

The Commissioner of Income Tax, Assam and Others

Vs

Himangshu Sekhar Chakravarty and Others

Civil Appeals Nos. 1960-1965 of 1969

(K. S. Hegde, P. Jagmohan Reddy, I. D. Dua JJ)

26.09.1972

JUDGMENT

HEGDE, J. -

1. This is an appeal by special leave. It is directed against the decision of the High Court of Assam and Nagaland rejecting the Commissioner's application under Section 66 (2) of the Indian Income Tax Act, 1922.
2. The Tribunal allowed the appeal of the assessee and set aside the assessments made on him on the ground that the assessee, which is an association of persons, had not made any illegal profits, but the illegal profits were made two of the three members of that association. Aggrieved by that decision, the Commissioner requested the Tribunal to submit to the High Court for its opinion three questions of law, namely :

"(1) Whether on the facts and in the circumstances of the case the assessment dated October 22, 1962, for the year 1945-46 was validly made on consequence of or to give effect to any finding or direction contained in Income Tax Appellate Tribunal's orders dated November 10, 1960 under Section 34 (3) proviso 2 of the Income Tax Act, 1922 and as such the assessment in question was not barred by limitation ?

(2) Whether on the facts and in the circumstance of the case the assessment dated October 22, 1962 was rightly made under the provisions of Section 44 of the Indian Income Tax Act, 1922 ?

(3) Whether on the facts and in circumstances of the case there was any evidence before the Income Tax Appellate Tribunal To justify its conclusion that the firm S. V. F. G. Syndicate made no profit other than those according to its accounts in the procurement and supply of paddy and rice during the relevant period ?

The Tribunal opined that though questions Nos. (1) and (2) raised questions of law arising from the order of the Tribunal those questions had become academic in view of its finding that the assessee had not made any profits which in view of its finding that the assessee had not made any profits which according to it is a finding or fact. The High Court agreed with that conclusion. If no case is made out to refer question No. (3) then questions Nos. (1) and (2) immediately become academic as opined by the Tribunal. Therefore the only point for consideration is whether a case is made out to refer question No. (3). Hence we have to see whether the finding of the Tribunal that the assessee, which is an association of persons, did not make profits in the relevant previous years, is supported

by evidence ?

3. On this question the Tribunal's findings are found at paragraph 12 of its order. The findings are :

The answer to these two preliminary objections raised on behalf of the assessee would have been sufficient to dispose of the appeal. We have, however, thought it proper to see for ourselves as to whether even on the merits the assessment could be sustained. Now in order to appreciate the question relating to the merits of the addition, it will be necessary to assume that the assessment has been made not on the partners separately but on the firm itself. Now, as we have stated above, this firm consisted of three partners. There was an agreement entered into by them with Government of Assam, under which they were appointed as agent for procuring paddy and rice and supplying it to the Government. It has got to be taken as an accepted fact in view of Shome Commission's Report that there was good deal of bungling in the procurement of paddy and rice. We have already stated that the Commission known by the name of "Shome Commission" was appointed to enquire into the malpractices in the procurement or supply of those commodities, came to the conclusion that the procurer purchased paddy from the agriculturists at a rate lower than what was shown in their vouchers but all the same charged the Government at the rates disclosed in those vouchers. The Commissioner calculated that the purchase of paddy and rice was charged at rates inflated by Rs. 2/8/- and Rs. 1/8/- per maund respectively and that the total illegal profits earned by the procurers came to a sum of Rs. 45,35,694. The question, with which we are concerned, is not that there has been a profit made by some persons; but the question is whether in making such illegal profits the firm, namely, the Surma Vally Foodgrain Syndicate, also participated. Now as the evidence on the record stands in the beginning this Syndicate purchased 5036 mds. of paddy and rice from the cultivators directly. Immediately thereafter, the Government required that procurement of paddy by the Syndicate must not be made directly from the agriculturists but must be made through licensed dealers. There after whatever paddy or rice was procured or supplied by the Syndicate, was obtained from the licensed dealers. There has been no complaint of profiteering by persons who procured rice and paddy from the licensed dealers. Such complaints were only in respect of procurement made from the agriculturists. Now from the Shome Commission's Report it is apparent that the assessee procured major portion of the rice and paddy from the firm of H. S. Chakravarty, and the firm of Khan Bahadur Abdul Karim Chowdhury, and the firm of Khan Bahadur Abdul Karim Chowdhury, which were licensed dealers. It may be stated that these two persons, Mr. H. S. Chakravarty and Khan Bahadur Abdul Karim Chowdhury, although being partners of the assessee Syndicate had established their separate firms also and had become licensed dealers. The assessee got all its procurement through those Firms. Naturally, therefore the profiteering in the procurement and supply of paddy and rice cannot be attributed to the assessee Syndicate. The profiteering that has been made could only go to the person who procure directly from the agriculturists. As a matter of fact, there is ample evidence on record, which shows that it was not the Syndicate which made the profits, but it is the partners which have been found by the Income-tax Officer in the account books of the separate firms constituted by the partners of the Syndicate, along with others. We are, therefore, clear in our mind that although illegal profits had been earned in the procurement and supply of paddy and rice to the Government of Assam, the assessee's share has been nil. The firm, therefore, cannot be assessed in respect of the profits earned by someone else.

4. From what has been stated above, it is clear that the findings reached by the Tribunal -a finding of fact -is fully supported by the evidence on record. Whether that finding is correct or not is not for the High Court or this Court, to decide.

5. In view of the above conclusions, we see no merit in these appeals. They are accordingly

dismissed with costs. One hearing fee.

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