

Madras High Court

S.P.A.V. An. Kannappa Chettiar vs Commissioner Of Income-Tax on 11 October, 1963

Equivalent citations: (1964) 1 MLJ 49

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JUDGMENT G.R. Jagadisan, J.

1. The following questions stand referred by the Tribunal under the Indian Income-tax Act:

(1) Whether the said garden formed the stock-in-trade of the money-lending business ; and (2) Whether the excess realised on the sale of the same was properly brought to tax ?

2. The assessee had been assessed to tax as a Hindu undivided family for the year of assessment 1956-57 relevant to the accounting year ended on 31st March, 1956. The family carried on money-lending business in Kurunegale in Ceylon under the vilasam S.P. AV. AN. A certain estate in Ceylon was purchased by the assessee family on 27th December, 1929, from one Gnanapandian Chettiar for a sum of Rs. 15,000. The said amount was paid in India and the transaction is disclosed in the account books of the family maintained at "Oor". Nattukkottai Chettiars who carry on business in foreign parts always maintain an account, at the place of their residence, called the "Oorkadai" account. As the property was in Ceylon, the income from the property was naturally utilised in, the money-lending business of Kurunegale. On 3rd November, 1947, entries, were made both in the Oorkadai, account and in the money-lending account at Kurunegale showing that the foreign firm was indebted to the Oorkadai business by reason of the transfer of the Ceylon property from the Oorkadai account to the foreign account. The property was actually sold during the year of account for a sum of Rs. 30,000. The assessee family thereby realised an excess of Rs. 15,000 ' over and above the purchase value which was paid in the year 1929. It is this amount which is sought to be taxed by the Department as revenue and which is sought to be saved from tax by the assessee on the ground that it is only an excess of capital realisation.

3. The Income-tax Officer observes in his order of assessment that it was admitted that the property was acquired in the course of money-lending transactions in Ceylon. According to the Officer there was an admission that the Ceylon assets purchased in the year 1929 and transferred to the account of the foreign firm in 1947 became stamped with the character of stock-in-trade of the money-lending firm. There can be no doubt that once it is admitted or found that the property constituted one of the items of the stock-in-trade of the money-lending firm, the excess realisation of Rs. 15,000 would of course be income. The Officer brought the sum of Rs. 15,000 to tax mainly on the admission of the assessee. On appeal before the Appellate Assistant Commissioner the assessee contended that there was no admission before the Income-tax Officer ; that if he thought that there was any such admission it was clearly a misapprehension of the arguments advanced before him. The appellate authority, however confirmed the assessment not on the ground of any concession made by the assessee but because other items of properties held by the assessee in the foreign firm constituted stock-in-trade of the money-lending business. He observed as follows:

It is clear that the assessee has treated this as a money-lending asset. Further, I find that the assessee has been assessed in respect of similar profits in the earlier years, as for e.g., profit on a sale

of plot in 1948-49 assessment " Rs. 910 profit from sale ". The assessee is an Indian citizen and is stated to have no intention of settling in Ceylon. It cannot, therefore, be said that the property in Ceylon is a piece of investment. On the other hand, the properties figure in the money-lending books in Ceylon. These will establish that the profit is assessable.

The assessee went up on appeal before the Income-tax Appellate Tribunal, but failed.

4. So far as we are able to see, the Tribunal confirmed the assessment on two grounds : (1) that the income from the property was included in the money-lending books of the foreign firm and, (2) there were other estates and properties admitted to be stock-in-trade which were recorded in the foreign books.

5. Now, the question is whether the Department and the Tribunal have taken the correct view in holding that the sum of Rs. 15,000 excess realised by the assessee in the year of account by sale of the Ceylon estate is revenue. In our opinion there are not sufficient materials to justify the view taken. Learned Counsel for the Department frankly conceded that at the inception when the property was purchased from and out of the funds available in Oorkadai business, it was only an investment of surplus moneys in purchasing properties in Ceylon. There is nothing to show that these amounts came from and out of the money-lending business at Kurunegale. Even if it can be said that the assessee purchased the property at Oor with the help and aid of remittances which he might have got from the Ceylon business, that would not be sufficient to hold that the object of the assessee was only to purchase property as part of the stock-in-trade of the money-lending business. It has been repeatedly held that the mere fact that moneys are taken from and out of the till of a money-lending business and utilised for the purchase of the property would not be enough to hold that the purchase is not for purposes of investment, but only for the purpose of carrying on the money-lending business. The premise is therefore that the assessee invested moneys in purchasing estates in foreign parts where he was having a money-lending business. At the time of the purchases it was simply and purely a case of investment.

6. The next question is whether the property was merged effectively with, the stock-in-trade or the money-lending business by reason of the transfer, to which we have already referred, in the year 1947. The assessee's explanation for effecting such entries in the account books of Oorkadai and in the foreign business is that but for such entries, income from the property could not have been brought into India. But, there is no evidence in support of this plea. We are unable to say that merely because the Oorkadai account was credited with the value of Rs. 15,000 by debiting the foreign account, what was an investment at the beginning became converted into a stock-in-trade of the foreign business. The only inference that is possible by reason of this transfer would be that the property which was dealt with as the property of the Oorkadai became the property of the foreign business. In fact, there is no distinction between the two, as what was done was only a transfer by the assessee from his right hand to his left hand. Surely this would not be evidence to show that there was any intention on the part of the assessee to convert what was an investment into a stock-in-trade. In spite of the strenuous contentions urged by learned Counsel for the Department we are of opinion that a transfer of assets from one account to another in the year 1947 did not effect, or bring about, an alteration of the nature of the original acquisition. Nor can we say that the

mere fact that the income from the property had all along been used in the money-lending business from the very commencement of the purchase of the property would be of any significance. The income so dealt with would certainly be a stock-in-trade of the money-lending business, but not the corpus from which it is emanated.

7. Reference has been made both by the Tribunal and the Department that the assessee held other properties in Ceylon which were treated as stock-in-trade. In our opinion that is an irrelevant circumstance to decide the present question. There are no materials to show under what circumstances those items of properties were purchased and why the assessee treated those properties as stock-in-trade. It would be unsafe to hold that a particular investment of a money-lender should partake of a character of a stock-in-trade, because other items of properties purchased by him have been so dealt with. The materials on record are hardly sufficient to show that the Ceylon estate purchased in the year 1929 and held by the assessee for a period of twenty-seven years before it was actually sold became a stock-in-trade of the foreign business in the year 1947.

8. Both the questions are answered in favour of the assessee who will get his costs from the Department. Counsel's fee Rs. 250.