

## **Ganga Sahai Umrao Singh vs Commissioner Of Excess Profits Tax on 25 April, 1950**

**Equivalent citations: AIR1950ALL595, [1950]18ITR988(ALL), AIR 1950 ALLAHABAD 595**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### **JUDGMENT**

Malik, C.J.

1. This is a reference under Section 66 (1), Income-tax Act, read with Section 21, Excess Profits Tax Act. The question referred to us is in these terms:

"Whether in the circumstances of this case, there is material to justify the opinion that the main purpose, for which the transaction in question was effected, was the avoidance or reduction of Excess Profits Tax Liability."

2. The facts of this case are that one Ganga Sahai had four sons, viz., Umrao Singh, Shimbhumal, Raghubir Saran and Ram Sarup. Shimbhumal had a son, Radhey Lal. Umrao Singh had three sons, namely Shib Charan Das, Tirloki Nath and Ram Richhpal. Parbhu Dayal is the son of Shib Charan Das. The family remained a joint Hindu family up to some date in the year 1920 and it used to carry on business of whole-sale cloth dealers, retail cloth dealers and of commission agents. The business was carried on in the names and styles of Firm Gangasahai Umraosingh, Firm Shimbhumal Raghubirsaran and Firm Gangasahai Ramsarup. In 1920 there was a partition in the family but the business continued to be carried on as before. In 1935 these four brothers entered into a partnership probably after the death of Ganga Sahai and the business mentioned above was carried on after 1935 by this partnership, in which Umrao Singh got an eight annas share and his two brothers, Ram Sarup and Raghubir Saran, got two annas eight pies share each. The share of Shimbhumal, the fourth brother, was entered in the name of his son, Radhey Lal, and it was two annas and eight pies. Firm Gangasahai Umraosingh was a registered partnership and the income from the three shops continued to be assessed up to the income-tax assessment year 1941-42. In the year 1940, there was a partition between Umrao Singh and his sons and grandsons. The reason for this partition is said to be that Parbhu Dayal, the grandson of Umrao Singh, had made a profit of about Rs. 20,000/-which he wanted to keep to himself and he was not willing to hand it over to be included in the funds of the joint family. Ram Gopal, son-in-law of Umrao Singh was appointed an arbitrator and he divided the family properties under a registered award. There is some difference about the date of the award, In

the order of the Appellate Tribunal and in the statement of the case the date is given as 10th August 1940, while in some of the applications filed by the assessee and in the two partnership deeds it is given as 11th August 1940. On 11th August 1940, the parties entered into two partnerships relating to the family business and under these two documents the family business was split up into two parts--Firm Gangasahai Umraosingh and Firm Shimbhumal Raghubirsaran. In the wholesale cloth business, which was being carried on by Firm Gangasahai Umraosingh, Umrao Singh was given one anna share though, under the law, he would have been entitled to two annas, Shib Charan Das got a three annas share instead of two annas and the other two sons of Umrao Singh got two annas share each and this business was placed in the charge of Umrao Singh's sons. The other two firms, Shimbhumal Raghubirsaran and Gangasahai Ramsarup, were combined into one firm under the business name of Firm Shimbhumal Raghubirsaran and in this firm Umrao Singh was not given any share. His three sons got the following shares :

			Rs.	As.	P.
Shib Charan Das	...	...	0	3	6
Tirloki Nath	...	...	0	2	3
Ram Richhpal	...	...	0	2	3

This firm was to be managed exclusively by the old partners, viz , Ram Sarup, Raghubir Saran and Radhey Lal. The new partnership deeds were registered under Section 26A, Income tax Act.

3. It is not suggested that this partition was bogus, nor is it suggested that Umrao Singh continued to have his old share of two annas in firm Gangasahai Umrao Singh or that he continued to have his two annas share in firm Shimbhumal Raghubirsaran. What was, however, suggested on behalf of the Department was that the main purpose behind the splitting up of one business into two separate businesses was to evade payment of the Excess Profits Tax. The assessee firm produced Ram Gopal as their witness whose evidence was neither relied upon by the Income-tax Commissioner nor by the Appellate Tribunal. The evidence of Ram Gopal having been rejected, the question arose before the Appellate Tribunal whether on the facts and circumstances placed before it, it could come to the conclusion that the splitting up of one business into separate business was effected with the main purpose of evading payment of the Excess Profits Tax. The members of the Appellate Tribunal mentioned three circumstances which, according to them, entitled them to come to the conclusion that this alteration was made with the main purpose of evading payment of the Excess Profits Tax. The circumstances are as follows :

(1) That no satisfactory reason was furnished as to why Umrao Singh was not given any share in Firm Shimbhumal Raghubirsaran;

(2) that no satisfactory reason was given as to why the parent partnership was split up into two units; and (3) that the assessee firm knew that they would have to pay the Excess Profits Tax if the amount of profits was in excess of Rs. 36,000/-.

4. So far as the first two circumstances are concerned, they only go to show that the assessee firm had failed to explain the reason for the splitting up of the parent partnership and for non-allotment of a share to Umrao Singh in the second partnership. It is not disputed that Umrao Singh was not given a share in the second partnership and that his share in the first partnership was reduced. After the partition in the family of Umrao Singh, it was necessary to split up the partnership into two units if the partners of the two units were not the same or their shares were not identical. For the purpose of evading payment of the Excess Profits Tax, it was, however, not necessary to exclude Umrao Singh from his legal share in the business. From the mere fact that the assessee firm knew that the Excess Profits Tax would be payable on an income in excess of Rs. 36,000/- and from the fact that an explanation to the satisfaction of the members of the Appellate Tribunal, was not furnished, it does not necessarily follow that the main object of the assessee firm was to evade the payment of the excess profits tax.

5. It may be profitable to refer to a decision of their Lordships of the Judicial Committee in the case of *Otto George Gfellar v. The King*, A. I. R. (30) 1943 P. C. 211 : (45 Cr. L. J. 241), wherein it was held that though upon the prosecution establishing that the accused was in possession of goods recently stolen the Court may presume that he was either the thief or had received the goods knowing them to be stolen, unless he can account for his possession, yet, where an accused person gives an explanation, which may reasonably be true and which is consistent with his innocence even though the accused may have failed to convince the Court about the truth of the explanation given, the burden is again shifted and the prosecution has to prove that the accused is guilty. This case was considered by me in the case of *Rex v. Ram Bharosey*, 1949 A. L. J. 445 : (1949 A. W. R. 532), where I pointed out that the observations of their Lordships partly embodied the provisions of Section 114, *illus. A*, Evidence Act, and what their Lordships intended to emphasise was that it was for the prosecution to prove that the accused was guilty and the accused had only to explain his possession. Though the observations were made in a criminal case still they are helpful to show to what extent the Court can go when a plausible explanation has been given but the party has failed to convince the Court of the truth thereof. The explanation given on behalf of the assessee was that Umrao Singh had become too old to take any active part in the carrying on of the business. That the other partners did not like to have his name included in the partnership but on sentimental grounds that his name must be associated with the old family business of the firm Ganga Sahai Umrao Singh and on his insistence he was given a one anna share in that business. That he was not given any share in the other business and that necessitated a change in the constitution of the firm and the business had to be split up into two businesses. This was a plausible explanation and even if it was not accepted by the Excess Profits Tax Officer the mere fact of his non-accepting the explanation would not entitle him to hold that that was a circumstance which established that the main purpose for splitting up of the business into two parts was an evasion of the excess profits tax. This leaves us with only the third fact that the assessee firm knew that they would have to pay the excess profits tax if the amount of profits was in excess of Rs. 36,000/- and that they had already made profits in excess of that amount. The question is whether merely from this fact the Appellate Tribunal could hold it established that the main purpose was to evade payment of the excess profits tax. Learned counsel for the department has relied on a decision of the Madras High Court in the *Commissioner of Income and Excess Profits Tax, Madras v. Coimbatore Pioneer Mills, Ltd., Coimbatore*, (1950) 1 M. L. J. 278 : (A. I. R. (37) 1950 Mad. 661) where one of the learned Judges held that the assessee

having failed to prove the motive or the reason for the change, the time at which the alteration was made becomes significant and it can properly be assumed that it was done with the main purpose of evading payment of the excess profits tax. Firstly, this would mean that after the Excess Profits Tax Act was amended and Section 10A was added to it, the burden was shifted on to the assessee to prove the reason for the alteration if the result of the alteration was to effect a saving in the payment of the Excess Profits Tax. The law is well settled that both under the Income-tax Act as well as under the Excess Profits Tax Act, the burden is on the department to prove the charge against the assessee that he had done something with the main purpose of evading payment of the tax. See *Dixon and Gaunt, Ltd. v. Inland Revenue Commissioners*, 1947-1 ALL B. R. 723. Secondly, in the *Commissioner of Income and Excess Profits Tax, Madras v. Coimbatore Pioneer Mills, Ltd., Coimbatore*, (1950-1 M. L. J. 278 : A. I. R. (37) 1950 Mad. 661) (*supra*), the time factor was considered with reference to two special circumstances that applied to that case only, viz., the substantial increase in the capital of the company due to war conditions and the improvement in the demand for textiles. In the present case, the time factor is to be considered only with reference to the passing of the Excess Profits Tax Act so that the views expressed in that case cannot appropriately apply to this case.

6. It is true that it is not possible for the department to lead any direct evidence to prove the main purpose with which the assessee effected the change in the constitution of his firm but that does not shift the burden on the assessee to justify his action and unless such facts or circumstances are placed before the Appellate Tribunal as would lead to a reasonable inference that the main purpose was to evade payment of the Excess Profits Tax, the Tribunal was not justified in coming to the conclusion, merely because the assessee had failed to give a satisfactory reason, that the motive was to evade payment of the Excess Profits Tax. Though direct evidence is not possible, yet in such cases it is the duty of the Excess Profits Tax Officer to investigate the facts carefully and examine the detailed working of the concern or concerns or look into such other facts and circumstances as would lead to a reasonable inference that the main purpose behind the reconstitution of the firm was to evade payment of the Excess Profits Tax. In the facts and circumstances of this case it being admitted, or at least not challenged, that there was a partition in August 1940 between Umrao Singh and his sons and that Umrao Singh was not given any share in Firm Shimbhumal Raghubirsaran though he was a shareholder in the other Firm Gangasahai Umraosingh, the splitting up of the business into two units became inevitable.

7. Our answer to this reference, therefore, is that there was no material before the Appellate Tribunal to justify the opinion that the main purpose for which the transaction in question was effected was the avoidance of payment of the excess profits tax. In the circumstances of the case the assessee firm is entitled to costs of this reference, which we assess at Rs. 400/- only.