual members on the shares received by them. The duty of the Income-tax Officer is to administer the provisions of the Act in the interests of public revenue, and to prevent evasion or escapement of tax legitimately due to the State. Though an executive officer engaged in the administration of the Act, the function of the Income-tax Officer is fundamentally

quasi-judicial. The Income-tax Officer's decision of bringing to tax either the income of the association collectively or the shares of the members of the association separately is not final : it is subject to appeal to the Appellate Assistant Commissioner and to the Tribunal. In *Commissioner of Income-tax v. Kanpur Coal Syndicate* [[1964] 53 I.T.R. 225.], it was held by this court that the Appellate Tribunal has ample power under section 33(4) to set aside an assessment made on an association of persons and to direct the Income- tax Officer to assess the members individually or to direct amendment of the assessment already made on the members. Exercise of this power is from its very nature contemplated to be governed not by considerations arbitrary but judicial. The nature of the authority exercised by the Income-tax Officer in a proceeding to assess to tax income, and his duty to prevent evasion or escapement of liability to pay tax legitimately due to the State, constitute, in our judgment, adequate enunciation of principles and policy for the guidance of the Income-tax Officer.

Counsel for the appellants contended that Section 23A of the Income- tax Act, as it was incorporated by Act 21 of 1930, laid down certain principles for the guidance of the Income-tax Officer in exercising his option, but since the legislature, by Act 7 of 1939, repealed that provision, the discretion vested in the Income-tax Officer to select either the income of the association or the individual members is unfettered. To appreciate the argument it is necessary to set out in some detail the legislative history. Under the Indian Income-tax Act, 1922, as originally enacted, an association of persons or individuals was not an entity, the income whereof was charged to tax. By Act 11 of 1924, "association of individuals" was added in section 3 as an entity of which the income is charged to tax under the Income-tax Act, but the Act as it stood amended contained no statutory safeguard against double taxation of income earned by an association of individuals. Section 14(1) of the Act (as it then stood) which aimed at avoiding double taxation of the same income was applicable to the income of a Hindu undivided family, to the income of a company distributed as dividends to shareholders, and to the income of a firm profits whereof were assessed in its hands. The legislature amended section 14 of the Act by Act 22 of 1930, and remedied the defect by modifying clause (c) of sub-section (2) of section 14 of the Act and provided that "any sum which he (the assessee) received as his share of the profits or gains of an association of individuals, other than a Hindu undivided family, company or firm, where such profits or gains have been assessed to income-tax", shall not be subject to tax. The legislature also enacted Act 21 of 1930, which made several modifications in the Income-tax Act. It provided for registration of firms and added section 23A which provided :

"(1) Where the Income-tax Officer is satisfied that any firm or other association of individuals carrying on any business, other than a Hindu undivided family or a company, is under the control of one member thereof, and that such firm or association has been formed or is being used for the purpose of evading or reducing the liability to tax of any member thereof, he may, with the previous approval of the Assistant Commissioner, pass an order that the sum payable as income- tax by the firm or association shall not be determined, and thereupon the share of each member in the profits and gains of the firm or association shall be included in his total income for the purpose of his assessment thereon."

A similar provision with regard to companies was also incorporated in sub-section (2) of section 23A. Broadly speaking, by the amended provision discretion was given to the Income-tax Officer to treat as separate entities for the purpose of taxation the individuals who formed any association carrying on business, of which only one member was competent to bind the association by his acts, and to give to the Income-tax Officer discretion to treat the members of a company as separate

entities in certain conditions. But section 23A(1) as enacted by Act 21 of 1930 applied only to firms and association of individuals if the management was in the hands of one person; it did not in terms apply to cases where the management was in the hands of more persons than one, even if it was formed for the purpose of evading or reducing the liability to tax of any member thereof. By Act 7 of 1939 the expression "association of persons" was substituted for "association of individuals", section 23A(1) was deleted and sub-section (5) was added to section 23. Sub-section (5) of section 23 prescribed the mechanism for bringing to tax the income of a firm registered or unregistered. If the firm was registered, the share of each partner was to be separately taken into account together with his other income and brought to tax. If it was an unregistered firm, the income of the firm itself was brought to tax, unless the Income-tax Officer was of the opinion that the correct amount of the tax including supertax, if any, payable by the partners under the procedure applicable to a registered firm would be greater than the aggregate amount payable by the firm and the partners if the firm is assessed as an unregistered firm. In respect of unregistered firms a practical scheme, which aimed at preventing evasion of tax, was devised by the enactment of section 23(5)(b).

After the repeal of section 23A(1) as introduced by Act 21 of 1930 no similar provision conferring discretion upon the Income-tax Officer similar to the discretion which is prescribed by the terms of section 23(5)(b) in respect of the income of the unregistered firms was expressly enacted. But it cannot be inferred that it was intended to make the discretion of the Income-tax Officer qua the assessment to tax the income of an association of persons in the hands of individual members collectively, arbitrary or unfettered. By the repeal of section 23A(1) the essential nature of the power of an Income-tax Officer was not altered. He remained as before under a duty to administer the Act for the benefit of public revenue, but his powers were to be exercised judicially and so as to avoid double taxation of the same income.

This resume of the legislative provisions discloses that the relevant provisions were made with a view to ensure against evasion of tax, while ensuring that the same income shall not be charged more than once.

The policy and the purpose of the Act may be gathered from "other operative provisions applicable to analogous or comparable situations" (Jyoti Prasad's case [[1962] 2 S.C.R. 125.] at page 139) and there can be no doubt that an unregistered firm and an association of persons are closely analogous. If the income is earned by an association of persons, normally a return would be made or asked for under section 22 from the association, and the income of the association would be brought to tax. If it appears to the Income-tax Officer that by taxing the association of persons evasion of tax or escapement of tax liability may result, he is given a discretion to tax the individual members; but the discretion is to be exercised judicially and not arbitrarily and its exercise is capable of rectification by superior authorities exercising judicial functions.

It cannot, therefore, be said that there is, by investing authority in the Income-tax Officer to select the association of persons or individual members thereof for the purpose of assessing of tax the income of the association, denial of equality before the law between persons similarly situate within the meaning of article 14 of the Constitution so as to render section 3 in so far as it confers power upon the Income-tax Officer to select either the association of persons or the members thereof for assessment to tax in respect of the income of the association void. Appeals Nos. 1103-1107 of 1966 must therefore fail.

In the group of appeals which arise out of the order passed by the High Court in exercise of its advisory jurisdiction under the Income- tax Act, counsel for the assessee urged that there was no

association in fact, that Chettiappa being at all material times a minor there could in law be no association of which the income could be brought to tax and that in any event there was no evidence to prove that any one on behalf of Chettiappa had assented to the formation of the association.

The expression "person" is defined in section 2(9) of the Indian Income-tax Act, 1922, as including "a Hindu undivided family and a local authority". The definition is inclusive and resort may appropriately be had to the General Clauses Act to ascertain and meaning of the expression "person". Clause (42) of section 3 of the General Clauses Act defines a "person" as inclusive of any company, association or body of individuals whether incorporated or not, and that inclusive definition in the General Clauses Act would also apply under the Income-tax Act. A firm is therefore a "person" within the meaning of the Income-tax Act, and a firm and an individual or group of individuals may form an association of persons within the meaning of section 3 of the Indian Income-tax Act.

There is nothing in the Act which indicates that a minor cannot become a member of an association of persons for the purposes of the Act. In *Commissioner of Income-tax v. Laxmidas Devidas* [[1937] 5 I.T.R. 584.] it was held that the fact that one of the individuals was a minor did not affect the existence of the association if, in point of fact, the assessee had associated together for the purpose of gain. In *Commissioner of Income-tax v. Indira Balkrishna* [[1960] 39 I.T.R. 546, 551; [1960] 3 S.C.R. 513.] it was held "that the word 'associate' means,..... 'to join in common purpose, or to join in an action'. Therefore, 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, profits or gains."

In the case before us, there is abundant material to prove that Meyyappa (I), his minor son, Chettiappa, and M.S.M.M. firm formed an association in the years 1952-53 to 1956-57. To review the relevant facts the "M.M. Ipoh properties" which were allotted to Meyyappa (I) at the partition in 1940 became on the birth of Chettiappa properties of a coparcenary, and it is common ground that Chettiappa acquired a share in the income which Meyyappa (I) received from the M.S.M.M. firm; the "M.M. Ipoh properties" were used in a trading venture and were managed by the M.S.M.M. firm : the selling agency was common between M.S.M.M. firm and "M.M. Ipoh"; the stocks and expenditure of the M.M. Ipoh firm were not separately determined; and common books of account were maintained for the management of the M.M. Ipoh properties and the M.S.M.M. firm dealings.

Alagammal - mother of Chettiappa - had executed the deed of partition dated April 13, 1950, as the guardian of Chettiappa. By the deed she acknowledged having received the share of Chettiappa in the property. The Tribunal found that the management was entrusted to the M.S.M.M. firm on behalf of "M.M. Ipoh", and that in entrusting the management Alagammal must have given her consent. In paragraph 11 of the statement of the case, the Tribunal observed :

"The integrity and management of the estates have continued undisturbed right throughout the period, only the holding thereof by various members having changed from time to time. The volition necessary is only all too apparent; the entrustment of the management to M.S.M.M. firm for a proper management implies a prior agreement to which the guardian of the minor must have given her consent too."

These observations relate to the entire period of six years 1951-52 to 1956-57. In the view of the High Court, division of the status of joint Hindu family on April 13, 1950, between Meyyappa (I) and Chettiappa was brought about not as a result of any mutual agreement between the coparceners,

but by Meyyappa (I) in exercise of his power to do so under the Hindu law, and "solely from the feature that the share of the minor son, Chettiappa, was not separated by metes and bounds, a conclusion could not be reached that Meyyappa (1) and Chettiappa continued as members of an association of persons. The minor had no volition of his own to express, and the fact that at the partition the minor was represented for purposes of form and nothing more by his father, cannot be taken to mean that the mother as his guardian exercised any volition on behalf of the minor." In the view of the High Court "to form an association of persons no agreement enforceable at law was necessary"; but that "is not the same thing as to say that an agreement - express or implied - may be inferred, where none can possibly exist." The High Court rejected the contention raised on behalf of the revenue that the father must have acted as the guardian of the minor in forming the association in 1951-52. The High Court however held that in the year 1952-53 and subsequent years and association of persons was formed and Meyyappa (I) joined that association on behalf of himself and Chettiappa. Counsel for the assessee contends that once the High Court reached the conclusion that in the year 1951-52 there was no association of persons, the conclusion that an association of persons existed in the subsequent years could not be reached in the absence of positive evidence to show that after the close of the year 1951-52 an association of persons was actually formed.

We are not called upon in these appeals to consider whether the learned judges of the High Court were right in the view which they have taken in so far as it relates to the assessment year 1951-52. We are only called upon to consider whether the conclusion of the Tribunal that in fact an association of persons existed in the year 1952-53 and subsequent years was based on any evidence. In our judgment the facts proved clearly show that there was such an association in the years 1952-53 and the subsequent years. Pursuant to the three partitions no division by metes and bounds of the shares of the owners was made, only the shares in the income of the owners were entered in the books of account. There was common management of the properties, and there was even a common selling agency. Alagammal had acted as a guardian of Chettiappa in the deed of partition. The Tribunal inferred that Alagammal must have assented to the formation of the association on behalf of Chettiappa and in the various transactions relating to the entrustment of management. It is true that this finding related to the year 1951-52 as well, and the High Court has disagreed with that finding in so far as it related to the year 1951-52. But on that account the finding of the Tribunal in respect of the subsequent years cannot be discarded. The association which has earned income in the years 1952-53 and thereafter is an association different from the association in 1951-52. In 1951, Chockalingam had demanded a share in the "properties of M.M. Ipoh" and he was given a half share. The shares of Meyyappa (I) and Chettiappa in the properties were reduced, and thereafter ownership in the "properties of M.M. Ipoh" and its activities vested in an association formed by Meyyappa (1), the M.S.M.M. firm and Chettiappa. It is common ground that "M.M. Ipoh" was a trading venture and its management was entrusted in the relevant years to the M.S.M.M. firm.

The doctrine of res judicata does not apply so as to make a decision on a question of fact or law in a proceeding for assessment in one year binding in another year. The assessment and the facts found are conclusive only in the year of assessment : the findings on questions of fact may be good and cogent evidence in subsequent years, when the same question falls to be determined in another year, but they are not binding and conclusive. The finding recorded by the High Court that in the year 1951-52 there was no association of persons constituted by Meyyappa (I) and Chettiappa for earning income from M.M. Ipoh properties will not in the present case have any effect on the finding of the Tribunal that in the year 1952-53 and the subsequent years such an association existed. It must again be remembered that the association of persons which traded in 1952-53 and the subsequent years was an association different from the association in 1951-52. After the reduction in the shares of Meyyappa (I) and Chettiappa in the "M.M. Ipoh properties" a fresh arrangement for entrustment of

the management of the properties to the M.S.M.M. firm was necessary and according to the findings of the Tribunal, Alagammal assented on behalf of Chettiappa to that arrangement.

Counsel for the assessee contended that the finding that Alagammal assented on behalf of Chettiappa to form an association was not supported by any evidence on the record. But from readjustment of the shares in the "M.M. Ipoh properties," admission of Chettiappa to the benefits of M.S.M.M. firm, and the management of "M.M. Ipoh properties" continuing to remain with the M.S.M.M. firm, with a common selling agency, and the execution of the deed of partition by Alagammal, an inference could reasonably be made that a person purporting to act as guardian of Chettiappa concurred in forming the association and that the person so concurring was Alagammal. The finding recorded by the Tribunal is one of fact, and was not liable to be questioned before the High Court. It is also pertinent to note that the finding that Alagammal acted on behalf of Chettiappa in forming the association for the years 1952-53 was never challenged and was not sought to be made the subject of a question in an application to the Tribunal under section 66(1) and no question in that behalf was referred to the High Court. It is true that the High Court was of the view that in the years 1952-53 to 1956-57 Meyyappa (I) acted on behalf of Chettiappa in forming the association. But the High Court in a reference under section 66 of the Income-tax Act was incompetent to disturb what was essentially a finding of fact recorded by the Tribunal and arrive at another finding.

On the other question which has been answered by the High Court the Tribunal declined to submit a statement of the case, because in their view it did not arise out of their order. They pointed out that a ground in support thereof was taken in the memorandum of appeal but as it was not pressed before the Appellate Assistant Commissioner, they did not deal with it. The High Court observed that the Tribunal was bound to deal with the question irrespective of whether it was agitated before the Appellate Assistant Commissioner. Even assuming that the second question was properly raised in the form and in the manner in which it was raised by the High Court, the answer to the question must, on the facts found, be against the assessee. Counsel for the assessee contended that there were no materials on which the Tribunal could hold that Meyyappa (I) was the principal officer of "M.M. Ipoh", and since the Income-tax Officer had made no enquiry before issuing the notice treating Meyyappa (I) as the principal officer of "M.M. Ipoh", Meyyappa (I) could not be so treated for the purpose of the proceedings for assessment. Under section 22(2), the Income-tax Officer may, if in his opinion the income of a person is liable to income-tax, serve a notice upon him requiring him to furnish a return in the prescribed form. The notice under section 34 for reassessment must also contain all or any of the requirements which may be included in a notice under sub-section (2) of section 22. Such a notice may be served under section 63(2) of the Income-tax Act upon the principal officer of an association of persons. Under the definition in section 2(12) a "principal officer" - omitting parts not material - "used with reference to any association means, - (a) (b) any person connected with the authority, company, body, or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof." The Income-tax Officer Karaikudi assessed the income of "the association M.M. Ipoh by its principal officer M.S.M.M. Meyyappa Chettiyar." No objection was ever raised before the Income-tax Officer about the regularity of the proceedings and the Income-tax Officer found that Meyyappa (I) was the principal officer of the association. Even before the Appellate Assistant Commissioner it was not argued that Meyyappa (I) was not the principal officer. For the first time that ground was taken before the Tribunal. The notices served on Meyyappa (I) are not printed in the record prepared for use in this court. In the orders of assessment for the year 1952-53 and the subsequent years it is recorded that action was taken to bring to tax the income of "M.M. Ipoh", and in response to the notices the principal officer Meyyappa (I) had filed returns. The assessee submitted an application

under section 66(2) during the course of the hearing before the High Court of the question referred by the Tribunal. The High Court granted that application and without calling for a formal statement of the case of the question sought to be raised, heard the parties. It may be reasonably assumed that the assessee was prepared to argue the case on the footing that the statements in the orders of the Income-tax Officer were correct. In the circumstances it must be held that the Income-tax Officer did serve a notice of his intention to treat a person connected with the association as the principal officer thereof. The Income-tax Officer assessed the income of the association as represented by Meyyappa (I) its principal officer. There is, in our judgment, nothing in the Act which supports the contention of counsel for the assessee that before proceedings in assessment can commence against an association of persons a notice must be issued and an order passed after giving opportunity to the person proposed to be treated as the principal officer, to show cause why he should not be so treated. It is open to the Income-tax Officer to serve a notice on a person who is intended to be treated as the principal officer. The person so served may object that he is not the principal officer or that the association is not properly formed. The Income-tax Officer will then consider whether the person served is the principal officer and whether he has some connection or concern with the income sought to be assessed. There is in the Income-tax Act an analogous provision in section 43 of the Act which authorises the Income-tax Officer to treat a person as a statutory agent of the non-resident for the purpose of assessing him to tax, the income received by the non-resident. It was held by the Judicial Committee in *Commissioner of Income-tax v. Nawal Kishore Kharaiti Lal* [[1938] 6 I.T.R. 61 (P.C.)], that it is not necessary for the validity of a notice calling for a return of the income under section 23(2) served on a person as agent of a non-resident under section 43, that it should have been preceded not only by the notice of intimation prescribed by section 43, but also by an order declaring the person to be the agent of the non-resident or treating him as such. The Income-tax Officer may postpone any final determination of the dispute until the time comes to make an assessment under section 23 of the Act. In our judgment, the same principle applies to a case in which in the assessment of the income of an association of persons, a person is to be treated as a principal officer of that association. If the person described as a principal officer of an association is duly served with a notice under section 23(2) in the manner prescribed by section 63(2), an adjudication of his status as the principal officer before assessment proceedings may take place is not obligatory. The order assessing the association containing a finding that the person served is the principal officer is sufficient compliance with the requirements of the statute. It is open to the association to challenge the finding of the Income-tax Officer in appeal before the Appellate Assistant Commissioner and in further appeal to the Appellate Tribunal. But the order declaring him as the principal officer of an association of persons will not be deemed to be void merely because the proceeding for assessment was not preceded by a declaration of the status of the person treated as the principal officer.

The Appeals Nos. 1060-1064 of 1965, must also fail and are dismissed with costs. There will be one hearing fee in Appeals Nos. 1103-1107 of 1966 and one hearing fee in Appeals Nos. 1060-1064 of 1965.

Appeals dismissed.

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