

# NAGPUR HIGH COURT

Buldana District Main Cloth Importers

Vs

Commissioner of Income-tax-cum-Excess

Misc. Civil Case No. 27 of 1954

(Mudholkar and Tambe, JJ.)

13.04.1956

## JUDGMENT

**Tambe, JJ.**

1. In compliance with the order of this Court the Income-tax Appellate Tribunal (hereinafter called the Tribunal) has stated the case.

2. The questions of law on which the Tribunal was directed to state the case are as follows :

"(i) Whether under the facts and circumstances of the case, the Buldana District Main Cloth Importers' Group constituted an 'Association of Persons' within the meaning of Section 3, Income-tax Act, 1922, and was liable to be assessed to income-tax and excess profits tax in that status?

(ii) Whether each member of the Group should have been assessed on the income derived by him as a member of the Group?

(iii) If the answer to the first question is in the affirmative, whether the various groups did not constitute independent 'Association of Persons' liable to be assessed separately?

(iv) Whether the notice under section 22 (2) of the Act served on Haji Ahmed Haji Ali was a valid notice to the assessee?

(v) Whether the assessment proceedings were in accordance with law?"

3. Facts relevant for purposes of this case are as follows : The Income-tax Officer, Khamgaon, issued a notice under Sub-Section (2) of Section 22, Income-tax Act, 1922 (hereinafter called the Act) on 12-3-1947 against the assessee (Buldana District Main Cloth Importers' Group, Khamgaon) to submit a return of the income for the assessment year 1946-47. The notice was served on Haji Ahmad Haji Ali, a member of the aforesaid group on 15-4-1947, one Shakoor Bhai, agent of Haji Ahmad Haji Ali sent a letter to the Income-tax Officer, Khamgaon, expressing inability to furnish the return of the total income on the ground that there was no privity of contract between the parties described as the Buldana District Main Cloth Importers'

Group.

As no return was filed, a notice under Sub-Section (4) of section 22 was issued and in response thereof account books were produced before the Income-tax Officer. It was found that the profits made by Haji Ahmad Haji Ali and one Harjiwan Kuwarji in the months of February, March and April 1945 were Rs. 15,093/- and were payable as under :

- (1) Harjiwan Kuwarji ... Rs. 5,304/-
- (2) Haji Ahmad Haji Ali ... Rs. 9,789/-

After April 1945, the aforesaid two members made re-adjustment about the distribution of the profits. The profits for the months of May, June, July, August and September 1945 were determined at Rs. 39,181/-. By order, dated 11-9-1947, the Income-tax Officer determined the total income of the assessee as follows :

Profits for the two periods mentioned above .. Rs. 54,274/-  
Less Excess Profits Tax liability Rs. 20,183/-  
Balance .. Rs. 34,091/-  
Allowing Rs. 4,000/- for earned income relief, he made the assessment.

4. This assessment was made under Sub-Section (4) of section 23 of the Act.

5. Similarly, another notice under Sub-Section (2) of section 22 of the Act was served on the assessee through Haji Ahmad Haji Ali on 16-8-1947. This time also no return was filed. A notice under Sub-Section (4) of Section 22 was, therefore, issued; account books were filed and the Income-tax Officer determined the total income for that year under Sub-Section (4) of section 23 of the Act to the best of his judgment at Rs. 98,345/-. It is an admitted position that there were changes in the membership of the group during the year. Only Haji Ahmad Haji Ali was a common member throughout.

6. The first order in the Excess Profits Tax assessment case was passed on 20-11-1947 which related to the accounting period commencing from 1-2-1945 to 30-9-1945. The second order in the Excess Profits Tax case was passed on 31-12-1947 for the period commencing from 22-10-1945 and ending on 31-3-1946. The assessee filed applications under Section 27 of the Act which were dismissed by the Income-tax Officer by two separate orders on 25-1-1949. These orders were upheld in appeal by the Appellate Assistant Commissioner of Income-tax. The Tribunal also dismissed the appeals. The assessee then moved the Tribunal to state the case to this Court, but those applications were also dismissed. The assessee then moved this Court by applications under Sub-Section (2) of section 66 of the Act. These were Misc. Civil Cases Nos. 23 to 28 of 1951. All these cases were heard together and by order, dated 10-3-1953 this Court directed the Tribunal to state the case on the aforesaid questions of law. The Tribunal has now stated the case.

7. The main question to be decided is the first question referred to above, i.e., whether the assessee constituted an "association of persons" within the meaning of the Act. This expression is not defined in the Act.

8. Formerly, the expression used in the Act was "association of individuals" which was

subsequently amended in the year 1939 to "association of persons" to make it more comprehensive. Nothing turns on the meaning of the word "individual" or "person" in the instant case. We are only concerned with ascertaining the exact import of the word "association."

9. According to the English Oxford Dictionary, "associate" means :

"to join in common purpose, action or condition; to link together, unite, combine, ally, confederate." In our opinion, this connotes that when two or more persons unite together of their own free volition in some common purpose or action they can be deemed to have associated together and formed an association.

10. The expression "Association of individuals" was considered by a Division Bench of the Calcutta High Court in a decision reported in - 'B.N. Elias, In re', 1935-3 ITR 408. At page 415 Derbyshire, C.J., in delivering the judgment quoted with approval the following passage from the judgment of Cotton, L.J. in *Smith v. Anderson*<sup>1</sup>, :

"I do not think it very material to consider how far the word 'association' differs from company or partnership, but I think we may say that if 'association' is intended to denote something different from a company or partnership, it must be judged by its two companions between which it stands, and it must denote something where the associates are in the nature of partners'." (Underlining (here in ' ') is by us.)

Costello, J., in considering the same question, at p. 417 observed :

"Mr. Banerji invited us to take upon ourselves the difficult but not indeed impossible task of laying down a general definition of the expression "association of individuals". In my opinion that is not desirable from any point of view whatever. Each case must be decided upon its own peculiar facts and circumstances. When we find, as we do find in this case, that there is a combination of persons formed for the promotion of a joint enterprise banded together if I may so put it, co-adventures, to use an archaic expression, then I think no difficulty whatever arises in the way of saying that in this particular case these four persons did constitute an 'association of individuals' within the meaning of both section 3 and Section 55, Income-tax Act, 1922."

11. The views taken in decisions reported in *Mufti Mohammad Aslam v. Commissioner of Income-tax, U. P.*<sup>2</sup>, In the matter of Keshardas Chamria, 1937-5 ITR 246 and *Mohamad Abdul Kareem and Co. v. Commissioner of Income-tax, Madras*<sup>3</sup>, have gone still further and held that the expression "association of persons" should be read ejusdem generis with the word "firm" immediately preceding it; and before there can be an association of individuals within the meaning of the Act it must be shown that the association has at least some of the attributes of a firm or partnership, though not in the strictly legal sense of the term.

12. Beaumont, C.J., in delivering judgment in *Commissioner of Income-tax, Bombay v. Laxmidas Devidas*<sup>4</sup>, preferred the rule laid down in B.N. Elias, In re (supra) and dissented from the one

taken in 1936-4 ITR 412 : AIR 1936 Allahabad 817 (cit. sup.).

13. The expression was also considered in *Commissioner of Income-tax, Burma v. M.A. Baporia*<sup>5</sup>, and Roberts, C.J., in considering the question cited with approval the observations of Costello, J., in *B.N. Elias, In re*, (supra).

14. For the purposes of this case, it is not necessary for us to express ourselves as to whether the expression "association of persons" should be read ejusdem generis with the word "firm." Suffice it to say that before any group of persons can be called an association of persons it must be established on facts that they are in the nature of partners, i.e. in our opinion, the established facts of the case must at least lead to an inference that the members of the group of their volition or free will have joined in a venture with a view to earn profit.

15. The facts of this case are that the Deputy Commissioner, Buldana, evolved a scheme for the distribution of cloth in his district during the period when this business was controlled by the Government. He recommended that the following persons, viz., 1. Haji Ahmad Haji Ali,

2. Bhanji Kuwarji,

3. Trimbaklal Tribhuwandas and

4. Deolal Rangulal,

be jointly allowed to import cloth in the Buldana district from the mills in India. This recommendation was accepted by the Provincial Government. The Deputy Commissioner, therefore, issued an order, the relevant part whereof reads as follows :

"In accordance with the instructions of the Provincial Government, I hereby direct that the distribution of cloth from the Bombay and Ahmedabad mills and of local mills shall be carried on through the agency of the persons named below :

Group of Importers :

1. M/s Haji Ahmad Haji Ali and Co., Khamgaon,

2. M/s Bhanji Kuwarji, Chikhli,

3. M/s Trimbaklal Tribhuwandas, Khamgaon,

4. M/s Deolal Rangulal, Khamgaon, ..... .."

Even though these persons were appointed by the Deputy Commissioner as a group of importers all of them did not participate in the scheme during the entire period. Changes in the personnel of the group occurred from time to time in this short period. It will further be seen that they had no option but to work the scheme if they desired to carry on their trade. Thus, even participation of some of the persons from the group in the scheme cannot be said to be at their free will but on the other hand it was under compulsion. In these circumstances, in our opinion, the assessee cannot be called an

"association of persons" within the meaning of the Act.

16. We may point out that the view taken in *Commissioner of Income-tax, Madras v. P.R.A.L.*

*Muthu Karuppan Chettiyar*<sup>6</sup>, 1936-4 ITR 412 : AIR 1936 Allahabad 817 and 1939-7 ITR 225 : AIR 1939 Rangoon 258 (SB), has been approved by a Division Bench of this Court in - '*Commissioner of Income-tax, M.P. and Bhopal v. Cloth Semi-Wholesalers, Akola*<sup>7</sup>, In that case certain semi-wholesale dealers were associated together under an order of Deputy Commissioner for taking over certain quotas of cloth bales and for distributing them amongst retailers. It was held that in the circumstances it could not be said that those persons had agreed to carry on the business or to share the profits. This case is not in any material way distinguishable from the present one.

17. We, therefore, answer the first question in the negative.

18. In view of the answer to the first question, the remaining questions do not arise and need not be answered.

19. The costs of this application shall be borne by the Department. Counsel's fee Rs. 100/-.

Reference answered.

Cases Referred.

<sup>1</sup>(1880) 15 Ch D 247 at p. 282

<sup>2</sup>1936-4 ITR 412 : AIR 1936 All 817

<sup>3</sup>1948-16 ITR 412

<sup>4</sup>1937-5 ITR 584

<sup>5</sup>1939-7 ITR 225 : AIR 1939 Rang 258 (SB)

<sup>6</sup>1935-3 ITR 208 : (AIR 1935 PC 117)

<sup>7</sup>1956 Nag LJ 223 : ( AIR 1956 Nag 103)