V.N.M. Arunachala Nadar vs Commissioner Of Excess Profits Tax, ... on 17 August, 1961

Equivalent citations: [1962]44ITR352(SC)

Bench: M. Hidayatullah, P.B. Gajendragadkar

JUDGMENT

Gajendragadkar, J.

1. These five appeals arise from two reference made by the Income-tax Appellate Tribunal, Madras Bench, under section 66(2) of the Income-tax Act, 1922, to the High Court of Judicature, Madras. The assessee in the two cases thus referred is the same but the points referred are different and the accounting years are also not the same. The assessee is V. N. M. Arunachala Nadar. In Reference No. 68 of 1953 the question referred to the High Court was under section 8(1) of the excess Profits Tax Act. This has been thus stated :

> "Whether on the facts and circumstances of the case there was a change in the persons carrying on the business within the meaning of section 8 (1) of the excess profits Tax Act ?"

2. The chargeable accounting period in respect of which this question was framed are four, February 7, 1943 to February 6, 1944, February 7, 1944, to January 18, 1945, January 19, 1945, to February 3, 1946, and February 4, 1946, to March 31, 1946. It is in respect of these four account periods that the four Civil Appeals Nos. 541 to 544 of 1960 arose from Reference No. 68 of 1953.

3. In Reference No. 58 of 1953 the question referred is one under section 10A of the excess Profits Tax Act. It had been thus framed :

> "Whether on the facts and in the circumstances of the case there is any material to justify the finding of the Tribunal that the main purpose in constituting the two firms was the avoidance or reduction of liability to excess profits tax within the meaning of section 10A of the Excess Profits Tax Act ?"

4. The assessment year in regard to this question is 1943-44 and the chargeable accounting period is January 28, 1942, to February 7, 1943. This reference has given rise to Civil Appeal No. 540 of 1960.

5. The two questions thus refereed to the High Court have been answered by it in the affirmative against the appellant assessee. The appellant has therefore come to this court by special leaves against the decision of the High Court in the two cases referred to it.

6. For the appellant Mr. Viswanatha Sastri has seriously pressed his contentions in Civil Appeals Nos. 541 to 544 of 1960. In respect of Civil Appeal No. 540 of 1960, however, he has not been able to press the case because, as we will points out later, the said case has obviously been concluded the findings of fact by the income-tax authorities against the appellant and the High Court has refused to interfere with the said findings. We will, therefore, first deal with Civil Appeals Nos. 541 to 544 of 1960.

7. Arunachala Nadar was the karta of the Hindu undivided family which consisted of himself and his ten sons. Four of these sons by name Ayyamperumal, Rathinasabapathy, Durairaja and Rajamanickam were born to the appellant by his first wife. In 1942 all of them were adults. The appellant had six sons by his second wife who were all minors in 1942. Up to the year 1942-43 this undivided Hindu family with the appellant as the manager was the assessee. It had its headquarters at Virudhunagar. Its business consisted of four principal items, grocery and two oil mills at Virudhunagar, grocery at Tuticorin, oil mills at Madurai and commission business in grocery at Bombay. There were some other items of business carried on by the family but with them we are not concerned in the present appeals.

8. It appears that the four adult sons of the appellation separated for the family and were subsequently divided intense. The appellant and his six minor sons continued to stay together and the appellant looked after the family. This happened after the accounting year of the appellant-assessee's family ended on January 27, 1942. The partition thus effected was to come into operation from the close of the accounting year. For the purpose of the partition from the close of the accounting year. For the purpose of the partition the member of the family were divided into two groups - the four adult sons constituted one group though they were later divided into se and the appellation and his undivided sons constituted another group. The properties of the family were divided into two halves each group taking one half. It appears that the appellant's group took over the business at Virudhunagar and at Madurai and the adult sons took over the business at Tuticorin and at Bombay. This partition was effected in the presence of and as determined by Mr. C. S. Subbiah Nadar of Virudhunagar. Subsequently a document was executed on August 10, 1942, which recorded the partition as it had already taken place.

9. Later on, three of the adults sons of the appellant, Ayyamperumal, Rathinasabapathy and Durairaja commenced separate business under the name and style of V. N. M. A. Ayyamperumal Nadar & Bros. This business was started on January 28, 1942. On the same day the fourth adults son Rajamanickam also commenced a separate business of his own. The appellant like wise started with a fresh set of accounts the business that had been allotted to him and his minor sons. This business commenced on January 28, 1942, and the method adopted in commencing this business was that the business that had been carried on under the two items up to January 27, 1942, had been closed or discontinued.

10. On October 14, 1942, the appellant wrote to the Income-tax Officer about the partition that had been effected in the family, and informed him that after the 15th That , Vishu, only the business in the name of V. N. M. Arunachala Nadar at Virudhunagar and Madurai belonged to him. The details of the business started by his divided sons were also giver by him in this communication. Later, in

the usual course the appellant was asked to submit his return for the assessment year 1943- 44 as the karta of the Hindu undivided family, that is to say, the return was expected to be submitted by the appellant as the head of the undivided family which was till then treated as the assessee. To this notice the appellant sent his reply on August 10, 1943. He averred that the form which had been sent to him on the basis of the original undivided family continuing during the accounting year was inappropriate because the family business was stopped on the 14th That , Vishu, and his four adult sons had gone out of the family and on the 15th That , Vishu, his adult sons had started separate business and he had also started a separate business. He reminded the Income-tax Officer that the same information had been submitted by him on October 14, 1942, along with the return made by him for 1942-43. "While this is so", said the appellant in his letter, "whereas I should have received a return in my separate capacity I have received a return in the character of the family. I am therefore returning this form". The appellant prayed that as per section 25A separate form may be sent to him and to his sons individually. Apparently this letter was treated by the Income-tax Officer as an application under section 25A of the Act and accordingly on October 31, 1945, an order was passed as required by the said section recognising the partition that had been effected in the family on January 27, 1942. It appears that after the partition took place in January, 1942, the appellant started a new line of business in paddy and rice at Kumbakonam with one Sadagopa Pillai as his employee in charge of that business at Kumbakonam. To this fact we may have to refer when we deal with Civil Appeal No. 540 of 1960. It is in the light of these facts that the High Court had to determine the questions referred to it in Reference No. 68 of 1953.

11. The High Court had found that the partition effected in the family of the appellant did not show that only the adult coparceners exercised their right to become divided in status from the other member of the family, took their share and left the family. A partition under Hindu law can be partial either as to persons or as to properties; but the High Court took the view that in fact a complete partition had taken place though after the said portion the appellant and his minor sons again continued as if they were an undivided Hindu family. "Factually, did the Hindu undivided family continue its existence after 27th January, 1942, for purpose of assessment of income-tax", said the High Court, "is the real question for determination". How this family came into existence it was not necessary to enquire or decide. Whether such a family came into existence in point of fact is the only point which called for its decision. Dealing with the question from this point of view the High Court referred to the facts found by the income-tax authorities. It referred to the conduct of the appellant, his application made under section 25A, his declarations to the department, the conduct of the adult sons, the statements made by all the parties in respect of the portion and particularly to the order passed under section 25A. It observed that when the appellant as the head of the new undivided family began his business as a fresh business he expressly stated that the old family business had been closed on January 27, 1942, and a fresh one had been started on January 28, 1942; in fact fresh accounting books were started on that basis. The High Court also observed that unless the requirement of section 25A was satisfied an order could not have been made by the Income-tax Officer at the instance of the appellant. In other words, accepting the findings made by the income-tax authorities which had been expressly recorded in the statement of the case the High Court was not impressed by the arguments urged before it on behalf of the appellant that under Hindu Law what had taken place in the family was that the adult members had left the family living the status of the appellant and his minor sons unaffected. Having come to the conclusion that there

was a partition of a general type the High Court naturally answered the question referred to it in the affirmative and against the appellation. It is the correctness of this answer which is challenged before us by Mr. Sastri.

12. Mr. Sastri contends that the partition deed executed in the case and in fact the general tenon or the conduct of the parties at the relevant time unambiguously suggests that it was a case where the adult coparceners had left the family after taking their shares and the status of the remaining coparceners was left unaffected. Mr. Sastri also contends that if the whole family had divided as a result of general partition it would not have been open in law to the appellant to reunite with his minor sons and so it would be difficult to imagine that the appellant and his minor sons could be treated as undivided Hindu family after the said general partition. Whether or not in law there could have been a reunion between the appellant and his minor sons it is unnecessary for us to decide in the present case. In Balabux v. Rakhmabai the Privy Council no doubt has observed that no agreement for a reunion on behalf of separated minor coparcener could be made by his father or mother as his guardian; but, as according to Mayne it would be open to the father or mother as his guardian to effect a separation on behalf of the minor coparcener, it would be equally open to the father or mother as his guardian to agree to a reunion on behalf of the minor. However, we do onto propose to pursue this matter any further because for the decision of the present appeals it is unnecessary to decide this question.

13. Returning to the argument urged by Mr. Sastri about the character of the partition effected in the family of the appellant it may be conceded that there are some feature of this partition which indicate that the adult coparceners may have left the family after obtaining their shares from their father. It is true that even in the case of such a partial partition for determining the shares of the seceding coparceners the shares of all the coparceners have to be determined as a preliminary step so that the determination of all the shares is not decisive one way or the other; but as the High Court has pointed out it is really not necessary to consider the academic question under the Hindu laws in the present proceedings, because the question under the Hindu in the present proceedings, because the question referred for the decision of the High Court has inevitably to be answered in the light of facts found by the income-tax authorities and recorded in the statement of the case, and the statement of the case is definitely and clearly against the appellant and consistent with the answer made by the High Court to the question under reference.

The statement of the case elaborately refers to the conduct of the parties. It points out that so far as the entries in the old family account books are concerned all the assets and liabilities were pooled on January 27, 1942, and divided into two halves; this fact considered in the light of the representation made by the appellant to the Income-tax Officer that the family business was stopped on the 14th That , Vishu, and a separate and new business had been commenced thereafter by the parties clearly shows, according to the statement, that a general partition had taken place. Same is the effect of the admitted circumstance that the appellant closed old books of account in respect of two items of business which came to him and opened new books of account on January 28, 1942. If the appellant and his minor sons had continued in the same old status of undivided Hindu family its was hardly necessary, and it would indeed have been inappropriate, to adopt this course. Then against the statement that the appellant in substance wanted his business to be registered as a new business and

accordingly an order under section 25A was passed to that effect is also indicative of a general petition. In conclusion, according to the statement, the taking over of various businesses by the two groups itself constitutes discontinuance of the business carried on by the quondam family and the businesses started by the two groups after the partition were new businesses and as such this was a case of partition in the family and not one of secession. These findings, the statement adds, were challenged before the Income-tax Tribunal but the challenge failed and the Tribunal accepted the conclusions affect recorded by the Income-tax Officer. It is in the light of these facts that the question under reference has to be considered, and the facts found unambiguously support the answer given by the High Court.

14. The statement of the case elaborately refers to the conduct of the parties. It points out that so far as the entries in the old family account books are concerned all the assets and liabilities were pooled on January 27, 1942, and divided into two halves; this fact considered in the light of the representation made by the appellant to the Income-tax Officer that the family business was stopped on the 14th That , Vishu, and a separate and new business had been commenced thereafter by the parties clearly shows, according to the statement, that a general partition had taken place. Same is the effect of the admitted circumstance that the appellant closed old books of account in respect of two items of business which came to him and opened new books of account on January 28, 1942. If the appellant and his minor sons had continued in the same old status of undivided Hindu family its was hardly necessary, and it would indeed have been inappropriate, to adopt this course. Then against the statement that the appellant was in complete control of the business at Madurai and Kumbakonam was contributed by the appellant, that the appellant was in complete control of the business at Madurai and Kumbakonam, in fact both the businesses were looked upon branches of the business carried on by him at Virudhunagar. Then the Tribunal examined the books of account and the mode adopted by him. It also considered that the appellant submitted to the assessment of income-tax of the income from all the three businesses only at Virudhunagar, and held that these factors clearly indicated that the dominant motive in forming the partnerships was the avoidance or reduction of liability to the excess profits tax. It is in the light of these facts that the attack made by the appellant against the answer given by the High Court to the question referred to it has to be judged. Thus considered we must hold that there is no substance in the appeal. It accordingly fails and is dismissed with costs. The respondent would be entitled to get costs in all the appeals in one set.

15. There is no doubt that the facts stated in the statement of the case have to be accepted and their correctness is not open to challenge in reference proceedings under section 66 (2). We may, however, very briefly indicate that the facts found in the statement, cannot be said to rest on no evidence at all; in fact there is ample evidence to support the statement of the case on the material points. The partition deed which was executed on August 10, 1942, merely records a past event which had already taken place. It is common ground that in point of fact the partition was effected in the presence of and was determined by Mr. Subbiah Nadar. The partition dad in terms refers to the division of businesses and the movable and immovable properties of the family. It is styled as a partition release deed and it is executed by the four adult sons of the appellant who took their shares. When we turn to the statements made by the parties, however, it appears clear that the family business was stopped at the time of immovable properties on the same day from the accounts

between the two groups. Ayyamperumal makes unequally categorical statement that family business was stopped, accounts were closed and the division followed between the two gropes. After this partition was made the appellant returned the notice served on him for the year 1943-44, applied under section 25A, obtained an order under that section and asked for due notice to be served on him in respect of the new business which he had started. Having regard to this material it would be difficult to suggest that the facts found in the statement of the case are not borne out by any evidence on the record. That is why the High Court haws observed that it was concerned to find the factual position of the family, and in doing so academic questions as to the principles of Hindu law would in necessarily play a minor part. In our opinion, Mr. Sastri is not right when he contends that the High Court has erred in law in answering the question referred to it in the affirmative. In the result Civil Appeals Nos. 541 to 544 of 1960 fail and are dismissed with costs.

16. That takes us to Civil Appeal No. 540 of 1960, which arose from reference No. 58 of 1953. In dealing with this appeal some more facts have to be stated. As we have already seen the appellant and his six minor sons began their new business at Virudhunagar and Madurai after partition. Thereafter the appellant commenced a fresh line of business in paddy and rice at Kumbakonam with Sadagopa Pillai as we have already pointed out; Pillai was put in charge of the business at Kumbakonam. The business of oil mills at Madurai was likewise in charge of Rathnaswamy, a nephew of the appellant, even before January 27, 1942, and Rathnaswamy continued his management after January 28, 1942. For the accounting year the appellant was assessed to tax on the income of the business carried on at all these places - Virudhunagar, Madurai and Kumbakonam.

17. The claim of the appellant was that in the next year of account which commenced on February 8, 1943, he had formed separate partnerships, one to carry on the business at Madurai and another to carry on the business at Kumbakonam; Rathnaswamy was taken as partner at Madurai and Pillai at Kumbakonam. The deeds of partnership were drawn up on January 10, 1944. The accounting year which had commenced on February 8, 1943, ended on February 6, 1944. The deed, however, recited that the partnership had been formed on February 8, 1943. Both the documents were substantially in similar terms.

18. On these facts the appellant claimed deduction of previous losses but his claim was reject by the departmental authorities on the ground that the two partnerships in question were brought about for the main purpose of avoidance or reduction of liability to excess profits tax. It is in respect of this conclusion that the question under reference had been framed.

19. In answering the question against the appellant the High Court has observed that in deciding such a question some important considerations must be borne in mind. Four such considerations have been set out in the judgment of the High Court; first, that the mere fact that a new business was started at a time when by such starting there would be a reduction of liability is not by itself proof that it was started with the main object of avoiding the excess profits liability within the meaning of section 10A; second, the onus of proof was on the department to show that the main purpose was to avid the payment of tax; third, the relationship between the parties to the transaction is not by itself conclusive to prove that the motive was the avoidance of liability; and fourth, that it was not

sufficient if gaining advantage in the matter of the payment of tax was merely an incidental advantage because such an advantage may be incidents and not the main motive for the transaction.

20. Having set outhouse considerations the High Court took into account the findings of fact recorded by the authorities and held that there was ample material to sustain the final conclusion of the Tribunal and that should be sufficient to dispose of the question under reference. The Tribunal accepted the findings of the Excess Profit Tax Officer and the findings thus accepted are borne out by the evidence on the record. It cannot be said that there was no evidence to support the findings. On this view the High Court answered the question against the appellant.

21. Mr. Sastri undoubtedly attempted to argue that the question posed forth decision of the High Court was a mixed question of fact and law and so the correctness of the findings recorded by the Tribunal was open to challenge before the High Court. We are not impressed by this argument. Whether or not the main purpose in constituting the two firms was the avoidance or reduction of liability to excess profits tax is, in our opinion, more a question of fact than a mixed question of fact and law it is abundantly clear that the conclusion of the Tribunal is borne out by overwhelming evidence on the record. The Tribunal rejected the pleas made by the appellant that he entered into the partnerships because was afraid of his old age. It was pointed out that the time when the partnerships came to into existence was significant, that the entire finance required for the business at Madurai and Kumbakonam was contributed by the appellant, that the appellant was in complete control of the business at Madurai and Kumbakonam was contributed by the appellant, that the appellant was in complete control of the business at Madurai and Kumbakonam, in fact both the businesses were looked upon branches of the business carried on by him at Virudhunagar. Then the Tribunal examined the books of account and the mode adopted by him. It also considered that the appellant submitted to the assessment of income-tax of the income from all the three businesses only at Virudhunagar, and held that these factors clearly indicated that the dominant motive in forming the partnerships was the avoidance or reduction of liability to the excess profits tax. It is in the light of these facts that the attack made by the appellant against the answer given by the High Court to the question referred to it has to be judged. Thus considered we must hold that there is no substance in the appeal. It accordingly fails and is dismissed with costs. The respondent would be entitled to get costs in all the appeals in one set.

22. Appeals dismissed.