

BOMBAY HIGH COURT

Himatlal Motilal

Vs.

Commissioner of Income Tax

Income-tax Ref. No. 41 of 1950

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

02.04.1951

JUDGMENT

Chagla, C.J.

The following question of law was referred for the opinion of the High Court:-

"Whether on the facts of the case, the assessee is entitled to the benefits of Section 25 (4), Income-tax Act, in respect of income from money lending business only or in respect of the three businesses carried on by the family at the time of the disruption?"

Chagla, C. J.

1. This reference has given an opportunity to Sir Jamshedji Kanga to advance before us a very interesting and ingenious argument based on the construction of Section 25 (4), Income-tax Act. The facts are that the assessee before us who is an undivided Hindu family of one Himatlal was assessed for the first time to tax for the assessment year 1921-22. This joint family was disrupted on 26-10-1943. It has been found as a fact that at the time of disruption the joint family was carrying on three separate businesses, one of money-lending secondly, of running a ginning factory and, lastly, a share business. It is also found as a fact that only the money lending business had paid tax under the Income tax Act of 1918. On these facts the assessee claims the concessions laid down in Section 25 (4) on the ground that his business had been succeeded to by others and, therefore, he was entitled to the benefits mentioned in that sub-section.

2. Now the contention of the Commissioner is that the concessions in Section 25 (4) are to be given to a particular business which was assessed to tax under the Act of 1918 and the relief to be granted should be in respect of that business only. That sub-section does not contemplate any relief in respect of any other sources of income of the assessee who was carrying on the business

which was assessed to tax under the Act of 1918 and in respect of which there was a succession. The ingenious argument advanced by Sir Jamshedji is that when you look at the framework of Section 25 (4) it is clear that the Legislature intended to give relief not merely in respect of a particular business which was assessed to tax under the Act of 1918 and in respect of which there was a succession, but the relief contemplated was in respect of the total income of the assessee whose business was succeeded to. This argument is based on the language used in Sub-s (4) to the effect that:

"no tax shall be payable by the first mentioned person in respect of the income, profits and gains for the period between the end of the previous year and the date of such succession."

It is pointed out that when you turn to Section 10 which deals with tax on business, profession or vocation, the language used by the Legislature is "Profits or gains of any business, profession or vocation." The expression "income from any business, profession or vocation" is not used in Section 10 at all. On the other hand, when you turn to Sub-Section (4) the words "income, profits and gains" are used in connection with an assessee who satisfies the conditions laid down in that subsection and not merely a relief in respect of a particular business which was succeeded to by another person. Frankly, the use of the expression "income profits and gains" creates considerable difficulty in properly construing this sub-section. If we were to give the construction for which Sir Jamshedji contends, it would lead to most absurd conclusions and consequences. It is obvious that the policy of the Legislature in enacting Section 25, Sub-ss. (3) and (4), was to prevent double taxation and the relief which was intended to be given was to a particular business that had paid tax under the Act of 1918 and which had paid a further tax under the new Act. Having paid tax twice a relief was intended to be given to that business when that business was succeeded to by another person. It is also clear that no relief was intended to be given by the Legislature to a person who had paid tax on his property or on dividends received by him on shares and securities. If that was the policy of the Legislature, it is difficult to understand why relief should be given to a person whose business is succeeded to in respect of not only that business but also in respect of all sources of income. Sir Jamshedji says that taxing statutes lead to many absurd results, but if we find that this is the only construction of Section 25 (4), we should not hesitate in giving effect to that construction. If we were satisfied that the Legislature intended to use the expression "income, profits and gains" not only for the purpose of indicating the profits and gains of the business as contemplated by Section 10 but also for the purpose of indicating the total income of the assessee, then no doubt we would have to come to that conclusion, however reluctantly; but fortunately there is a clear indication in this sub section itself. What the Legislature intended by using the expression "income, profits and gains" was the profits and gains of the business or profession contemplated by Section 10 and not the total income of the assessee, because when we come to the proviso to Section 25, Sub-ss. (3) and (4), it provides as follows:

"Provided that sub-ss. (3) and (4) shall not apply -

(a) to super-tax except where the income, profits and gains of the business, profession or vocation were assessed to super tax for the first time either for the year beginning on the first day of April 1920, or for the year beginning on the 1st day of April 1921;"

Therefore, here we have the expression "income, profits and gains" used in juxtaposition with business, profession and vocation" and there can be no doubt as far this provision is concerned that what the Legislature was providing for was the profits and gains of the business, profession or vocation contemplated by Section 10. It is true that the expression "income" is very loosely used. Had the Legislature been careful they would only have used the expression "profits and gains". But the very fact that in the proviso they have used "income, profits and gains" as indicating profits and gains of the business clearly shows that the expression "income, profits and gains" in Sub-s (4) has also been used with the same meaning and intent. Further when you look at Sub-Section (4) as a whole, apart from the use of the expression "income, profits and gains" it is clear that the conditions required for obtaining of relief under this sub-section are, firstly, carrying on any business profession or vocation; secondly, tax being charged on this business, profession or vocation under the Act of 1918; and lastly, succession to any such business, profession or vocation in such capacity by another person. Therefore, such other person must not only succeed, he must also succeed in such capacity, which means, he must carry on the same business, profession or vocation which had been carried on by the assessee to whom relief is to be given. If these conditions are satisfied, then no tax is payable by the first mentioned person who is the person to whom relief is intended to be given in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession. Therefore, the whole emphasis in Sub-Section (4) is not upon the assessee so much as upon the particular business, profession or vocation which was carried on and which was subjected to tax under the Act of 1918. One might almost say that the relief contemplated to be given was not to the assessee so much as to the particular business, profession or vocation. No authority was really necessary in support of this construction, but we find that the High Court of Orissa has, in the case of *Nopram Ramgopal v. Commr. of Inc. tax*¹ taken the view that it is the business which was in existence and which had been assessed to tax under the Act of 1918 and not the person who is entitled to this relief. Even the High Court of Allahabad has in the case of *Gopi Mohan and Sons v. Commr. of Inc.-Tax, U. P. and C. P.*² in construing Section 25 (3) (where also the expression income, profits and gains occurs) has construed that sub-section as relating to that head of income, which had been dealt with in Section 10, and as quite distinct from income from property which was mentioned in Section 9. Sir Jamshedji, relying on the judgment of the Orissa High Court, wanted to argue that the two other businesses, viz. the running ginning factory and the share business really formed part of the money-lending business and therefore, all the three businesses should obtain the relief under Section 25 (4). What the Orissa High Court held was that if the new business has arisen from the old business, then it may be stated that the new business and the old business constituted only one business and the two businesses were not distinct and separate and therefore, both the business as one business may be entitled to the relief

under Section 25 (4). But before us we have a clear and categorical finding that the three businesses of the assessee were distinct business and, therefore, it cannot be stated that the relief which was intended for the money-lending business which was called on by the assessee and which was subjected to tax under the Act of 1918 should be extended to the business of running the ginning factory and the share business which were not in existence and which was not subjected to tax under the Act of 1918. The answer, therefore to the question put to us will be that the assessee is entitled to the benefit mentioned in Section 25 (4) only in respect of his money lending business. The assessee to pay the costs of the reference.

Answer accordingly.

¹(1950) 19 i. t. r. 219 (Ori)

²(1946) 15 i. t. R. 220