A

G. MURUGESAN & BROS.

v.

C.I.T., MADRAS

February 8, 1973

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

Income-tax—'Association of Persons'—What constitutes—Volition on part of members an essential ingredient—In case of realisation of dividends there is no act of management—The statement of members that they had started drawing dividends separately must be accepted in absence of facts to the contrary—They must be assessed as 'Individuals.'

C For the years 1957-58 to 1962-63 the assessees were assesed by the Income-tax Officer as an 'Association of Persons.' They had filed their returns for the first two of these years as 'Association of persons' but in 1959-60 they claimed that they had divided their interest in the shares held by them and therefore in respect of them they should be thereafter assessed as 'Individuals'. The Appellate Assistant Commissioner upheld the order of the Income-tax Officer. The Tribunal however held that the assesseess should be assessed as 'Individuals' and not as Association of Persons'. The High Court in reference answered in favour of the Revenue.
D In appeal by certificate it was urged on behalf of the assessees appellants that the facts that a joint gift of shares was made in favour of more than one person or those shares were registered jointly in their names or even the fact that the dividend was realised together did not go to show that the share-holders or the beneficiaries did act as an 'Association of Persons.'

E HELD : (i) For forming an 'Association of Persons' the members of the association must join together for the purpose of producing income. An 'Association of Persons' can be formed only when two or more individuals voluntarily combine together for a certain purpose. Hence volition on the part of the members of the association is an essential ingredient. [519F-G]

F In the case of receiving dividends from shares where there is no question of any management, it is difficult to draw an inference that two or more shareholders functioned as an 'Association of Persons', from the mere fact that they jointly own one or more shares and jointly receive the dividends declared. These circumstances do not by themselves go to show that they acted as an 'Association of Persons'. [519G-H]

(ii) For the years 1957-58 and 1958-59 the assessees were rightly assessed as an 'Association of Persons' because of their own admission which was an important piece of evidence. [519H; 520A-B]

G (iii) For the years 1959-60 and 1962-63 they had specifically stated that they were no more functioning as an 'Association of Persons'. In the case of an 'Association of Persons', It is always open to its members to withdraw from the same. No one can be compelled to continue as a member of an association. For withdrawing from an association no particular form need be observed. [520C-D]

H In the present case the question related only to realisation of dividends. If the individual members of the association choose to realise their dividends as individuals there is an end of the association. The assesees' assertion that they had realised their dividends in their individual capacity remained unrebutted. There was nothing to disprove their claim. None of

the facts proved could be said to be inconsistent with the claim made by them. [520D-E] A

The answer, therefore, in respect of the years 1959-60 to 1962-63 must be in favour of the assessees. [521C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 685 to 690 of 1970. B

Appeals by certificate from the judgment and order dated 27th June 1968 by the Madras High Court at Madras in Tax case No. 308 of 1964.

M. C. Setalvad and *T. A. Ramachandran,* for the appellant.

N. D. Karkhanis, S. P. Nayar and *R. N. Sachthey,* for the respondents. C

The Judgment of the Court was delivered by

HEGDE, J. These are connected appeals by certificate. They are directed against the decision of the High Court of Madras in a Reference under Section 66(1) of the Indian Income-Tax Act, 1922 (to be hereinafter referred to as the Act). D

The question of law referred for ascertaining the opinion of the High Court was :

> "Whether on the facts and in the circumstances of the case, the Department was justified in assessing the assessee in the status of an Association of Persons ?" E

In this case we are concerned with the assessment of the assessee for the assessment years 1957-1958 to 1962-63. In all these years the assessees were assessed as an 'Association of the persons'. The contention of the assessees is that in the years, in question, they should have been assessed as 'individuals' and not as an 'Association of Persons'. Therefore, the only question that calls for decision is as to the status of the assessee during the relevant assessment years. F

For deciding the question formulated above, it is necessary to divide the assessment years into two groups. For the assessment years 1957-58 and 1958-59 the assessees themselves submitted their return in the status of 'Association of Persons', but for the later years, they submitted their returns as 'individuals'. In their returns for the assessment years 1959-60, they stated that they have divided their interest in the shares and therefore they should be thereafter assessed as 'individuals'. It is necessary to mention one other circumstance before we proceed to set out the relevant facts. The income in which we are concerned in this case arises under two heads. Part of the income arises from house property G H

A and the remaining income arises from dividends from shares. So far as the income from house property is concerned, the High Court has answered the question in favour of the assessee; the Revenue has not appealed against that decision. Hence we need not go into that aspect. All that we have to decide in the present case is whether the dividend income which is the subject-matter
B of these appeals should be assessed in the hands of the appellants as an 'Association of Persons' or as 'individuals'.

Now, we shall refer to the material facts as could be gathered from the case stated by that Tribunal. One Sinnamani Nadar (who will be hereinafter referred to as 'Nadar') and his son
C Ganesan partitioned their family properties on December 4, 1940. Thereafter, Nadar started a firm of his own on June 27, 1955. Later Nadar executed a settlement deed in favour of his four grandsons, namely, G. Murugesan, G. Kathiresan, G. Raja Shankar and G. Vettrivel. The property covered by the said settlement deed included a house property, which had been let
D out. Under this settlement deed, the donees are to enjoy during the life time the properties gifted and thereafter the same was to devolve on their children. Sometime thereafter Nadar purchased a number of shares in Joint Stock Companies in the name of 'G. Murugesan & Brothers'. For each of such purchase, a debit entry was made in the books of the firm. The share applications
E addressed to the companies for the transfer of the shares from the prior owners to the name of G. Murugesan and Brothers were signed by Padamavathy Ammal, the mother of donees as their guardian. The donees were minors at the time most of these transactions; took place. Murugesan became a major on March 3, 1955. After 1959, Murugesan himself signed all transfer
F applications both on his behalf as well as on behalf of his brothers. The youngest of the brothers became a major on 15th December, 1962. The income from the house property and the dividend income from shares were credited to an account called "G. Murugesan & Brothers" in the books of Nadar's Firm. In those books. there are separate accounts for G. Murugesan, G. Kathiresan, G. Raja Shankar and G. Vetrivel. Private income and expenses of
G these persons were credited or debited to these individual accounts. At the end of each year the balance in the account of G. Murugesan & Brothers is transferred in equal proportion to the individual accounts of the four persons mentioned above. There was a partition between Ganesan and his sons on 3rd February 1958, but that does not include the house property or the shares
H gifted by Nadar to his grandsons. As mentioned earlier for the assessment years 1957-58 and 1958-59, the assessees submitted their returns in the status of 'Association of Persons' and thereafter they submitted their returns as individuals.

On the basis of the above facts, the Income Tax Officer assessed the assessee during all the years mentioned earlier in the status of 'Association of Persons'. His orders were confirmed by the Appellate Assistant Commissioner. But on a further appeal to the Appellate Tribunal, the Tribunal held that the assessee should be assessed as 'individuls' and not as 'Association of Persons'. At the instance of the Commissioner, the question set out earlier was referred to the High Court. The High Court answered that question in the affirmative and in favour of the Revenue.

The High Court was of the opinion that because of the fact that the shares were purchased jointly in the name of G. Murugesan & Brothers, the transfer applications were filed by Padmavathy acting as guardian of all the assessees, and further, after Murugesan became major, he collected the dividends jointly on behalf of the assessees, the assessees should be considered to have acted as an 'Association of Persons'. That conclusion is challenged before us by Mr. Setalvad, appearing on behalf of the assessees. Counsel urges that the facts that a joint gift of shares was made in favour of more than one persons or those shares were registered jointly in their names or even the fact that the dividend was realised together do not go to show that the shareholders or the beneficiaries did act as an 'Association of Persons'. On the other hand, it is contended on behalf of the Revenue by Mr. Karkhanis that the facts proved in this case clearly establish that the assessee functioned as an 'Association of Persons'.

The expression 'Association of Persons' is not a term of art. That expression has come up for consideration before this Court in more than one case. In *Commissioner of Income-tax, Bombay, North, Kutch and Saurashtra* v. *Indra Balkrishna* (39 I.T.R. 546), this Court after referring to the various judgments, observed thus :

"It is enough for our purpose to refer to three decisions : *In re. B. S. Elias* (1935) 3 I.T.R. 408; *Commissioner of Income-tax v. Laxmidas Devidas* (1937) 5 I.T.R. 548; and *In re : Dwarkanath Harishchandra Pitale* (1937) 5 I.T.R. 716. *In re : B. N. Elias* Derbyshire, C.J., rightly pointed out that the word "associate" means, according to the Oxford Dictionary, "to join in common purpose, or to join in an action. Therefore, an association of persons must be one in which two or more persons join in a common purpose or common action, and as the words occur in a section which imposes a tax on income, the association must be one the object of which is to produce income, profits or gains. This was the view expressed by Beaumont, C.J., in *Commissioner of Income-tax* v. *Lakshmidas Devidas*, at page 589 (1937) 5 I.T.R., and also *In re : Dwarkanath Harishchandra*

A *Pitale. In re* : *B. N. Elias*, Costello, J., put the test in more forceful language. He said : "It may well be that the intention of the Legislature was to hit combinations of individuals who were engaged together in same joint enterprise but did not in law constitute partnerships .... when we find, ... that there is a combination of persons formed for the promotion of a B jcint enterprise ..... then I think no difficulty arises whatever in the way of saying that .... these persons did constitute an association.....".

We think that the aforesaid decision correctly lay down the crucial test for determing what is an 'Association persons within the meaning of section 3 of the Income-tax Act, and they have C been accepted and followed in a number of later decisions of different High Courts to all of which it is unnecessary to call intention. It is, however, necessary to add some words of caution here. There is no formula of universal application as to what facts, how many of them and of what nature, are necessary to come to a conclusion that there is an association of persons within the mean- D ing of section 3; it must depend on the particular facts and circumstances of each case as to whether the conclusion can be drawn or not."

In the course of that judgment, this Court also observed :

> "With regard to the shares, dividends, and interest E on deposits there was no finding of any act of joint management. Indeed, the main item consists of the dividends and it is difficult to understand what act of management the windows performed in respect thereof which produced or helped to produce income."

For forming an 'Association of Persons', the members of the asso- F ciation must join together for the purpose of producing an income. An 'Association of Persons' can be formed only when two or more individuals voluntarily combine together for a certain purpose. Hence volition on the part of the member of the association is an essential ingredient. It is true that even a minor can join an 'Association of Persons' if his lawful guardian gives his consent. In the case of receiving dividends from shares, where there is no G question of any management, it is difficult to draw an inference that two more shareholders functioned as an 'Association of Persons' from the mere fact that they jointly own one or more shares, and jointly receive the dividends declared. Those circumstances do not by themselves go to show that they acted as an 'Association of Persons'.

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But unfortunately for the assessee for the assessment years 1957-58 and 1958-59, they themselves had submitted their returns in the status of 'Association of Persons'. Those returns were

niether withdrawn nor did they file fresh returns as 'individuals'. It was for the first time in the appeal, it was argued on their behalf that they should not have been assessed as 'Association of Persons'. The question whether the assessees functiond as on 'Association of Persons' during those years was best known to them. Their admission in that regard is an important piece of evidence. They have made no attempt to show that the said admission was made under erroneous impression of law or is otherwise vitiated. Hence for those years they were rightly assessed as an 'Association of Persons'. But so far as the other assessment years are concerned, the same result does not follow. They themselves have specifically stated that they are no more functioning as 'Association of Persons'. In the case of 'association of persons' it is always open to its members to withdraw from the same. No one can be compelled to continue as a member of an association. For withdrawing from an association there is no particular form need be observed. As seen earlier, herein we are concerned only with the realisation of dividends. If the individual members of the association choose to realise their dividends as individuals, there is an end of the association. The assessee's assertion that they have realised their dividends in their individual capacity remains unrebutted. There is nothing to disprove that claim. None of the facts proved can be said to be inconsistent with the claim made by them.

For the reasons mentioned above, we are unable to agree with the High Court that during the assessment years 1959-60 to 1962-63, the assessees should be held, as having functioned as an 'association of persons'. Mr. Karkhanis in support of the contention of Revenue relied on the decision of the Bombay High Court in *S. C. Gambatta* v. *Commissioner of Income-tax, Bombay* (14 I.T.R. 748). Therein, the only question was whether when an action is taken by an Income-tax Officer under Section 23A, should the dividend deemed to have been declared to the shareholders must be considered has been taken by a husband and wife who were the joint holders of a share as an 'Association of Persons' or by the husband alone who under the Articles of Association was to act on behalf of the joint holders. The contention of the Revenue was that the husband alone was the shareholder. On the other hand the contention of the assessee was that they were an 'Association of Persons' and that contention was accepted by the

A Court. The ratio of that decision has no bearing on the point in issue in the present case. We are also not able to agree with Mr. Karkhanis that the decision of this Court in *N. V. Shanmugham & Co.* v. *Commissioner of Income-Tax, Madras* (81 I.T.R. 310) lends any support for the contention of the Revenue. On the B other hand, therein this Court relied upon the decision of this Court in *Commissioner of Income-tax, Bombay North, Kutch & Saurashtra* v. *Indra Balkrishna* (39 I.T.R. 546).

In the result, Civil Appeals Nos. 685 & 686 of 1970 are dismissed with no order as to costs. Civil Appeals Nos. 687—690 C of 1970 are allowed with costs—one hearing fee. Consequently the answer given by the High Court in those four appeals is discharged and in its place, we answer the question, in the negative and in favour of the assessee.

G.C.