

## **Dhaukal Mal Dwarka Prasad vs Commissioner Of Income-Tax, U.P., ... on 28 September, 1950**

### **Equivalent citations: [1951]19ITR212(ALL)**

#### **JUDGMENT**

This reference under Section 21 of the Excess Profits Tax Act read with Section 66(10) of the Income-tax Act raised three question of law. The first two question are as follows :-

- (1) Whether the formation of the new partnership is a transaction within the meaning of Section 10A of the Excess Profits Tax Act ?
- (2) Whether the fact of the registration of the firm under Section 26A of the Income-tax Act is a bar to the addition of its income to the income of a firm which is subject to excess profits tax proceedings by the Excess Profits Tax Officer in exercise of his powers of adjustment under Section 10A (2) of the Excess Profits Tax Act for the purpose of determining the excess profits tax ?

The answers to the first two questions are covered by our decision in *Sohan Pathak and Sons, Banaras v. Commissioner of Income-tax, U.P. and Ajmer-Merwara*, Lucknow. The facts briefly stated are that there was a Hindu undivided family carrying on extensive business in Jaunpur under the name and style of Dhaukal Mal Dwarka Prasad. The family dealt in grain, kerosene oil, petrol and cloth. On the August 8, 1943, the cloth business was separated from the main business and a firm was started under the name and style of Kedia & Co., to carry on the cloth business. Dhaukal Mal, the karta of the joint family, had an eight annas share in this business and Ganga Ram and Madan Lal, son-in-law of Dhaukal Mal and son of a servant of Dhaukal Mal respectively, were included as partners on a share of four annas each. The partnership was registered under Section 26A of the Income-tax Act by the Income-tax Officer. The Excess Profits Tax Officer, however, held under Section 10A that the cloth business had been started with the main purpose of reducing the liability to pay excess profits tax. This finding was affirmed by the Appellate Tribunal. In the statement of the case the facts are summarised on the basis of which the Tribunal came to the conclusion that the main purpose of separating the cloth business was the avoidance or reduction of payment of excess profits tax.

The third question formulated is as follows :-

- (3) Whether the conclusion drawn by the Tribunal that the main purpose of the formation of the firm Kedia & Co., was to avoid or reduce the excess profits tax liability was a correct inference drawn by the Tribunal from the proved facts as stated above ?

The question has not been correctly framed and what the Tribunal probably meant was whether

there was material on which the Tribunal could come to the conclusion that the main purpose was to reduce liability to pay excess profits tax. The Tribunal, as we have already said, has set out at some length, in the statement of the case, the material on the basis of which they came to that conclusion. We cannot, therefore, say that there was no material on which the Tribunal could hold that the main purpose was to reduce the liability to pay excess profits tax. This is our answer to the third question.

The Commissioner of Income-tax is entitled to his costs which we assess at Rs. 350.

Reference answered accordingly.