

BOMBAY HIGH COURT

Ambaram Kalidas

Vs.

Commissioner of Income-Tax

Income-tax Ref. No. 8 of 1950

(Chagla, C.J. and Tendolkar , J.)

06.10.1950

JUDGMENT

Chagla, C.J.

1. The facts giving rise to this reference are stated in the judgment. Under Section 66 (1) the following questions were referred to the High Court:

- (i) What income is exempt under Section 25 (4) and whether any application is required to be made in respect of this exemption and if so whether that application is governed by the period of limitation referred to in Section 25 (5) of the Act?
- (ii) Whether an application is required to be made in respect of the second part of Section 25 (4) and if so whether that application is governed by the period of limitation referred to in Section 25 (5) of the Act?

Chagla, C. J.

The facts giving rise to this reference may be briefly stated. The assessee is a, Hindu undivided family. It is a dealer in cloth and was taxed under the provisions of the Income-tax Act, 1918. Its accounting years were Samvat years, and the joint family was disrupted on Aso Vad 30th, Samvat, year 2000, that is to say on 17-10-1944, and on Kartak Sud 1st, Samvat year 2001, the joint family business was taken over by a firm consisting of the coparceners of the Hindu undivided family. The claim of the assessee was that the income earned by the Hindu undivided family for the Samvat year 2000 should be totally exempt under the provisions of Section 25 (4). This claim was rejected by the Tribunal, and the question that we have to consider is whether on a proper construction of Section 25 (4) the contention of the assessee should be upheld.

2. The scheme of Section 25 seems to be that it deals under Sub-Section (1) with the case of a

business which is discontinued and which has not been subjected to double taxation having paid tax under the provisions of the Income-tax Act, 1918, and the provision of Sub-Section (1) is that if a business is discontinued in the middle of a year, then the business which is discontinued has to pay tax both with regard to the whole of its previous year and also for the broken period of the year of assessment. The scheme seems to be that instead of the business being assessed again for a broken period, the business should pay tax not only for the previous year which it ordinarily would do, but also for the additional period being the period up to its discontinuance. Turning to Sub-Section (4), with which we are concerned, it deals with a business which had paid tax under the Income-tax Act, 1918, and that sub-section deals not so much with the mode of taxing a business which is discontinued as with giving relief to a business from double taxation. In Sub-Section (4) what is dealt with is a situation where one business is succeeded by another, and the first relief to which the business which ceases to continue and which has been succeeded by another is entitled is that no tax shall be payable by the first mentioned person, i.e., the person whose business has come to an end, in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession; and the second relief to which such person is entitled is that he 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.

3. Now, dealing with the first relief, the relief in this case to which the joint Hindu family would be entitled to is that it will not be liable to pay any tax in respect of the income, profits and gains of a period which consists of the end of the previous year and the date of succession. Looking to the plain language of the section, it is clear that this relief has to be claimed by the assessee in the year of assessment in which the succession took place, and the nature of the relief is that he is not entitled to pay tax on that particular specific period which is made up of the last date of the previous year and the date of succession. Therefore, what we have to ascertain in this case is, what was the date of succession because it is in relation to the date of succession that the relief has to be computed. The period may be anything from one day to 364 days. In this particular case, unfortunately for the assessee, the date of succession is 18-10-1944, i.e., in the assessment year 1946-47. The previous year of the assessee is Samvat year 2000 which is the assessment year 1945-46. Therefore the end of the previous year is 17-10-1944 and the date of succession is the very first day of the following assessment year. Therefore, under this section the relief that the assessee is entitled to is the period between 17-10-1944, and 18-10-1944, and as the tribunal has rightly held that no profits could have been earned between 17-10-1944, and the following day, the result may seem to be anomalous. But we cannot construe the section to avoid certain anomalies which are inevitable depending upon the particular date in a year in which succession takes place. In this very case, instead of the succession having taken place on 18-10-1944, if it had taken place on 18-11-1944 or 18-12-1944, then the assessee would have been entitled to relief with regard to the period between 17-10-1944, and 18-11-1944, or 18-12-1944, periods during which undoubtedly the assessee would have earned some income in his business. But the difficulty we find, and the difficulty which has not been appreciated by the Tribunal, and to which really the Advocate-General has no answer, is that this relief should have been claimed in

the assessment year 1946-47 and not in the assessment year 1945-46. Here we are dealing with the assessment of the assessee for the assessment year 1945-46, and clearly whatever relief the assessee is entitled to by reason of the fact that there was a succession to his business, that relief cannot be granted to him for the assessment year 1945-46, but it could only be granted to him for the assessment year, 1946-47. Therefore, it will be open to the assessee to make a claim with regard to any relief to which he is entitled under Section 25 (4) in the assessment year 1946-47. As a definite question of law has been submitted to us, we have expressed our opinion as to the true construction of Section 25 (4).

4. Now, two other questions arise with regard to the claim of the assessee. One is that no appln. was made by the assessee with regard to his claim falling under the first part of Section 25 (4). Section 25 (5) provides that no claim to the relief afforded under Sub-Section (3) or (4) shall be entertained unless it is made before the expiry of one year from the date on which the business, profession or vocation was discontinued or the succession took place as the case may be. It is not disputed that if Sub-Section (5) applies to the relief to which the assessee is entitled under the first part of Sub-Section (4), then his appln. would be barred. But the question is whether any appln. at all is necessary on the part of the assessee before he would be entitled to any relief under Sub-Section (4). When one looks at the language of subs. (4), a clear distinction has been made by the Legislature between the first part and the second part. In the first part, it is provided that no tax shall be payable in respect of the period to which I have already referred in the earlier part of the judgment. With regard to the second part it is provided that such person may further claim the relief which is set out in that part of the sub-section. Therefore, whereas with regard to the first relief the Department is enjoined not to impose any tax upon the income of the assessee at all, in the other case the assessee would be entitled to relief only provided he made a claim to that effect. Sub-section (5) refers to no claim being entertained unless an appln. is made within the period of limitation. Therefore, Sub-Section (5) would clearly apply to the second relief to which the assessee is entitled under Section 25 (4), but it would not apply to the first part because no claim need necessarily be made by the assessee for the relief to which he is entitled under the first part. Therefore, in our opinion, no question of limitation can arise with regard to the relief to which the assessee is entitled under the first part of Section 25 (4) and that relief must be given to him irrespective of the question of limitation. The question of limitation can only arise with regard to the second part of Sub-Section (4). In this case the assessee also applied for relief under the second part of Section 25 (4) and in our opinion it is clear that an appln. had to be made with regard to that relief, and as no appln. was made within the period of limitation laid down in Section 25 (5), it is not open to the assessee to make any such appln. after the period of limitation or to get any relief after the period of limitation. Sir Jamshedji for the assessee has very fairly conceded that the Tribunal's view with regard to the second relief claimed by him is right and he cannot contest that position.

5. That result, therefore, is that we must answer the first part of question (1) as follows :
That the income of the assessee is exempt from 17-10-1944, till 18-10-1944, and Section 25 (5)

does not apply to this relief under Section 25 (4). With regard to question (2), the answer is in the affirmative to both the parts. Assessee to pay the costs.
Reference answered.