

A.S. Krishna Setty and Sons Vs. Additional Commissioner of Income-tax, Mysore

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Court : Karnataka

Decided On : Feb-11-1975

Reported in : ILR1975KAR956; [1975]100ITR587(KAR); [1975]100ITR587(Karn)

Judge : D.M. Chandrashekhar and ;E.S. Venkataramaiah, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 23, 29(1), 33, 34(3) and 155(5)

Appeal No. : Income-tax Referred Case No. 17 of 1973

Appellant : A.S. Krishna Setty and Sons

Respondent : Additional Commissioner of Income-tax, Mysore

Advocate for Def. : S.R. Rajasekhara Murthy, Adv.

Advocate for Pet/Ap. : G. Sarangan, Adv.

Judgement :

Venkataramiah, J.

1. At the instance of the assessee, the Income-tax Appellate Tribunal, Bangalore Bench, had made the above reference under section 256(1) of Income-tax Act, 1961 (hereinafter referred to as 'the Act'), requesting this court to give its opinion

on the following question :

'Whether, on the facts and in the circumstances of the case, the development rebate allowed in the assessment for the year 1965-66 was rightly withdrawn under section 155(5)(i) of the Income-tax Act, 1961 ?'

The facts leading to the above reference are as follows :

The assessee is a firm carrying on business at Arsikere. During the assessment year 1965-66, it was carrying on business as mundry merchants and it also owned a cinema theatre, a rotary oil mill and a coir factory. Development rebate of plant and machinery used in the oil mills and coir factory under section 33 of the Act, and the same had been allowed by the assessing authority. The firm consisted of 7 partners. 2 minors had also been admitted to the benefit of the partnership. On March 31, 1965, the partners of the firm entered into an arrangement whereby the coir factory was transferred exclusively in favour of four of them, by name, K. Ananthanagaraj, K. A. Chandrakanth, K. A. Satheeshkumar and K. A. Manohar. Similarly, the rotary oil mills belonging to the firm was transferred by all the partners in favour of three of them, namely, A. S. Narayana Setty, K. Ramachandra Setty and K. Ananthakrishna Setty. By virtue of the above agreement each group of partners became exclusive owner of the items of property which it took over under the arrangement referred to above. Thereafter, the partners who took over the items of properties under the arrangement referred to above, entered into separate deeds of partnership among themselves and some new persons in respect of those items of business. But the assessee-firm continued to carry on the business of Rathna Talkies, etc., referred to in paragraph 5 of the agreement, dated March 31, 1966, which is enclosed as annexure 'A' to the statement of the case submitted by the Tribunal.

2. On coming to know that the agreement dated March 31, 1965, and the deeds of partnership referred to above had come into existence, the II Income-tax Officer, Hassan, who was the assessing authority under the Act, took action under section 155(5) of the Act, to rectify the order of assessment relating to the assessment year 1965-66, in view of the provisions of section 34(3)(b) of the Act, as he was of the opinion that the machinery and plant in respect of which development rebate

had been allowed, had been transferred by the assessee within the stipulated time. After hearing the parties, he made an order rectifying the order of assessment by withdrawing the rebate and called upon the assessee to pay to the deficient tax due and payable. The appeal filed by the assessee before the Appellate Assistant Commissioner of Income-tax and the further appeal filed before the Tribunal were dismissed. Hence, this reference.

Section 34(3)(b) of the Act provides :

'If any ship, machinery or plant is sold or otherwise transferred by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired or installed, any allowance made under section 33 or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), in respect of that ship, machinery or plant shall be deemed to have been wrongly made for the purposes of this Act, and the provisions of sub-section (5) of section 155 shall apply accordingly....'

3. It was contended by the assessee before the income-tax authorities, that it was not open to them to withdraw the rebate that had been granted to the assessee during the assessment year 1965-66, as there was no transfer in the eye of law, of the machinery and plant in respect of which rebate had been allowed under section 23 during the relevant year. The above contention was founded on the assumption that the agreement dated March 31, 1965, whereby some of the partners became exclusive owners of the machinery and plant in question, did not bring about a transfer of machinery and plant in the eye of law, but under the above arrangement they had only withdrawn some part of the capital contributed by them to the firm. The income-tax authorities repelled the above contention, being of the view that there was a transfer by the assessee which attracted section 34(3)(b) read with section 155(5) of the Act.

4. Sri G. Sarangan, learned counsel for the assessee, contended before us that when all the partners transferred a part of the assets belonging to the firm exclusively in favour of some of the partners, there was only an adjustment of the rights of the partners in respect of the partnership capital and there was no transfer of assets in the eye of law. It is not disputed that the machinery and plant

in question formed part of the assets of the firm of seven partners. The nature of the rights of the partners of a firm in the assets belonging to the firm under the Partnership Act, had been explained by the Supreme Court in *Addanki Narayanappa v. Bhaskara Krishnappa* :

'It seems to us that looking to the scheme of the Indian Act no other view can reasonably be taken. The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated his right during the subsistence of the partnership is to get his share of profits from time to time as a be agreed upon among the partner and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges. It is true that even during the subsistence of the partnership a partner may assign his share to another. In that case what the assignee would get would be only that which is permitted by section 29(1), that is to say, the right to receive the share of profits of the assign or and accept the account of profits agreed to by the partners.'

5. From the observations of the Supreme Court extracted, it is clear that the individual partners of a firm have no exclusive interest in the assets belonging to the firm. They can become exclusive owner of any of the assets belong to the firm only by all the partners acting on behalf of the firm conveying or transferring their interest to such individual partners. In that event, it is clear that there is an extinguishment of the rights of the firm in the assets in question on the one hand and acquisition of interest in them by such individual partners. In law, such a transaction does amount to a transfer. The expression 'transfer of property' has

been defined in section 5 of the Transfer of Property Act. It means, an act by which a living person conveys property, in the present or in future to one or more other living persons, or to himself, and one or more other living persons. In the instant case, all the partners of the firm who were entitled to transfer the machinery and plant on behalf of the firm have entered into an agreement giving up their interest in those items in favour of some of them. The partners in whose favour the items of property in question are transferred, have been enjoying the same to the exclusion of other partners after March 31, 1965. That they have been doing so, can be gathered from the new partnership deeds entered into on May 1, 1965, which are enclosed to the statement of the case. It is not also the case of the assessee that the other partners (partners other than transferee partners) have been exercising any kind of right, title or interest in or over the machinery and plant. In the circumstances, we are of the view that the income-tax authorities were right in holding that there was a transfer of machinery and plant by the assessee-firm in favour of some of its partners.

6. Reliance was however, placed by Sri Sarangan, learned counsel for the assessee, on the decision of the Supreme Court in *Commissioner of Income-tax v. Dewas Cine Corporation* in support of his contention that when the properties belonging to the firm are distributed among the partners, there would not be a transfer. That decision is clearly distinguishable from the case on hand. In that case, there was dissolution of a firm and distribution of its assets among its partners. In the instant case, the assessee-firm continues to carry on business with all the original seven partners even after a part of its assets were transferred to some of its partners on March 31, 1965. It was not dissolved and there was no distribution of its assets among the partners. Hence, the decision of the Supreme Court is of no avail.

7. In the result, we answer the question referred to us in the affirmative and in favour of revenue. The assessee shall pay costs to the income-tax department. Advocate's fee Rs. 250.

8. Question answered in the affirmative.

