PATNA HIGH COURT

Sharafat Hussain

Vs

Commissioner of Income Tax

Misc. Judicial Case No. 635 of 1953

(Das, C.J. and Kanhaiya Singh, J.)

03.08.1955

JUDGMENT

Kanhaiya Singh, J.

1. This is a case stated by the Income-tax Appellate Tribunal under Sub-section (2) of Section 66, Income-tax Act. In the assessment year 1948-49 corresponding to the accounting year 1947-48 the Income-tax authorities assessed the assessees as an association of individuals in respect of the income of Rs.9961/-, being the ground rent from Eamna Gola and Murshiclapur. The assessees are the descendants of the late Chowdhury Karamat Hussain of Arrah. The latter was assessed as an individual prior to 1927-28 on income from property and non-agricultural income from ground rent and from other sources, such as, bazars, fisheries, etc. He died in 1926 leaving behind him his widow, Mt. Saroor Fatma, and five sons. Chowdhury Sharafat Hussain, Dr. Reyasat Hussain, Chowdhury Warasat Hussain, Chowdhury Wajahat Hussain and Chowdhury Rafazat Hussain. Wajahat Hussain died in 1945, and his heirs were Mt. Saida Begam and two sons and two daughters, who have been substituted in his place.

The assessees contended before the Income-tax Officer that they did not form an association of individuals and that they should be separately assessed on their individual shares. He overruled the contention and assessed them as an association. They unsuccessfully appealed to the Appellate Assistant Commissioner. An appeal against his order was taken to the Income-tax Appellate Tribunal, Patna Branch. The Tribunal remanded the case for ascertainment of certain facts connected with the case, and thereupon the Income-tax Officer found the following facts: (1) though all the heirs of Chowdhury Karamat Hussain were mutated in the Revenue records, the exact share belonging to each has not been specified, the mutation record showing only this that the persons mentioned jointly succeeded to the property on the death of Chowdhury Karamat Hussain and the death of Chowdhury Wazahat Hussain; (2) the receipts granted in respect of the ground rent showed the names of Chowdhury Sharafat Hussain and others as the persons, on whose behalf the collections were made; (3) the leases of the properties were made by Mr.

Sharafat Hussain for self and as a general agent of the other heirs of Chowdhury Karamat Hussain; (4) the zamindari cash book showed joint collection of the rent and deduction of the total expenses from the total income thus derived and further that the distribution among the different co-owners was not exactly in accordance with their respective shares. On these facts the Judicial Member Mr. C.V. Nagaraja Sastri held as follows:

> "All along the assessments have been made in the status of an association of persons and the income was assessed as a unit. It was also urged by the Authorised Representative for the Department that the payments referred to in the remand report are not according to the shares; and that not only before this year, but for this year and subsequently, the assessee had filed returns declaring its status as an association of persons. We see no reason to take another view in this year and specially after perusing the remand reporting and hearing the parties thereon."

The Accountant member Mr. Narayana Row agreed with the Judicial Member and held that although mere inheritance unaccompanied by any further fact was inadequate to constitute an association of persons, joint possession and joint management of the property through a common manager, as in the present case, justified the inference that there was an association of persons within the meaning of Section 3, Income-tax Act. The assessees made an application to the Appellate Assistant Commissioner under sub-section (1) of Section 66 for referring to the High Court the question of law arising out of his order, but their application was dismissed on the ground that the question framed by the assessees was concluded by findings of fact and no question of law arose. The assessees then moved the High Court which under sub-section (3) of Section 66, Income-tax Act required the Income-tax Appellate Tribunal to state a case on the following question of law:

> "Whether upon the facts found in this case the assessees could be validly taxed as an association of persons within the meaning of Section 3, Income-tax Act?"

2. It was contended by the learned Advocate on behalf of the assessees that having regard to the fact that the assessees were co-heirs of a Muhammadan, they did not on the facts found by the Income-tax authorities constitute an association of persons as contemplated by Section 3, Income-tax Act. Reliance was placed upon the cases of Nizam-ud-din Amir-ud-din, In re. 1943-11 I.T.R. 443 (Lah) (A) - *'Mufti Mahomed Aslam v. Commissioner of Income Tax*[1]*,'* In the former case, the assessees who were the co-heirs of a Muhammedan inherited after his death, unlder Muhammedan Law, specific shares of the property left by him. The assessees did not partition the property, and the rent deeds stood in their joint names. They had jointly employed a munshi to manage the property and collect the rents, and the income after deducting the cost of collection and other expenses was distributed in accordance with their respective shares. On these facts, their Lordships of the Lahore High Court held that the assessees did not form an association of individuals. In the latter case, it was held by the Allahabad High Court that persons having

specified but undivided shares in property which produces income do not come within the expression association of individuals in Section 3 of the Act and are not liable to be assessed to income-tax as such. It was further pointed out therein that even the appointment by a body of co-owners of a common collecting agent will not convert such body of co-owners into an association of individuals within the meaning of Section 3 of the Act. Mr. R.J. Bahadur representing the Department did not dispute the general principles of law enunciated in these cases, but contended, and I think very rightly, that the peculiar facts of this case distinguished it from other decided cases which were relied upon by learned Counsel for the assessees. All the authorities agree on one point, viz., that each case must be decided on its own peculiar facts. The question whether these assessees farmed an association of individuals within the meaning of Section 3 is a question which must depend upon the particular facts and circumstances of the case, and the decided cases placed before us, where the facts are quite dissimilar, render but little assistance. It is incontrovertible that, unlike Hindu joint family, the heirs of a deceased Muhammedan inherited a specified share in the property, and the status they acquired in inheritance is not affected by continued joint possession and joint management of the property either through one of themselves or through a common collecting agent. If there had been a mere inheritance of specific shares followed by joint possession and joint management, it is plain that the assessees would not have constituted an association of persons as contemplated by Section 3 of the Act. In this case, over and above the management land possession of the property and appropriation of the income remaining joint, there was the added fact, not found in the cases placed before us, that apart from the notional specification of these shares of the heirs of a deceased Muhammedan, there was no actual separation or specification of shares in the Revenue records, that the leases in respect of the land in question were granted by Mr. Sharafat Hussain, jointly on behalf of himself as well as on behalf of other co-sharers, and the receipts in respect of the ground rent, the income derived wherefrom is in dispute, were granted jointly on behalf of all, and further that up to 1936 Mr. Sharafat Hussain and others were assesssed to income-tax as an unregistered firm, and in the year 1937-38 their status was shown as an association of individuals, and since the assessment year 1940-41 the status of these assesstees continued as an association, of persons. They were recorded and assessed to income-tax as an association of persons on their own admissions and not on the finding to that effect by the income-tax authorities. The assessees filed returns declaring their status as an association of persons not only in respect of years prior to the disputed assessment, but also for the year in question and subsequently. These facts I think are sufficient to establish that the assessees formed an association of persons. Reference was made by learned Counsel for the assessees to sub-section (3) of Section 9 of the Act, under which where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons. This argument, I think, is against the assessees. Section 9 relates to buildings or lands appurtenant thereto and does not apply to income derived from ground rent, as in the present case. If in all cases joint owners of property possessing definite and ascertainable shares were not to constitute an association of persons, such exceptions would have occurred in Section 3 also and it, therefore, implies that for determination of the

question whether or not there was an association of persons within the meaning of Section 3 of the Act, possession of definite and ascertainable shares was not conclusive on the point.
As explained in - *'Commissioner of Income Tax, Burma v. M.A. Baporia*[2]*,'* the words "association of individuals" in Section 3, Income-tax Act should be construed ejusdem generis with all the other groups of persona mentioned in the section,
namely, Hindu undivided family, company and firm, and not with firm alone. Accordingly, the familiar considerations governing Hindu undivided family, company and firm shall apply here also, notwithstanding the fact that the assessees are Mohammedans. It was contended that there was no evidence in this case that these assessees combined consciously and with full knowledge of the consequences for a joint enterprise. It is difficult to expect in all cases direct evidence of contract between the parties to form an association. Whether or not in a given case there was a combination of persons for a joint venture and joint efforts, is a question of inference from facts proved or admitted in the absence of a direct testimony. If each and every fact found in this case is considered separately it will not lead to an inference that the assessees formed an association of persons. The cumulative effect of all the facts found leads unmistakably to the conclusion that these assessees did constitute an association of persons within the meaning of Section 3 of the Act. It is difficult, I should say unsafe also, to lay down precisely to quantum of evidence or number and nature of facts which will be adequate to support a conclusion that there is an association of individuals. In my opinion, the case reported in AIR 1939 Rangoon 258 (SB), above referred to, correctly indicated how the matter in such cases could be approached. It lays down that where an individual inherits a share in property he has an opportunity of deciding whether he will, by reason of having inherited that share from an association of individuals or renounce such relationship; and if there is evidence that he has chosen the former alternative, it will be a matter on which the income-tax authorities can base: their ultimate decision, and further that by merely inheriting a share of property however, no person can become a member of an association of individuals unless there is some forbearance or act upon his part to show that his intention and will accompanied the new status which he has been asked to receive. The present case stands on a higher footing. Here, on their own showing, the assessees were an association of individuals. Further, although they inherited specific and ascertainable shares in the property, they for several years had jointly managed the property and derived income therefrom, and the appropriation of the income was not strictly in accordance with their shares. Their cash book showed that the members of the association drew moneys from the common fund as and when money was needed by them, irrespective of their shares in the income. On the facts found in this case, I have no doubt that there was sufficient material for assessment as an association of individuals. The Appellate Tribunal was, therefore, right in holding that the assessees constituted an association of individuals within the meaning of Section 3, Income-tax Act. I consider that the question referred to the High Court must be answered against the assessees and in favour of the Income-tax Department. The asseesees must pay the cost of the reference: hearing fee Rs.200/-.

Das, C. J.

3. I agree.

Answer in the affirmative.

Cases Referred.

[1] AIR 1936 All 817
2 AIR 1939 Ran 258 (SB)