

A COMMISSIONER OF INCOME-TAX, PUNJAB, PATIALA

v.

R. B. JODHA MAL KUTHIALA

November 19, 1965

B [K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

Indian Income Tax Act 1922, s. 25(4)—Benefit under—Business assessed under Indian Income-tax Act, 1918—Firm dissolved on March 31, 1939 and new firm took over business from April 1, 1939—Act 7 of 1939 came into force from April 1, 1939—Firm whether carried on business at commencement of Act 7 of 1939.

C A Hindu undivided family was assessed to tax under the Indian Income-tax Act 1918 in respect of its business, *inter alia*, in timber. In 1934 there was dissolution of the family and five of its members entered into a partnership to carry on the business. This firm was dissolved on March 31, 1939 and its accounts were settled on and up to that date. The timber business of the dissolved firm was taken over by the assessee firm. An instrument of partnership for the new firm was drawn up on D June 29, 1939 in which the facts relating to the dissolution of the earlier firm were also recited. The new firm—the assessee—was also dissolved in March 1943. In assessment proceedings for 1943-44 the assessee claimed benefit under s. 25(3) or in the alternative s. 25(4) of the Indian Income-tax Act, 1922. The claim was rejected by the assessing and appellate authorities but in reference, the High Court allowed the claim under s. 25(4). The Commissioner of Income-tax, with certificate, appealed to the Supreme Court.

E The material question for determination was whether the assessee was carrying on business at the commencement of Act 7 of 1939 so as to be entitled to the benefit under s. 25(4).

F HELD: The Indian Income-tax (Amendment) Act 7 of 1939 was brought into force on April 1, 1939. Section 5(3) of the General Clauses Act (10 of 1897) provides that unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into being on the expiration of the day preceding its commencement. Act 7 of 1939 must therefore be deemed to have come into operation at a point of time immediately on the expiration of March 31, 1939. [648 D-E]

G Whether the assessee was carrying on business at the point of time which Act 7 of 1939 came into force had to be decided from the recitals in the partnership deed executed by the respondents on June 29, 1939. The recitals in the instrument that the accounts were settled up to March 31, 1939 and that the erstwhile partners had become separate would imply that the firm formed in 1934 did not do business after March 31, 1939. The assessee was constituted to carry on the timber business allotted to it at the time of dissolution from April 1, 1939. The timber business was an old and running business and an intention to maintain continuity of the business and its transactions may reasonably be attributed to the assessee. It must therefore be held that the assessee commenced doing business immediately after the dissolution of the firm of H 1934 become effective. The business of that firm continued up to the midnight of March 31, 1939, and immediately thereafter the business of the assessee commenced. [649 E-H; 650 A]

The new partnership therefore came into being at the precise period of time at which Act 7 of 1939 came into force and it could not be said that the assessee was not carrying on business at the commencement of that Act. The High Court was therefore right in holding that the assessee was entitled on the dissolution of the firm in March 1943 to the benefit of s. 25(4) of the Indian Income-tax Act, 1922.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 95 of 1964.

Appeal from the judgment and order dated April 14, 1961 of the Punjab High Court in Income-tax Reference No. 23 of 1958.

S. T. Desai, R. Ganapathy Iyer, Gopal Singh, B.R.G.K. Achar and R. N. Sachthey, for the appellants.

A. V. Viswanatha Sastri, T. A. Ramachandran, O. C. Mathur for the respondent.

The Judgment of the Court was delivered by

Shah, J. Hakam Mal Tani Mal a Hindu undivided family was assessed to tax under the Indian Income-tax Act, 1918, in respect of income from business, *inter alia*, in timber at Abdullapur. In 1934 there was a partition of the Hindu undivided family, and five members of that family entered into a partnership to carry on in the name of M/s Hakam Mal Tani Mal the business which was originally carried on by the undivided family. Accounts of this firm were settled till March 31, 1939, and the firm was dissolved. The timber business of the firm was taken over by two partners of the firm—Gajjan Mal and Jodha Mal, who entered into an agreement of partnership to carry on the business in the name of R. B. Jodha Mal Kuthiala—hereinafter called 'assessee'. An instrument of partnership recording the terms of the partnership and reciting the dissolution of the earlier partnership was executed on June 29, 1939. The assessee was dissolved in March 1943.

In assessment proceedings for 1943-44 the assessee contended that the firm Messrs Hakam Mal Tani Mal was dissolved on March 31, 1939, before the Income-tax (Amendment) Act 7 of 1939 had come into force and the first succession to the business after April 1, 1939 was in March 1943, when the assessee was dissolved and on that account the assessee was entitled to relief under s. 25(3), or in the alternative under s. 25(4) of the Indian Income-tax Act, 1922. The Income-tax Officer completed the assessment without giving to the assessee the benefit of sub-ss. (3) or (4) of s. 25 of the Indian Income-tax Act, 1922. The Appel-

A late Assistant Commissioner confirmed the order holding that succession to the family firm Messrs. Hakam Mal Tani Mal took place on April 1, 1939, and that firm alone was entitled to relief under s. 25(4) and to the second succession which took place on April 1, 1943, after Act 7 of 1939 was brought into force relief under s. 25(4) was not admissible. The Income-tax Appellate Tribunal agreed with the view of the Appellate Assistant Commissioner. Thereafter as directed by the High Court of Punjab under s. 66(2) of the Indian Income-tax Act, 1922, the Tribunal drew up a statement of the case and submitted the following question of law for the opinion of the High Court :

C "Wheher in the facts and the circumstances of the case, the Tribunal is correct in law in holding that the assessee firm (R. B. Jodha Mal Kuthiala, Abdullapur Depot, Simla) was not entitled to the benefit provided in Section 25(3) or 25(4) of the Income-tax Act, in relation to the assessment in question?"

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The High Court held that the assessee was carrying on business when Act 7 of 1939 was brought into operation and was on that account entitled to the benefit of s. 25(4) of the Act. With certificate granted by the High Court, this appeal has been preferred.

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Sub-section (4) was inserted in s. 25 of the Indian Income-tax Act, 1922, by the Income-tax (Amendment) Act 7 of 1939. It provides :

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"Where the person who was at the commencement of the Indian Income-tax (Amendment) Act, 1939 (VII of 1939), carrying on any business, profession or vocation on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is succeeded in such capacity by another person, the change not being merely a change "in the constitution of a partnership, no tax shall be payable by the first mentioned person in respect of the income, profits and gains of the period between the end of the previous year and the date of such succession, and such person may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said

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period, and, if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference :

[Provided.....]"

There is no dispute that the Hindu undivided family of Hakam Mal Tani Mal was taxed under the Indian Income-tax Act, 1918, in respect of the timber business and Messrs. Hakam Mal Tani Mal succeeded to that business in 1934. Accounts of Messrs. Hakam Mal Tani Mal were settled on March 31, 1939, and the business in timber which was carried on by that firm was taken over by the assessee. The departmental authorities held that the assessee was at the commencement of the Indian Income-tax (Amendment) Act 7 of 1939 not carrying on business, and that it succeeded to the business on April 1, 1943. The High Court disagreed with that view and opined that the assessee was at the commencement of Act 7 of 1939 carrying on business, and correctness of that opinion is challenged in this appeal.

The Indian Income-tax (Amendment) Act 7 of 1939 was brought into force on April 1, 1939. Section 5(3) of the General Clauses Act 10 of 1897 provides that unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement. Act 7 of 1939 must therefore be deemed to have come into operation at a point of time immediately on the expiration of March 31, 1939. The assessee contends, and the contention has found favour with the High Court, that the assessee was carrying on business at the commencement of the Indian Income-tax (Amendment) Act 7 of 1939. In support of the plea of the assessee reliance was placed only upon the instrument of partnership which was executed on June 29, 1939. The question in dispute must, therefore, be determined on a true interpretation of the terms of the instrument of partnership. Insofar as it is material, the instrument recites :

"We, R. B. Jodha Mal Kuthiala son of Lala Gopi Mal Sahib Sud of the one part and Gajjan Mal Kuthiala son of Lala Hakam Mal Sahib Sud Kuthiala of the other part, residents of Haroli, District Hoshiarpur, and presently of Simla.

A Whereas we, the deponents, were partners and
shareholders in the firm of Lala Hakam Mal Tani Mal
Simla and all the partners of firm Lala Hakam Mal Tani
Mal understood and settled their accounts upto the 31st
of March 1939, on the 31st of March, 1939, and all
B the partners have become separate from the 1st of
April, 1939, and the business at Abdullapur in the
name of firm Hakam Mal Tani Mal and R. B.
Jodha Mal Kuthiala has fallen to our share to run
which we have by means of an oral agreement constitut-
ed a separate partnership styled R. B. Jodha Mal
C Kuthiala,, Abdullapur from the 1st of April, 1939.
Now the said oral (agreement) is being reduced to writ-
ing and we agree that :”

The instrument of partnership in the first instance recites that the
D accounts of Messrs. Hakam Mal Tani Mal were settled on March
31, 1939 and upto March 31, 1939. It is then recited that all
the partners had become separate from April 1, 1939. This is
an ambiguous recital : it may mean that the dissolution had taken
place on April 1, 1939 *i.e.*, the business had continued for the
whole or a part of the day on April 1, 1939, or it may mean
that from the end of March 31, 1939, there had been separation.
E When a deed recites that a transaction is effective from a particu-
lar date it has to be determined in the context in which that expres-
sion occurs, whether the date mentioned has to be excluded or
to be included. The recitals in the instrument that the accounts
were settled upto March 31, 1939, and that the partners had
become separate, would imply that the firm of Messrs Hakam
F Mal Tani Mal did not do business after March 31, 1939. The
date of the oral agreement constituting a separate partnership of
the assessee is not set out in the instrument, and there is no other
evidence in that behalf. But the assessee was constituted to
carry on the timber business allotted to it at the time of dissolu-
tion from April 1, 1939. The timber business was an old and
G a running business, and an intention to maintain continuity of the
business and its transactions may reasonably be attributed to the
assessee. It must therefore be held that the assessee commenced
doing business immediately after the dissolution of the firm
Messrs Hakam Mal Tani Mal become effective. In the absence
of other evidence, it may be held that the business of Messrs.
H Hakam Mal Tani Mal continued till the midnight of March 31,
1939, and immediately thereafter the business of the assessee
commenced.

The partnership therefore came into being at the precise point of time at which the Indian Income-tax (Amendment) Act 7 of 1939 came into force and it could not be said that the assessee was not carrying on business at the commencement of the Indian Income-tax (Amendment) Act 7 of 1939. The High Court was, therefore, in our judgment, right in holding that the assessee was entitled on the dissolution of that firm in March 1943 to the benefit of s. 25(4) of the Indian Income-tax Act.

The appeal fails and is dismissed with costs.

Appeal dismissed.