

## **B.N. Rama And Co. vs Commr. Of Income-Tax, United ... on 12 November, 1952**

**Equivalent citations: AIR1953ALL445, AIR 1953 ALLAHABAD 445**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### **JUDGMENT**

Malik, C.J.

1. This is a reference under Section 66(1), Income-tax Act and the question referred to us for decision reads as follows :

"Q. Whether, in view of fact that the capital invested in the businesses in respect of which the benefit of Section 25(3) and (4) is claimed flowed put of the same nucleus of the Hindu undivided family from which the Hindu undivided family business in respect of which the tax was paid under the Act of 1918 and of the fact that both the businesses were owned by the same Hindu undivided family and assessed together, the businesses started subsequent to 1918 would be entitled to the benefit of the provisions of Section 25(3) and (4) as ramifications of the old business which was assessed to tax under the Act of 1918?"

2. In effect, we have been asked to give our opinion on the point whether if the following two facts are proved that (1) The capital invested in the two businesses, in respect of which the benefit of Sub-sections (3) and (4) of Section 25, Income-tax Act is claimed, came out of the joint funds of the Hindu undivided family; and (2) The two businesses were both owned by the same Hindu undivided family and assessed together;

the conclusion must necessarily be drawn that both the businesses were one and the same so that if the Hindu undivided family had paid income-tax for one business under the Income-tax Act of 1918, it would be entitled to benefit for the other business Under Sub-sections (3) and (4) of Section 25 of the Act. The mere fact that a Hindu undivided family and not an individual had carried on the business should make no difference and we fail to see how the fact that an individual had invested his own money and carried on two businesses must lead to the necessary conclusion that the two businesses were one and the same and were not two separate businesses. It was for the assessee to prove that the business, which had been discontinued, was the same business which had been charged with income-tax under the provisions of the Income-tax Act of 1918. It appears from the appellate order of the Income-tax Appellate Tribunal that the counsel for the assessee was asked

whether he could prove that it was the same business, which had been charged with income-tax under the provisions of the Income-tax Act, 1918, from his account books or otherwise but he expressed his inability to do so on the ground that the old account books were not available. No evidence was tendered on behalf of the assessee but reliance was placed on certain old records. Learned counsel has stated that the records meant the old assessment records. Barring the fact that the assessee contended that both the businesses were carried on by the same Hindu undivided family and funds were invested out of the joint funds of that family, no other circumstance appears to have been relied upon | and, as we have already said, it is impossible to hold that, merely on these two facts, the necessary conclusion must be drawn that it was the same business in respect of which income-tax had been paid under the provisions of the Income-tax Act of 1918. Not only there were no materials to prove to the satisfaction of the Tribunal that it was the same business, there were certain other facts and circumstances relied upon by the Tribunal which pointed towards a different conclusion. The Tribunal pointed out that, from the assessment order for the year 1922-23, it appeared that the account books for the two businesses were separate, that the expenditure over the staff and other expenses were separately claimed in the return, that the Johnstonganj business, which was assessed to tax under the Income-tax Act of 1918, was closed in the year 1926 and that there was nothing to show that either the capital or the assets of that business were transferred to the Canning Road business. The Tribunal held that there did not appear to be any interlacing or intermingling of the two businesses at any stage. The finding recorded was, therefore, clearly a finding of fact, based on such materials as were available.

3. Our answer to the question referred to us for opinion, therefore, is in the negative. The assessee must pay the costs to the Department which we assess at Rs. 300/-.