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INCOME-TAX OFFICER, GORAKHPUR

v.

RAM PRASAD AND ORS.

August 28, 1972

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[K. S. HEGDE, P. JAGANMOHAN REDDY AND H. R. KHANNA, JJ.]

Indian Income-tax Act 1922—S. 14 and 44—The Excess Profits Tax Act 1940—S. 13(1)—Whether a H.U.F. can be assessed for the purpose of excess profits tax even after petition.

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Respondent 1, the Karta, carried on the family business in the name and style of "Ram Nath Ram Prasad". The Income-Tax assessments for the assessment year 1944-45 and the excess profits tax assessment for the corresponding chargeable accounting period ending on October 28, 1943 were set aside by the Income-Tax Appellate Tribunal with the direction that fresh orders of assessment be made in accordance with the directions given by the Tribunal.

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On September 25, 1951, under a scheme for voluntary disclosure, the first respondent disclosed by means of an application, a sum of Rs. 2,08,450/- and offered the same for taxation.

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On October 1, 1951, the Hindu undivided family was disrupted and there was a complete partition. Thereafter, fresh assessments to Income Tax were made for the assessment years 1944-45 to 1947-48 taking into consideration the disclosure made by the 1st respondent. Subsequently, notices were issued under s. 13(1) of the Excess Profits Tax Act, 1940 for certain chargeable accounting periods in the name of the first Respondent. He filed writ petitions challenging the validity of the notices issued.

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The learned single Judge allowed the petitions holding that the appellant was not competent to take proceedings under the Act in respect of a Hindu undivided family which had been divided. On appeal, the Division Bench also upheld the decision of the learned single Judge. The appellant contended that (1) in the case of Excess Profits Tax Act, the tax is levied on the business and not on any individual and therefore, what is relevant is the continuation of the business and not the continuity of the identity of the assessee; (2) that under Section 44 of the Indian Income Tax Act 1922, a firm, or association of person, is jointly and severally liable to assessment and for the amount of tax payable.

Dismissing the appeals,

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HELD: (1) Under s. 14 sub-section (3) of the Excess Profits Tax Act, if a business is carried on jointly during a chargeable accounting period, the assessment should be made upon the persons jointly and in the case of a partnership, it should be in the name of the partnership. Under Sub-Section (4), if a person could be assessed either solely or jointly with other person or persons, in case of his death, the assessment may be made on his legal representative either solely, or jointly with the other person or persons. The provisions of Section 14 place the matter beyond doubt that the assessment of the tax is on the person in the same manner as under the Income-tax Act. No doubt, under the Income-tax Act, the computation of tax is on the basis of the income derived by a person from various sources, while under the Excess Profits Tax Act, it is on the profits of "a business of the person". Therefore, the change of the person who carries on business is very material so far as the Excess Profits Tax is concerned. [1048D]

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Commissioner of Excess Profits Tax, Madras v. Jivaraj Topun and Sons, Madras, 20 I.T.R. 143, referred to. A

(ii) Section 44 of the Indian Income Tax Act 1922, applies only to firms and associations of persons. Hindu undivided family is neither a firm nor an association of persons. It is a separate entity by itself. That is made clear by s. 3 of the Indian Income Tax Act 1922. Therefore, s. 44 of the Act has no application to the facts and circumstances of the case and the impugned notices are invalid. [1049E] B

CIVIL APPELLATE JURISDICTION : C.A. Nos. 257 and 258 of 1969.

Appeals by special leave from the judgment and order dated July 11, 1967 of the Allahabad High Court in Special Appeal Nos. 319 and 320 of 1962. C

B. Sen, P. L. Juneja, R. N. Sachthey and S. P. Nayar, for the appellants.

N. D. Karkhânis, and A. G. Ratnaparkhi, for the respondents.

The Judgment of the Court was delivered by D

Hegde, J. Aggrieved by the decision of the Allahabad High Court in Misc. Writ Petitions Nos. 1057 and 1059 of 1957, the Income-tax Officer, Gorakhpur has brought these appeals after obtaining special leave from this Court. For proper appreciation of the questions of law arising for decision in these appeals, it is necessary to set out the material facts. E

The first respondent Ram Prasad was the Karta of a Hindu undivided family which carried on business in the name and style of "Ram Nath Ram Prasad". Assessments were made on the family for income-tax for the assessment years 1944-45 to 1947-48 and for excess profits tax for the corresponding chargeable accounting periods respectively ending on October 28, 1943, October 16, 1944, November 4, 1945 and March 31, 1946. The income-tax assessments for the assessment year 1944-45 and the excess profits tax assessment for the corresponding chargeable accounting period ending on October 28, 1943 were set aside by the Income-tax Appellate Tribunal with the direction that fresh orders of assessment be made in accordance with the directions given by the Tribunal. On September 25, 1951, under a scheme for voluntary disclosure, the first respondent disclosed by means of an application a sum of Rs. 2,08,450 and offered the same for taxation. On October 1, 1951, the Hindu undivided family disrupted and there was a complete partition, which was accepted by the department as of that date. Thereafter fresh assessments to income-tax were made for the assessment years 1944-45 to 1947-48 taking into consideration F
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A the disclosures made by the first respondent. There is no dispute about those assessments. Subsequently notices were issued under s. 13(1) of the Excess Profits Tax Act, 1940 (to be hereinafter referred to as the Act) on February 14, 1957 for all the four chargeable accounting periods ending on October 25, 1943, October 16, 1944, November 4, 1945 and March 31, 1946 in the name of the first respondent. Immediately thereafter the first respondent filed two writ petitions before the Allahabad High Court challenging the validity of the notices issued. After the institution of those writ petitions on April 8, 1958, the appellant issued three notices to the respondent under s. 15 of the Act in respect of the chargeable accounting periods ending on October 14, 1944, November 4, 1945 and March 31, 1946. Thereafter the writ petitions filed by the first respondent were amended and the validity of those notices was also challenged. The learned single judge who heard the writ petitions allowed the same holding that the appellant was not competent to take proceedings under the provisions of the Act in respect of Hindu undivided family which had been divided. Aggrieved by that decision, the appellant took up the matter in appeal to the Division Bench of the Allahabad High Court. The Division Bench upheld the decision of the learned single judge. Hence these appeals.

E Section 2(17) of the Act defines a person as including a Hindu undivided family. Section 4 is the charging section. It reads :

F "4(1) Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits during any chargeable accounting period exceed the standard profits a tax (in this Act referred to as "excess profits-tax") which shall, in respect of any chargeable accounting period ending on or before the 31st day of March, 1941, be equal to fifty per cent of that excess and shall, in respect of any chargeable accounting period beginning after that date, be equal to such percentage of that excess as may be fixed by the annual Finance Act :"

G The other relevant provisions are ss. 13 and 14 which read :

H "13(1) The Excess Profits Tax Officer may, for the purpose of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay excess profits tax to furnish within such period, not being less than sixty days from the date of the

notice, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) with respect to any chargeable accounting period specified in the notice the profits of the business and the standard profits of the business as computed in accordance with the provisions of section 6 or the amount of deficiency available for relief under section 7 :

Provided that the Excess Profits Tax Officer may, in his discretion, extend the date for the delivery of the return.

(2) The Excess Profits Tax Officer may serve on any person upon whom a notice has been served under sub-section (1) a notice requiring him on a date to be therein specified to produce, cause to be produced, such accounts or document as the Excess Profits Tax Officer may require and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require :

Provided that the Excess Profits Tax Officer shall not require the production of any accounts relating to a period prior to the "previous year" as determined under section 2 of the Indian Income-tax Act, 1922, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937.

14(1) The Excess Profits Tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 13, assess to the best of his judgment the profits liable to excess profits tax and the amount of excess profits tax payable on the basis of such assessment, or if there is a deficiency of profits, the amount of that deficiency and the amount of excess profits tax, if any, repayable and shall furnish a copy of such order to the person on whom the assessment has been made.

(2) Excess profits tax payable in respect of any chargeable accounting period shall be payable by the person carrying on the business in that period.

(3) Where two or more persons were carrying on the business jointly in the chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a partnership, may be made in the

A chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a partnership name.

B (4) Where by virtue of the foregoing provisions an assessment could, but for his death, have been made on any person either solely or jointly with any other person or persons, the assessment may be made on his legal representative either solely or jointly with that other person or persons, as the case may be."

C Section 21 of the Act attracts some of the provisions of the Indian Income-tax Act, 1922 to proceedings under the Act. That section reads :

D "The provisions of sections 4A, 4B, 10, 13, 24B, 29, 36 to 44C (inclusive) 45 to 48 (inclusive) 49E, 49F, 50, 54, 61 to 63 (inclusive) 65 to 67A (inclusive) of the Indian Income-tax Act, 1922 shall apply with such modifications, if any, as may be prescribed as if the said provisions were provisions of this Act and referred to excess profits tax instead of to income-tax, and every officer exercising powers under the said provisions in regard to income-tax may exercise the like powers under this Act in regard to excess profits tax in respect of cases assigned to him under sub-section (3) of section 3 as he exercises in relation to income-tax under the said Act :

E Provided that references in the said provisions to the assessee shall be construed as references to a person to whose business this Act applies."

F There is no provision in the Act similar to s. 25-A of the Indian Income-tax Act, 1922.

G The learned Counsel for the appellant contended that in the case of Excess Profits Tax, the tax is levied on the business and not on any individual and therefore what is relevant is the continuation of the business and not the continuity of the identity of the assessee. According to him if the business in question continues as in the case before us, then the fact that the identity of the person who is continuing the business has changed is not relevant. In support of this contention he relied on the language of s. 4 of the Act. It will be noticed that the proviso to that section refers to s. 4(3) of the Indian Income-tax Act, 1922 and the body of the section itself refers to the assessments in respect of any business to which the Act applies, to be charged, levied and paid on the amount by which the profits during any

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chargeable accounting period exceeds the standard profits. The word "paid" in the context can only refer to the person. That is a clear indication that the Act contemplates assessment of the tax on a person though on the basis of the profits from a business. This conclusion receives support from s. 5 of the Act which states that the Act is to apply to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax under the provisions of sub-cl. (1), sub-cl. (2) of cl. (b) of sub-s. (1) of s. 4 of the Indian Income-tax Act, 1922 or of cl. (c) of that sub-section. No doubt the basis of the assessment is not the receipt of the profits but the accrual, whether it accrued to a resident or non-resident and whether the accrual was within or without British India in the same manner as under the Indian Income-tax Act, 1922. As observed by the High Court of Madras in *Commissioner of Excess Profits Tax, Madras v. Jivraj Topun and Sons, Madras*:⁽¹⁾

"The point however is put beyond doubt by Section 14, sub-section (1) of the Act which provides for assessment of the tax after the return is submitted in pursuance of a notice issued under Section 13 of the Act. It requires that the Excess Profits Tax Officer, after completing the assessment should furnish "a copy of such order (that is the assessment order) to the person on whom the assessment has been made", Sub-section (2) of that section imposes the liability to pay on the person carrying on the business in that period. Under sub-section (3) if the business is carried on jointly during the chargeable accounting period, the assessment should be made upon the persons jointly and in the case of a partnership it should be in the name of partnership. Under sub-section (4) if a person could be assessed either solely or jointly with other person or persons, in case of his death, the assessment may be made on his legal representative either solely, or jointly with the other person or persons. The provisions of this section therefore place the matter beyond doubt that the assessment of the tax is on the person in the same manner as under the income-tax Act. No doubt under the Income-tax Act the computation of the tax is on the basis of the income derived by a person from various sources, while under the Excess Profits Tax Act it is on the profits of a business of the person."

(1) 20 I.T.R. 143.

A We are in agreement with these observations. Consequently we are unable to uphold the contention that so long as the business continues, the change of the person who carries on the business is immaterial.

B Next Mr. B. Sen, learned Counsel for the appellant sought to seek assistance from s. 44 of the Indian Income-tax Act, 1922 which section is one of the sections mentioned in s. 21 of the Act. Section 44 of the Indian Income-tax Act, 1922 reads thus :

C "Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an association of persons is dissolved, every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such association shall, in respect of the income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment."

E This provision applies only to firms and association of persons. Hindu undivided family is neither a firm nor an association of persons. It is a separate entity by itself. That is made clear by s. 3 of the Indian Income-tax Act, 1922 which classifies the assessee under the heads "individuals", "Hindu undivided families", "companies", "local authorities", "firms" and "other associations of persons" ... If Hindu undivided family is to be considered as an association of persons, there was no point in making separate provision for the assessment of Hindu undivided families. This conclusion is strengthened by F s. 25-A of the Indian Income-tax Act, 1922 which provides for the assessment of Hindu undivided family after its partition.

G For whatever reason it may be, the legislature did not include in s. 21 of the Act s. 25-A of the Indian Income-tax Act, 1922 nor did it make any similar provision in the Act. That being so, we agree with the High Court that the impugned notices were invalid. The same view was taken by the Madras High Court in *Jivraj Topun's* case (*supra*) and the Allahabad High Court in *Commissioner of Income-tax, U.P. v. Neekelal Jainarain*⁽¹⁾.

H For the reasons mentioned above, these appeals fail and they are dismissed with costs—advocates' fee one set.

S.C.

Appeals dismissed.