

Chhaju Ram Ram Kumar vs Commissioner Of Income-Tax, U.P. on 21 December, 1951

Equivalent citations: [1952]21ITR251(ALL)

JUDGMENT

In this reference under Section 66(1) of the Indian Income-tax Act read with Section 21 of the Excess Profits Tax Act the following two questions have been referred to this Court for answer :-

"(1) Whether the inference drawn by the Tribunal that the main purpose of starting the new business in wholesale yarn under the name and style of Nanda Kishore & Co., by the newly created firm consisting of the two partners of the assessee firm and two outsiders for the avoidance or reduction of excess profits tax liability is legally correct ?

(2) Whether the formation of the new firm Nanda Kishore & Co., which was separately registered under Section 26A of the Act as a firm distinct from the old firm of M/s. Chhaju Ram Ram Kumar could legally amount to a transaction within the meaning of Section 10A and the provisions of that section could be applied to it ?"

The facts are that the assessee Messrs. Chhaju Ram Ram Kumar was carrying on business in yarn and the two partners, Chhaju Ram and Ram Kumar were brothers, who owned eight annas share each. On October 20, 1941, they started a firm Nanda Kishore & Co., to do wholesale business in yarn in which the shares of Chhaju Ram and Ram Kumar were fixed at four annas share and their sisters son, Sat Narain, was given a four annas share and their mother, Sm. Parvati Devi, was given another four annas share. It was said that the assessee firm was doing business of Arhat on commission basis.

The Excess Profits Tax Officer claimed that the main purpose in starting the new business was to avoid payment of the excess profits tax.

The contention of the Excess Profits Tax Officer was upheld by the Tribunal and it recorded the following findings of fact :-

"(1) It was proved that by the creation of the new firm the scope of the business of the parent firm had been reduced and consequently its profits had also been reduced."

This would naturally mean that a part of the business that was being done by the assessee firm was diverted to the new firm.

"(2) It was admitted that a separate firm was created to avoid the payment of income-tax at a higher rate and it followed logically that the assessee was also

influenced by the existence of the Excess Profits Tax Act in force at the time when the new firm was created."

It is admitted that the assessee firm was assessed both to income-tax as well as to excess profits tax. It was admitted on behalf of the assessee that a firm was started to do wholesale business to avoid the payment of income-tax at a higher rate. That it would necessarily reduce the excess profits tax liability was obvious and if the motive was admittedly the avoidance of one tax it is not difficult to assume that the motive was the avoidance of the other tax liability also.

"(3) The profits of the assessee firm were rising and, therefore, he did not want to tag profits of Nanda Kishore & Co., to its own profits to increase its liability to excess profits tax."

This fact is not denied and is admitted.

The question, therefore, arises whether on these facts the Tribunal could come to the conclusion that the main purpose for starting the new business in wholesale yarn under the name and style of Nanda Kishore & Co., was the avoidance or reduction of the excess profits tax liability. It is not necessary for us to consider the law on the subject at any great length as we have had occasions in several cases to do the same. Learned counsel has urged that a transaction in Section 10A does not mean the starting of a new firm. What amounts to transaction within the meaning of Section 10A has been discussed by us in *Bhagwan Dass & Sons, Cawnpore v. Commissioner of Income-tax, U.P., C.P., and Berar*. The point was also discussed in *Sohan Pathak and Sons, Banaras v. Commissioner of Income-tax, Dhaukal Mal Dwarka Prasad v. Commissioner of Income-tax, U.P., Income-tax, U.P., C.P., and Berar*. In our view the starting of the firm Nanda Kishore & Co., and transferring to it a part of the work of the old firm was a transaction within the meaning of Section 10A.

On the facts found by the Tribunal stated above it is not possible to hold that there was no material before the Tribunal on which it could hold that the main purpose was the avoidance or reduction of the excess profits tax liability. We may mention that the Second Amendment Act (No. XXIV of 1941) received the assent of the Governor-General on November 26, 1941. The assessee having had to pay the excess profits tax under the unamended Act must have thought that he would escape a part of the liability by transferring a part of the business of the old firm to a new firm. No other plausible reason has been given for doing a part of the business under a new name.

In the circumstance our answer to the two questions must be in the affirmative.

The Commissioner is entitled to his costs which we assess at Rs. 300.