

BOMBAY HIGH COURT

The Commissioner of Income-Tax

Vs

M.H. Sanjana

(Norman Macleod, Kt., C.J. Coyajee, J.)

18.08.1925

JUDGMENT

Norman Macleod, Kt., C.J.

1. This is a case stated by the Commissioner of Income Tax under Section 66 (2) of the Income-Tax Act XI of 1922 and referred to the High Court with the opinion thereon of the Commissioner, at the instance of the assessee, the liquidators of Messrs. M. H. Sanjana & Company, Limited (in voluntary liquidation), hereinafter called the Company. The Company was started in 1919 to carry on the business of merchants, commission agents, contractors, suppliers of stores, shipchandlers etc., and did so until the end of the year 1922, when it was resolved to take it into voluntary liquidation.

2. On February 21, 1923, the liquidators entered into an agreement with Ahmedbhoy Currimbhoy and Albert Raymond on behalf of a new Company to sell to the new Company when incorporated the business including all the stock-in-trade, furniture, fittings, machinery, and plant, motor cars, buildings and lands, the lease of the office premises at Elphinstone Circle, the goodwill of the business including all trade marks and the benefit of all running contracts.

3. By an agreement dated July 20, 1923, between the Company and its liquidators of the first part, Ahmedbhoy Currimbhoy and Albert Raymond of the second part, and the new Company of the third part the above mentioned agreement was adopted. The business which uptill that time had been carried on by the assessee began to be conducted by the new Company. For the year April 1, 1922, to March 31, 1923, the Company was assessed to income-tax and super-tax on the profits amounting to Rs. 3,79,408 for the calendar year 1922-23. At the time of the assessment for the year 1923-24 the assessee submitted the accounts of the Company for the period January 1, 1922, to November 30, 1922, disclosing a profit of Rs. 1,99,208. The assessee claimed under Section 25 (8) of the Act that they were not liable to pay any tax on their profit, and that on the other hand as regards the assessment for 1922-23 they were entitled to substitute the profits of

Rs. 1,99,208, for the eleven months up to December 1, 1922, in place of the profits of Rs. 3,79,408 for the year 1921 and get a refund of the tax overpaid.

4. This claim for a refund was disallowed on the ground that Section 25 (3) of the Act was applicable only to cases in which a business was discontinued entirely and not to cases in which it was transferred from one set of proprietors to another, and that under Section 26 of the Act the new Company as successors to the business were liable to be taxed on the profits made by the Company in 1921 and they were taxed accordingly. The question on which the opinion of the Court is required is not very succinctly stated in the letter of reference.

5. I should prefer to express it as follows :-On the facts of the case are the assessee entitled to claim the refund they ask for under the provisions of Section 25 (3) of the Income-Tax Act of 1922 ?

6. Section 25 (3) only refers to a business which was in existence at the commencement of the Act, namely, April 1, 1922.

7. If such a business is discontinued no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance. And the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period.

8. In this case the term 'previous year' meant the year ending December 31, 1921.

9. It would appear then that the assessee could claim that the income, profits and gains of the previous year, namely Rs. 3,79,408, should be deemed to be the income, profits and gains of the period between the end of the previous year and the discontinuance, Then an assessment should be made on the basis of the income profits and gains of the said period, and if an amount of tax, had 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 of the difference was payable.

10. I understand that on a proper construction of these words that the assessee, though the Company had paid in 1922-23 income-tax on the profits for the year 1921 amounting to Rs. 3,79,408, if the Company discontinued its business during the year 1922-23, were entitled to substitute the profit of Rs. 1,99,208 for the eleven months up to December 1, 1922, in place of the profit of Rs. 3,79,408 and claim a refund. If that is the real meaning of the section, to my mind it has been expressed in the least intelligible way. I should have thought it would have been simpler to say that if a business in existence on April 1, 1922, is discontinued in any particular year, and has already paid tax on the profits of the previous year it becomes entitled to be assessed on the profits for the year in which it is discontinued, so that if those profits are less than

the profits of the previous year, a refund is payable, However the question before us is whether the assessee is entitled to resort to Section 25 (3) and we are not concerned with the relief they may be entitled to if they are BO entitled. The assessee contends that because the Company stopped its business, they were entitled to relief, that as the Company went into liquidation its corporate powers ceased, and its assets became distributable amongst its creditors, and lastly that if they were not entitled to relief, the benefit of Section 25 (3) of the Act could not be given in any case.

11. All these arguments are based on a misapprehension of the scheme of the Act.

12. By Section 6 certain heads of income, profits and gains shall be chargeable to income-tax, of which 'business' is one. Business is defined by H. 2 (4), and by Section 2 (2) an assessee is defined as a person by whom income-tax is payable. By Section 10 (1) the tax shall be payable by an assessee under the head 'business' in respect of the profits or gains of any business carried on by him.

13. In the case of a Company by Section 22 (1) the principal office shall present to the Income-Tax Officer a return of the total income of the Company for the previous year, and under Section 23 the Income-Tax Officer makes the assessment, and determines the sum payable by the assessee.

14. By Section 26 when any change occurs in the constitution of a firm or where any person has succeeded to any business, profession or vocation, the assessment shall be made on the firm as constituted or on the person engaged in the business, profession or vocation as the case may be, at the time of the making of the assessment.

15. As then the tax is chargeable on the profits of a business, it makes no difference if there is any change in the person who carries on the business so long as the business is continued. There is no necessity to go beyond the facts of this case, where it is admitted that the business was continued, the management only passing from the old Company and its liquidators to the new Company when the agreement of June 20, 1923, was completed. Exactly the same question was raised in *Bartlett v. Inland Revenue Commissioners*¹ The owner of a business sold it to a Company. Under the provisions of Section 24 Sub-section 3 of the Finance Act 1907 he claimed that he was only chargeable with tax on the actual amount made in the year of discontinuance and there was no power to go back on the three years average. Scrutton J. said (p. 693): " The answer to that appears to me to be very simple. The trade was not discontinued in the year, the trade was sold to a Company and continued during the whole year; and in my view therefore Section 24 of the Act of 1907 has no application to this case," I would answer the question I have framed above in the negative. The assessee must pay the costs of the reference Coyajee, J.

16. The statement of the case drawn up by the Commissioner of Income-tax and referred to this Court clearly sets out the material facts. In the year 1919 the company, Messrs. M. H. Sanjana & Co. Ltd., commenced business in Bombay as merchants, commission agents, contractors, suppliers of stores, shipchangers, mechanical engineers, &c. About the end of the year 1922 it was resolved to take the company into voluntary liquidation, Its business was then sold to another company, the Consolidated Mills Stores Co, Ltd. The sale included buildings and lands, the lease of the office premises, all the stock-in-trade, machinery, plant, furniture and fittings, the goodwill of the business including all trade-marks and the benefit of &[1] contracts entered into between the vendor company and various other companies. The business was then continued by the Consolidated Mill Stores Co. Ltd.

17. For the year 1922-23 M. H. Sanjana & Co Ltd, were assessed to income-tax and super-tax on profits amounting to Rs. 3,79,408 for the calendar year 1921. At the 1923-24[1] assessment the company (in voluntary liquidation) submitted its accounts showing a profit of Re. 1,99,208 from January 1, 1922, up to November 30, 1922. They now claim that as their business is discontinued, they are entitled to substitute the profit of Rs, 1,99,208 in place of the profit of Rs. 3,79,408 on which the tax has been levied, and ask for a refund of the difference. They rely upon the provisions of Section25(3) of the Indian Income-tax Act, 1922, which says'. "Where any business, profession or vocation which was in existence at the commencement of this Act, and on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued," &c. The section grants relief if the condition which it lays down is fulfilled. The question arising for consideration then is: whether this business which was in existence on April 1, 1922, has been "discontinued" ? On the facts of this case it is clear that when the company sold the business, including the goodwill and the benefit of all running contracts, to the Consolidated Mills Stores Co. Ltd. the ownership of the business was changed, but the business was not "discontinued." The purchaser company succeeded to the business and continued it-a case which is provided for by Section 26, It was, however, contended on behalf of the assesseees, that when they sold the business, it was "discontinued" at any rate so far as they were concerned, and they are, therefore, entitled to claim a refund of the overpaid tax. But the language of the section is clear; and the question arising under it is-whether the business was discontinued; and not-whether the business was discontinued by A. B. In this ease the transfer of ownership left the continuance of the business wholly unaffected. In my opinion, therefore, the assesseees are not entitled to claim the refund which they ask for.

Cases Referred.

1[1914] 3 K. B. 686