CALCUTTA HIGH COURT

Sri Mahaliram Santhalia

Vs.

Commissioner of Income-tax

Income Tax Ref. No. 116 of 1954

(P. Chakravartti, C.J. and B.K. Guha, J.)

06.08.1957

JUDGMENT

P. Chakravaktti, C.J.

1. On 16-5-1947, an application was made on behalf of a firm called the Benares Steel Rolling Mills for its registration in connection with its assessment for the income-tax year 1944-45. The Applicants were four persons, one of whom was Mahaliram Santhalia and each was said to own a one fourth share in the firm. In support of the application a deed of partnership, executed on 24-12-1943, was produced. The Income-tax Officer allowed the application and proceeded to assess the firm as a registered firm. Similar assessments of the firm were made for the next three years, namely, 1945-46, 1946-47 and 1947-48.

2. In the return for his personal assessment in respect of none of the aforesaid years did Mahaliram Santhalia include his share of the income from the firm of Benares Steel Rolling Mills. Upon the Income-tax Officer detecting that income and wanting to include it in his assessment, he put forward the contention that he was a partner of the firm of Benares Steel Rolling Mills, not in his individual capacity, but as a representative of another firm, called Radhakissen Santhalia, of which he was a partner. According to him, the proportionate income of the firm of Benares Steel Rolling Mills in respect of the one-fourth share standing in his name was to be included in the assessment of the firm Radhakissen Santhalia and not in his personal assessment. The Income-tax Officer overruled that contention. He appears to have informed himself in the first year from the Excess Profits Tax Officer of Cawnpore that Mahaliram Santhalia was a partner of the Benares Steel Rolling Mills in his personal capacity, but subsequently he was able to see for himself the deed of partnership relating to that firm which was produced before him. The deed confirmed the view which had been taken by the Excess Profits Tax Officer of Cawnpore. For that reason and also for the reason that questions about the real constitution of the firm, the Benares Steel Rolling Mills, could be agitated only in an appeal

from the assessment of the firm and not in any proceeding relating to the assessment of the partners, he included the one-fourth share of the income of the firm in the total income of Mahaliram Santhalia. This was done in respect of all the four assessment years.

3. Mahaliram Santhalia appealed against the order of the Income-tax Officer. It so happened that two of his appeals, those relating to the assessment years 1944-45 and 1947-48, came to be heard by an Appellate Assistant Commissioner, named Mr. K. N. Bose, whereas the remaining two appeals, those relating to the assessment years 1945-46 and 1946-47, came to be heard by another Appellate Assistant Commissioner, named Mr. M. K. Banerji. The conclusions the two Assistant Commissioners arrived at were diametrically opposite. In his order relating to the assessment year 1944-45, Mr. K. N. Bose said that he had already held in an appeal preferred by the firm of Radhakissen Santhalia in respect of its own assessment that the share of the income of the Benares Steel Rolling Mills paid to Mahaliram Santhalia should be taken as the profit of that firm and consequently he held that that income should be excluded from Mahaliram's personal assessment. In his order for the assessment year 1947-48, Mr. Bose stated a further fact. He again referred to his finding recorded in an appeal by the firm of Radhakissen Santhalia that the one-fourth share of the income of the Benares Steel Rolling Mills actually belonged to that firm, but he also stated that the books of the firm of Radhakissen Santhalia had since been shown to trim and they showed that the capital contributed to the Benares Steel Roiling Mills had come from the funds of Radhakissen Santhalia. Mr. Bose's conclusion was that Mahaliram Santhalia had no interest in the firm of Benares Steel Rolling Mills as an individual and accordingly he directed that the income should be excluded from his assessment and included in the assessment of Radhakissen Santhalia as profit of that firm.

4. As I have already stated, Mr. M. K. Banerji took a different view in the two appeals dealt with by him. In his order relating to the assessment year 1945-46, he said that the contention of Mahaliram that he was not a partner of the Benares Steel Rolling Mills in the capacity of an individual, but was a partner as the representative of the firm of Radhakissen Santhalia was barred under the second proviso to Section 30 of the Income-tax Act. The question, he thought, was really a question of the apportionment of the income of the firm of Benares Steel Rolling Mills and consequently under the clear words of the second proviso to Section 30, any of the partners of the firm could question the apportionment as made by the Income-tax Officer in an appeal against an assessment order of the firm itself, but could not raise a contention in his personal assessment that his share in the firm had been determined as more or less than it actually was or that he had been treated as the partner of the firm in his individual capacity, whereas he was not such partner. In his order relating to the assessment for the year 1946-47, Mr. Banerji practically repeated the same reason. He overruled the contention of the assessee in both the appeals.

5. I might state here that the Statement of the Case contains a mistake as regards the result of the appeals by the assessee from the four assessment orders passed against him. The Tribunal have

stated that the assessee's contention was allowed by the Appellate Assistant Commissioner in each of the appeals and that the share of the income from the Benares Steel Rolling Mills had been held to belong to all the partners of Messrs. Radhakissen Santhalia and not to the assessee alone. The Tribunal have stated further that the Department filed appeals from the order of the Appellate Assistant Commissioner in all the cases. I have already pointed out that the assessee succeeded with one Appellate Assistant Commissioner in respect of two of the assessment years, but failed with respect to the remaining two years with another Appellate Assistant Commissioner. Of the four appeals to the Tribunal, two were by the assessee and two by the Department, as they were bound to be. It is regrettable that a mistake of this kind should occur in a Statement of Case.

6. When the four appeals came to be heard by the Appellate Tribunal, they gave their reasons in their order relating to the assessment year 1944-45. It appears that an agreement between the partners of Radhakissen Santhalia dated 3-4-1944, was produced before them and that agreement was found to contain a provision to the effect that the income from the Benares Steel Rolling Mills belonged to all the partners of the firm. The Tribunal, however, did not find that Mahaliram Santhalia was a partner of the Benares Steel Rolling Mills only as a representative of the firm of Radhakissen Santhalia, which was a firm of four partners, including Mahaliram, but they said that even if it was a fact that Mahaliram Santhalia was a partner of the Benares Steel Rolling Mills only as a representative of the firm of Radhakissen Santhalia, this fact not having been disclosed in the assessment of the Benares Steel Rolling Mills, was no longer open to Mahaliram. They added that the contention of the assessee really amounted to saying that all the partners of the firm of Radhakissen Santhalia were interested in the one-fourth share standing in the name of Mahaliram Santhalia; but if that was so, their individual shares not having been specified in the partnership deed, registration would have been refused to the Benares Steel Rolling Mills, if what was now stated to be the fact had been disclosed. It was also pointed out, which was in fact admitted before the Tribunal, that the firm of Radhakissen Santhalia had not included any income from the Benares Steel Rolling Mills in its own returns. In that state of the facts, the Tribunal held that Mahaliram Santhalia was precluded from contending in his own assessment that he was a partner of the firm of Benares Steel Rolling Mills only in a representative capacity.

7. The Tribunal proceeded to give some further reason in support of the view taken by it which is not at all intelligible to me. They seem to have thought that the fact that, in any event, Mahaliram Santhalia would have some interest in the income from the Benares Steel Rolling Mills was an important fact and that the inclusion of the income from the firm of the Benares Steel Rolling Mills in his total income was for that reason justified. Neither of the parties before us could explain to us what the steps of the Tribunal's reasoning could be and what conclusion it led to in what manner. I shall, therefore, leave aside the further reason given by the Tribunal.

8. After the disposal of the appeals by the Tribunal, Mahaliram Santhalia made four applications for a reference to this Court, in some of which he asked for a reference of five questions and in

some for a reference of four. The Commissioner of Income-tax, Central, Calcutta, submitted that only one question could be said to arise out of the Tribunal's order and he framed that question in a form which he thought would raise the real controversy between the parties and cover the point decided by the Tribunal. The Tribunal appears to have accepted the Commissioner's contention and they have referred to this Court a single question which is phrased more or less like the draft question submitted by the Commissioner of Income-tax. The question referred reads as follows:

> "Whether on the facts and in the circumstances of this case the entire share of profits from Benares Steel Rolling Mills can be included in the individual assessment of Mahaliram Santhalia?"

9. Strictly speaking, the only question which can be said really to arise out of the order of the Tribunal is whether they were right in law in holding that, in the events which had happened, Mahaliram Santhalia was precluded from contending in his personal assessment that he was a partner of the firm of Benares Steel Rolling Mills only as a representative of the firm of Radhakissen Santhalia. The question actually referred, however, is slightly wider and the reason may be that besides holding against the assessee on the basis that he was estopped from advancing the contention he was seeking to advance, the Tribunal also gave some reasons in support of the assessment on the merits. Those reasons, I have been compelled to say, are not easy to follow, but they do provide some justification for the comparatively broad form of the question.

10. It might be useful to pause here a moment and see what the question really means. It asks whether "the entire share of profits" from the Benares Steel Rolling Mills could be included in the individual assessment of Mahaliram Santhalia. It is clear that the form of the question reflects the contention which was put forward by the assessee before the income-tax authorities. His contention was that the income from the Benares Steel Rolling Mills should be taken as the income of the firm of Radhakissen Santhalia, but since he himself was a partner of the second firm as well, a portion of the income of that firm, provided there was an assessable income, would necessarily be taxable in his hands. In that event, while the whole of the income from the Benares Steel Rolling Mills would not be assessable in his hands, a portion of it would be and that is obviously the reason why the question asks if the entire share of the profits from the Benares Steel Rolling Mills could properly be included in Mahaliram's personal assessment. Quite obviously, the question does not contemplate that no part of the share of the profits from the Benares Steel Rolling Mills can be included in Mahaliram's personal assessment.

11. Towards the latter part of the argument before us, Mr. Mitra presented the asses-see's case in an altogether new form. Before dealing with the contention on which he seemed to have been at last relying, it would be proper to dispose of the case which was actually made before the income-tax authorities and rejected by all but one of them.

12. In my view, the case sought to be made by the assessee was altogether untenable. As the

Tribunal have pointed out, the application for registration or, to be more precise, for a renewal of registration, was made by four partners, of whom Mahaliram Santhalia was one. He was obviously applying as a partner who was such partner in his individual capacity and there was no trace whatsoever in the application that he bore any character other than the character in which he was obviously making the application. Mr. Mitra pointed out that in the deed of partnership which was relevant to the assessment of the firm for the year 1944-45, the assessee had been described as Mahaliram Santhalia "of the firm of Messrs. Radhakissen Santhalia", just as each one of the other three partners was described as of some firm or other. It is quite true that the description, "of the firm of Messrs. Radhakissen Santhalia", does occur in the prefatory part of the deed, but the partners contemplated by the operative part are clearly individuals, regarded in their personal capacity. That such is the contemplation of the deed, appears indisputably from clause (VIII) which says that if any dispute shall arise among the partners, the partners or any of them or between the surviving partners and legal representatives of any of the deceased partners regarding the partnership or the accounts and transactions thereof, etc., the same shall be referred to the arbitration of a single arbitrator. Unless the partners were regarded as individuals and as members of the firm in their personal capacity, the deed could not possibly speak of legal representatives of any of the deceased partners. The import of the deed is, to my, mind, absolutely plain, but I need not proceed on my own construction of the deed. By the application they made under Section 26A of the Act, the partners, including Mahaliram Santhalia, themselves indicated what their own construction of that deed was, because each of them made the application in his personal capacity on the footing that he was a partner as an individual. That was the basis upon which registration of the firm was prayed for and that was the basis upon which registration was allowed. The consequence of allowing registration on the representation thus made, could only be the consequence laid down in Section 23(5) (a), of the Act. That section provides that "in the case of a registered firm, the sum payable by the firm itself shall not be determined, but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined". Once a firm has been registered as a firm constituted of a certain number of partners, each with the share specified in the deed of partnership, the mandate of the Act is that the income of the firm shall only be determined, but not assessed in its hand and that the share of each partner in the income shall be included in his own total income and assessed in his hands as a part of the total income on which he may be liable to be assessed. If, therefore, Mahaliram Santhalia and along with him the three other partners obtained registration of the firm, the Benares Steel Rolling Mills, on the basis that each one of them was a partner in his individual capacity, owning a one-fourth share, then, a one-fourth share of the income of the firm was bound to be included in the total income of each partner in his personal assessment. It is impossible to see how, after a proportionate share of the income had thus been included in the total income of a partner for the purpose of his personal assessment, it could then go anywhere else or could be further divided between such partner and other parties.

13. The contention of the assessee, it may berecalled, was that the one-fourth share of the income of the Benares Steel Rolling Mills which was paid to him on account of his share in the partnership should be included in the total income of the firm of Radhakissen Santhalia, which firm he really represented in the Benares Steel Rolling Mills. In view of the provisions of Section 23(5) (a), a one-fourth share of the income of the Benares Steel Rolling Mills or, for the matter of that, any share, could be included in the total income of Radhakissen Santhalia only ifthe firm of Radhakissen Santhalia was or could be a partner. Otherwise, it is impossible to see how any share of the income of the Benares Steel Rolling Mills, a registered firm, assessed as such, could be included in the total income of Radhakissen Santhalia. But quite apart from the fact that neither the deed of partnership, nor the application for registration gives the slightest indication that the firm of Radhakissen Santhalia had any interest, as such firm, in the Benares Steel Rolling Mills, it is perfectly clear that Radhakissen Santhalia, being itself a firm, could not possibly be a partner of the Benares Steel Rolling Mills. The contention of the assessee, therefore, was not only that the income-tax authorities should accept something as a fact, although quite the contrary was represented by the assessee himself, but also that they should accept a position which was plainly opposed to law. In my view, the contention of the assessee carries its own refutation and was rightly rejected.

14. I think also that the second proviso to Section 30(1) of the Income-tax Act is not altogether without some bearing on the present question. That proviso reads as follows:-

> "Provided further that where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Appellate Assistant Commissioner against any order of an Income-tax Officer determining the amount ofthe total income or the loss of the firm or the apportionment thereof between the several partners, but inrespect of matters which are determined by such order may not appeal against the assessment of his own total income". Weare concerned only with the apportionment ofthe income between the several partners. The income of the Benares Steel Rolling Mills was apportioned between its four partners who are named in the deed of partnership and who made the application for registration. To Mahaliram Santhalia was apportioned a one-fourth share of the total income and, by virtue ofthe provisions of Section 23(5) (a), that share became liable to be included in his total income for the purposes of his personal assessment. If Mahaliram's case be that he was not a partner of the Benares Steel Rolling Mills inhis individual capacity, but only as a representative ofthe firm of Radhakissen Santhalia, so that the incomepaid for the share held inhis name was not his income at all or if his case be that the remaining partners of Radhakissen Santhalia were equally interested in the one-fourth share of the Benares Steel Rolling Mills, standing in his name, the apportionment of the one-fourth share to him was obviously not in accordance with that case. The apportionment of which Mahaliram Santhalia had good reason to complain, if his case be what was represented be fore the income-tax authorities. The proviso which I have just read says that, in those

circumstances, Mahaliram Santhalia would be entitled to raise the question of the apportionment in an appeal from the assessment of the Benares Steel Rolling Mills, but it says, at the same time, that he would not be entitled to raise the question of apportionment in connection with the assessment of his own total income, because this is a matter determined by the order passed in the assessment of the Benares Steel Rolling Mills. This, in my view, is another reason why the contention, raised by the assessee in his personal assessment, must be overruled.

15. As I said a few moments ago, Mr. Mitra while drawing his argument to a close tried to give his client's case an altogether new form and shape. He submitted that he was not at all questioning the finding that Mahaliram Santhalia was a partner of the Benares Steel Rolling Mills in his personal capacity, nor was he questioning the apportionment of a one fourth share of the income of the Benares Steel Rolling Mills to Mahaliram Santhalia in consequence of the assessment of the Benares Steel Rolling Mills as a registered firm. According to him, the one-fourth share of the income of the Benares Steel Rolling Mills was, in the first instance, rightly brought into the present assessment of Mahaliram Santhalia. What he contended was that after the share of the income had thus been brought into the personal account of Mahaliram Santhalia, he, at that stage was entitled to contend that the income, prima facie belonging to him, was not really his income at all, because under the terms of the deed of partnership of the firm of Radhakissen Santhalia, it was to be taken as the income of the firm. Mr. Mitra submitted that he would put his contention in two branches. He would contend, in the first instance, that by reason of the terms of the agreement between the partners of Radhakissen Santhalia, the share of the income of the Benares Steel Rolling Mills paid to Mahaliram Santhalia, did not and could not become his income at all, but was diverted to the firm of Radhakissen Santhalia before it could become such income. In the alternative, the amount, liable to be included in the taxable income of Mahaliram Santhalia out of the share of the income of the Benares Steel Rolling Mills paid to him, would be only the amount which would be his share in that income under the terms of the agreement between the partners of Radhakissen Santhalia, the shares of the remaining partners being deducted as expenditure.

16. It appears to me that untenable as the assessee's contention before the taxing authorities was, the new contention put forward by Mr. Mitra on his behalf is even less tenable. The case he wanted to make was never sought to be made before any of the authorities below and can be put on one side on that ground alone. In the second place, it is quite impossible to see how there could conceivably be any question of diversion by an overriding title in the present case, which could be said to prevent the share of income received by Mahaliram Santhalia from the Benares Steel Rolling Mills from becoming his income. If, as Mr. Mitra conceded, Mahaliram was rightly taken as a partner of the Benares Steel Rolling Mills in his personal capacity and if a one-fourth share of the income was rightly allocated to him, any agreement between him and his three partners of the firm of Radhakissen Santhalia, under which the income was to be treated as the income of the whole firm, could only be an agreement by which Mahaliram Santhalia was

allowing what was really his income to be treated as the income of the firm or, in other words, an agreement by which he was applying or distributing an income which he had himself already earned and received. Such application or distribution would be a voluntary act of Mahaliram Santhalia in respect of a sum which, it was conceded, had rightly been included in his own total income and, therefore, was his own income. If the moment the share of the income from the Benares Steel Rolling Mills was allocated to Mahaliram Santhalia, it became his income and liable as such to be included in his own total income for the purpose of his personal assessment, an agreement by him with other persons regarding the rights to that income could only be a voluntary disposition of his income by him. No question of a diversion by superior title could possibly arise.

17. I may point out here a small fact which, however, would affect only one assessment year. The agreement relied upon is dated the 3rd of April, 1944 and therefore, in any event, its provision could not apply to the income which fell to be assessed in the assessment year 1944-45. Mr. Mitra conceded that with regard to that year, there might be a difficulty. But I think his difficulty is not less with respect to the remaining years.

18. Turning now to the second branch of Mr. Mitra's argument, I find it quite impossible to see how the share of the income from the Benares Steel Rolling Mills which was or might be payable to the three other partners of Radhakissen Santhalia under an agreement between them and Mahaliram Santhalia could be said to be an expenditure made by Mahaliram for the purpose of earning his own share of that income. Mr. Mitra contended that the agreement was binding on Mahaliram Santhalia and, therefore, the remaining partners would have to be paid their shares according to their interest in the firm. But, as I have already explained, the agreement was one which was entered into by Mahaliram Santhalia voluntarily and, therefore, although payment under the agreement might be in a sense a compulsory payment, the agreement itself was not one which had been forced upon Mahaliram Santhalia or at any rate there is nothing before us to show that unless Mahaliram Santhalia agreed to enter into that agreement, he would not be able to become a partner of the Benares Steel Rolling Mills at all and that he bad to concede shares of the income which he might earn from the Benares Steel Rolling Mills to his partners of Radhakissen Santhalia as the price of his being put in a position to enter the firm of the Benares Steel Rolling Mills and earn a partnership income therefrom. It seems to me, if I may say so, that the argument that the shares payable to the other partners of Radhakissen Santhalia should be treated as expenditure incurred by Mahaliram Santhalia for the purpose of earning his share of the one-fourth share of the income received from the Benares Steel Rolling Mills, is little short of fantastic.

19. For the reasons given above, the answer to the question referred must, in my opinion, be in the affirmative.

20. The Commissioner of Income-tax (Central), Calcutta will have the costs of this Reference.

B.K. Guha, J.

21. I agree.

Answered in the affirmative.