

BOMBAY HIGH COURT

Commissioner of Income-Tax

Vs

Laxmidas Devidas

(John Beaumont, Kt., C.J. Blackwell, J.)

30.03.1937

JUDGMENT

John Beaumont, Kt., C.J.

1. This is a reference made by the Income-tax Commissioner under Section 66(2) of the Indian Income-tax Act, 1922; and the short question raised is whether the assessee is an association of individuals within the meaning of Section 3 of the Act.

2. The Commissioner finds as a fact that the assessee in the year of assessment joined together in purchasing certain immovable properties in Bombay, contributing the purchase moneys in equal shares, that the properties were managed by or on behalf of the owners, and such management resulted in certain profits or gains. One of the assessee was a minor during the year of assessment, and he contracted through his father and natural guardian.

3. The short question is, whether when two persons associate together for the purpose of buying property and managing it so as to produce income, they are an association of individuals within Section 3 of the Act. Now, Section 3 imposes a tax "in respect of all income, profits and gains of the previous year of every individual, Hindu undivided family, company, firm, and other association of individuals." I agree with the view expressed by the Calcutta High Court in *In re B.N. Elias* (1935) I.L.R. 63 Cal. 538 that the words "association of individuals" have to be construed in their plain, ordinary meaning. In that case, the Court was dealing with an association of three individuals, who had combined together to purchase various properties which they proposed to manage for the purpose of making profits; and those three individuals were held to be an association of individuals within the meaning of Section 3. I think the principle of that case must apply equally where the association consists only of two individuals and there is only a single property which is managed and produces income.

4. I cannot agree with the view expressed by the Allahabad High Court in *Mufti Mahomed v. I.T. Commr* . that the words "association of individuals" should be read *ejusdem generis* with the

word immediately preceding, viz., "firm." The so-called ejusdem generis rule, which, I cannot help thinking, is sometimes misapplied in India, is merely a rule of construction. When you have general words following particular words, the general words are limited to things which are ejusdem generis with the particular words. But that rule being one of construction should never be invoked where its application appears to defeat the general intent of the instrument to be construed. Moreover, I know of no authority for applying the rule so as to limit the meaning of the general words to the last of the particular words preceding. Here, there are three associations of individuals referred to in Section 3 of the Act, a Hindu undivided family, a company and a firm; and those three associations of individuals are marked by widely different characteristics. A Hindu undivided family is an association united by ties of birth; members of a company are associated in such a manner that they become a legal entity; and a firm is an association depending on contract but is not in itself a legal entity; and I think it would be very difficult, if not impossible, to suggest any other association of individuals which embodies substantially the peculiarities of the three particular types to which the Act refers. In my opinion, the only limit to be imposed on the words "other association of individuals" is such as naturally follows from the fact that the words appear in an Act imposing a tax on income, profits and gains, so that the association must be one which produces income, profits or gains. It seems to me that an association of two or more persons for the acquisition of property which is to be managed for the purpose of producing income, profits or gains falls within the words "other association of individuals" in Section 3; and under Section 9 of the Act, the association of individuals is the owner of the property, and as such is assessable.

5. The fact that one of the assesseees during the year of assessment was a minor, does not, I think, affect the question. In point of fact, the two-assesseees have associated together for the purpose of the acquisition of this property. Whether or not the minor is bound by any contract entered into by his father on his behalf is immaterial for the purposes of the reference. What we have got is the ownership of property by two persons, and the production by that property of profits or gains. The first question raised is : Whether in the circumstances of the case, the assesseees constituted an association of individuals within the meaning of Section 3 of the Income-tax Act?

6. In my opinion, that question should be answered in the affirmative. The second question is :

Whether the said association can be said to be the owner of the properties within the meaning of Section 9 of the Income-tax Act, and was rightly assessed as such?

7. That question again must be answered in the affirmative.

8. The third question is :

Whether the assessee were in any event rightly assessed as owners of the said property under Section 9(1)?

9. The answer to that question would seem to follow from the answer to question No. 2, and must also be answered in the affirmative.

10. The assessee should pay the costs on the original side scale, less 100 rupees.

Blackwell, J.

11. I am of the same opinion. Section 9(7) of the Act provides that : "The tax shall be payable by an assess under the head 'Property' in respect of the bona fide annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner." According to the scheme of the Act, property is assessable in terms of that section, and not in terms of income from a business, as it is suggested by the assessee in this case that the owners of this property should be assessed. The only question with which we are concerned is, who was the owner or who were the owners of this property? On the fact as found by the Commissioner, the owners of the property are the two individuals who owned it in equal shares.

12. It has been contended on behalf of the assessee that they do not constitute an association of individuals owning property, that the words "association of individuals" in Section 3 are referable only to an association of individuals who are joined together for purposes of business and that each of the assessee should have been assessed individually as a co-owner on his share in the income from the properties. I cannot agree with this contention. If it were income-tax right, it would involve splitting up the annual value of the property into the undefined shares of the persons who owned it as tenants-in-common. That seems to me not permissible, having regard to the words of Sub-section (2) of Section 9 of the Act, which are as follows : "For the purposes of this section, the expression 'annual value' shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year." In my view, that means the property as a whole, and not divided, separate portions of it. I think it is perfectly clear that these two individuals were associated together for the purpose of acquiring the property and deriving profits from it, and that they are assessable as an association of individuals.

13. It has been contended that as one of the assessee at the time when the property was acquired, and during the year of assessment, was a minor, he could not be associated with the major assessee to acquire the property. I do not think we are concerned with what was the legal effect of the contract of purchase entered into. In my opinion, the minor was none the less associated with the major assessee in acquiring the property, although he was a minor at the time; and I think that all we have to decide is whether, as a matter of fact, these two persons were associated together

as individuals for acquiring the property.

14. I agree that the questions must be answered, as they have been answered by the learned Chief Justice.