

THE COMMISSIONER OF INCOME-TAX,  
POONA

1961

March 6.

v.

BULDANA DISTRICT MAIN CLOTH  
IMPORTERS GROUP(J. L. KAPUR, M. HIDAYATULLAH and  
J. C. SHAH, JJ.)

*Income Tax—Business by group of persons—Profits ascertained and shared on joint basis—If Association of Persons—Indian Income-tax Act, 1922 (II of 1922), s. 3.*

A scheme for the distribution of cloth was evolved by the Deputy Commissioner of the District who appointed a group of persons as sole agents for the import of cloth from Mills and distribution of the same to retailers. Though for different periods the group was differently constituted, one of the members, firm 'H' remained a common member. The profits of the business were distributed amongst the members of the group in proportion of the capital contributed by them. The Income-tax Officer issued notice under s. 22(4) of the Indian Income-tax Act, and on production of books of account assessed the respondent as an "Association of Persons". The High Court was of the opinion, *inter alia*, that before a group of persons could be called an "Association of Persons" it had to be established that they were in the "nature of partners", which was not so in the instant case, as the members of the group were appointed by the Deputy Commissioner as importers; the participation of the group could not be held to be of free will but under compulsion and therefore they were not an "Association of Persons" within the meaning of s. 3 of the Indian Income-tax Act.

*Held*, that where a business is carried on and the profits ascertained on a joint basis, and then distributed according to the capital contributed by each member of the group, the group is an "Association of Persons" and it makes no difference that the scheme which produced profits was at the instance of or under the control of the Deputy Commissioner or that he had appointed the members constituting the group.

*Commissioner of Income-tax, Bombay North v. Indira Balakrishna*, [1960] 3 S.C.R. 513, referred to.

*Mohamed Noorullah v. Commissioner of Income-tax*, [1961] 3 S.C.R. 515, relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeals  
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Appeals by special leave from the judgment and order dated April 13, 1956, of the former Nagpur High Court in Misc. Civil Case No. 27 of 1954.

*K. N. Rajagopal Sastri and D. Gupta*, for the appellant.

*J. M. Thakar, S. N. Andley, Rameshwar Nath, P. L. Vohra and J. B. Dadachanji*, for the respondent.

1961. March 6. The Judgment of the Court was delivered by

*Kapur J.*

KAPUR, J.—These are four appeals by the Commissioner of Income-tax in Income-tax Reference made under s. 66-A(2) of the Income-tax Act (hereinafter termed the 'Act'). The question for decision is whether the respondent is "an association of persons" within the meaning of s. 3 of the Act.

The appeals relate to two Income-tax assessments and two Excess Profits Tax assessments; the former for the years 1946-47 and 1947-48 respectively, corresponding to the accounting years February 1, 1945, to September 30, 1945, and October 1, 1945, to August 21, 1946, the latter are in regard to chargeable accounting periods February 1, 1945, to September 30, 1945, and October 22, 1945, to March 31, 1946. The decision of the Excess Profits Tax appeals is consequent upon the decision of the Income-tax appeals.

The facts may now be stated: In 1945 the Deputy Commissioner of Buldana evolved a scheme for the distribution of cloth in his district and with the sanction of the Government of C. P. appointed four persons, viz., Haji Ahmed Haji Ali & Co., Bhanji Kuwarji, Trimbaklal Tribhovan Das and Deolal Rangulal as sole agents for the import of cloth from mills in various places in India and for distribution of the same to retailers. Two of them Haji Ahmed Haji Ali & Co. and Bhanji Kuwarji carried on the business as from February 1, 1945, to the end of September 1945. The profits of the business in proportion of the capital contributed by these persons were distributed between these two persons. After September 1945 there was a change in the group of importers and some others also joined the group and the profits of

the subsequent period were similarly distributed between the members of the group as it was then constituted in proportion to the capital contributed by each of them.

On March 12, 1947, the Income-tax Officer issued a notice under s. 22(2) of the Act to the respondent calling upon it to submit a return of the income of the group for the assessment year 1946-47. This was served on Haji Ahmed Haji Ali & Co but that firm did not furnish any return contending that there was no privity of contract among members of the group. A notice was then issued under s. 22(4) of the Act and on the production of the books, the Income-tax Officer ascertained the income for the year ending September 1945 and assessed liability for payment of income-tax under s. 23(4) of the Act. He assessed the respondent as "an association of persons" both for purposes of Income-tax and Excess Profits tax. An application under s. 27 of the Income-tax Act was dismissed by the Income-tax Officer. Similarly for the year 1947-48 a notice was again issued and served on Haji Ahmed Haji Ali & Co. and similarly the group was assessed as an association of persons to Income-tax and it was also assessed to Excess Profits tax for the period October 22, 1945, to March 31, 1946, and an application under s. 27 of the Income-tax Act was dismissed in regard to this period also.

Appeals were taken against the orders of assessments of Income-tax and Excess Profits tax but they were dismissed by the Appellate Assistant Commissioner. Appeals were then taken to the Income-tax Appellate Tribunal but they also were dismissed by an order dated April 18, 1950. An application for making a reference to the High Court was dismissed by the Tribunal but an order was obtained from the High Court under s. 66(2) of the Act and four questions were ordered to be referred to the High Court. The question relevant for the appeals is the following.

"Whether under the facts and circumstances of the case, the Buldana District Main Cloth Importers' Group constituted an 'Association of persons' within the meaning of section 4 of the Income-tax Act,

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1922, and was liable to be assessed to income-tax and excess profits tax in that status?"  
 The order of the Tribunal dated April 18, 1950, shows that for different periods the group which imported the cloth was differently constituted but Haji Ahmed Haji Ali & Co. was a common member. The books relating to the business were maintained by Haji Ahmed Haji Ali & Co. and every time there was a change in the constituents of the group separate set of books was maintained by them and the profits from those enterprises were divided between the various persons who formed the group at the material times. It was contended before the Tribunal that there was no "Association of persons" and that the cloth imported was issued to the importers who sold the cloth on their own account. The Tribunal however found:—

"The accounts themselves show that the import and distribution of cloth was done on joint basis. The purchases were on joint account, the sales were on joint account, the profit was first ascertained on the joint account and then distributed according to their agreed share of profits. In our opinion the assessment has been rightly made on the status of an association of persons."

The High Court, when the matter went to it after the statement of the case by the Tribunal, held that before a group of persons could be called an "association of persons" it had to be established that they were in the nature of partners, i.e., the members of the group of their own volition or free will had joined in a venture with a view to earn profits. As the members of the group were appointed by the Deputy Commissioner as importers their participation could not be held to be of free will but it was under compulsion and therefore they were not an "association of persons" within the meaning of the Act. The High Court referred to and relied upon various cases, to which it is not necessary to make any reference.

As to what constitutes an association of persons was laid down by this Court in the *Commissioner of Income-tax, Bombay North v. Indira Balkrishna* (1) and in

(1) [1960] 3 S.C.R. 513.

*Mohammad Noorulla v. Commissioner of Income-tax* (1) decided on January 18, 1961, where the business was carried on as one unit and by the consent of all the parties who were heirs of deceased Mohammad Omer Sahib and during the period when an administration suit between them was being fought in courts of law. In the present case the Tribunal has found that the import and distribution of cloth which was the business carried on by the respondent was done on a joint basis. The purchases were joint; so were the sales and the profits were ascertained on a joint basis and then distributed according to the capital contributed by each member of the group. This finding which is one of fact makes the respondent an "association of persons" and it makes no difference that the business was carried on because the Deputy Commissioner of the district had appointed the members constituting the group to import and distribute the cloth in the district.

The respondent, it is not disputed, worked the scheme which was framed by the Deputy Commissioner and the working of the scheme produced profits and it made no difference that the scheme was at the instance of or under the control of the Deputy Commissioner. Dealing with the argument of similar control Sarkar, J., in *Commissioner of Income-tax, Madhya Pradesh & Bhopal v. Vyas and Dhoniwala* (2) observed as follows:—

"The Tribunal thought that since the scheme was completely under the control of the Deputy Commissioner, the assessee could not be said to have carried on business by working the scheme. We are unable to see that the fact of the control of the Deputy Commissioner can prevent the working of the scheme by the assessee from being a business carried on by them. In our view, it only comes to this that the assessee had agreed to do business in a certain manner."

We are in respectful agreement with this observation. In our view the respondent was an association of

(1) [1961] 3 S.C.R. 515.

(2) [1959] Supp. 1 S.C.R. 39, 43.

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persons and was rightly so assessed to Income-tax and Excess Profits Tax.

The appeals are therefore allowed with costs. One hearing fee.

*Appeals allowed.*

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 MADHYA PRADESH

v.

SETH KHUSHAL CHAND DAGA

(J. L. KAPUR, M. HIDAYATULLAH and  
 J. C. SHAH, JJ.)

*Income Tax—Set-off of loss—Amount computed not notified in writing—Effect—Income-tax Act, 1922 (XI of 1922), ss. 24, 24(3).*

For the accounting year 1941 the assessee's profits from his share in an unregistered firm were set off against his losses in the individual business and the Income Tax Officer determined the loss to be carried forward at Rs. 53,840, but did not notify to the assessee by order in writing the amount of the loss as computed by him as required by s. 24(3) of the Act. The assessee appealed against the assessment but did not question the amount of the loss which had been determined. In the year 1942-43 the assessee claimed to re-open the question of the loss to be carried forward stating that it was Rs. 2,11,760. This contention was rejected by the Tribunal. The contention was again raised by the assessee in the assessment years 1948-49 and 1949-50.

The question was whether the loss which had been determined and ordered to be carried forward must be deemed to have become final because no appeal was filed against that determination.

*Held*, that computation of the amount of loss under s. 24 of the Income-tax Act does not become final unless the Income-tax Officer notifies by order in writing the amount of the loss as computed by him to the assessee. The assessee was entitled to have