

V.N.M. Arunachala Nadar Vs Commissioner of Excess Profits Tax, Madras**Civil Appeal No.540 of 1960; 544 of 1960**
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Court: Supreme Court of India**Date of Decision:** Aug. 17, 1961**Acts Referred:**

Excess Profits Tax Act, 1940 " Section 10A, 8(1)#Income Tax Act, 1922 " Section 66(2)

Citation: (1962) 44 ITR 352**Hon'ble Judges:** P. B. Gajendragadkar, J; M. Hidayatullah, J; K. Subba Rao, J**Bench:** Full Bench**Final Decision:** Dismissed

Judgement

Gajendragadkar, J.

These five appeals arise from two reference made by the income tax Appellate Tribunal, Madras Bench, u/s 66(2) of

the income tax Act, 1922, to the High Court of Judicature, Madras. The assessee in the two cases thus referred is the same but the points referred

are different and the accounting years are also not the same. The assessee is V. N. M. Arunachala Nadar. In Reference No. 68 of 1953 the

question referred to the High Court was u/s 8(1) of the excess Profits Tax Act. This has been thus stated :

Whether on the facts and circumstances of the case there was a change in the persons carrying on the business within the meaning of section 8 (1)

of the excess profits Tax Act ?

2. The chargeable accounting period in respect of which this question was framed are four, February 7, 1943 to February 6, 1944, February 7,

1944, to January 18, 1945, January 19, 1945, to February 3, 1946, and February 4, 1946, to March 31, 1946. It is in respect of these four

account periods that the four Civil Appeals Nos. 541 to 544 of 1960 arose from Reference No. 68 of 1953.

3. In Reference No. 58 of 1953 the question referred is one u/s 10A of the excess Profits Tax Act. It had been thus framed :

Whether on the facts and in the circumstances of the case there is any material to justify the finding of the Tribunal that the main purpose in

constituting the two firms was the avoidance or reduction of liability to excess profits tax within the meaning of section 10A of the Excess Profits

Tax Act ?

4. The assessment year in regard to this question is 1943-44 and the chargeable accounting period is January 28, 1942, to February 7, 1943. This

reference has given rise to Civil Appeal No. 540 of 1960.

5. The two questions thus referred to the High Court have been answered by it in the affirmative against the appellant assessee. The appellant has

therefore come to this court by special leaves against the decision of the High Court in the two cases referred to it.

6. For the appellant Mr. Viswanatha Sastri has seriously pressed his contentions in Civil Appeals Nos. 541 to 544 of 1960. In respect of Civil

Appeal No. 540 of 1960, however, he has not been able to press the case because, as we will point out later, the said case has obviously been

concluded the findings of fact by the income tax authorities against the appellant and the High Court has refused to interfere with the said findings.

We will, therefore, first deal with Civil Appeals Nos. 541 to 544 of 1960.

7. Arunachala Nadar was the karta of the Hindu undivided family which consisted of himself and his ten sons. Four of these sons by name

Ayyamperumal, Rathinasabapathy, Durairaja and Rajamanickam were born to the appellant by his first wife. In 1942 all of them were adults. The

appellant had six sons by his second wife who were all minors in 1942. Up to the year 1942-43 this undivided Hindu family with the appellant as

the manager was the assessee. It had its headquarters at Virudhunagar. Its business consisted of four principal items, grocery and two oil mills at

Virudhunagar, grocery at Tuticorin, oil mills at Madurai and commission business in grocery at Bombay. There were some other items of business

carried on by the family but with them we are not concerned in the present appeals.

8. It appears that the four adult sons of the appellant separated from the family and were subsequently divided into two. The appellant and his six

minor sons continued to stay together and the appellant looked after the family. This happened after the accounting year of the appellant-

assessee's family ended on January 27, 1942. The partition thus effected was to come into operation from the close of the accounting year. For

the purpose of the partition from the close of the accounting year. For the purpose of the partition the members of the family were divided into two

groups - the four adult sons constituted one group though they were later divided into two and the appellant and his undivided sons constituted

another group. The properties of the family were divided into two halves each group taking one half. It appears that the appellant's group took

over the business at Virudhunagar and at Madurai and the adult sons took over the business at Tuticorin and at Bombay. This partition was

effected in the presence of and as determined by Mr. C. S. Subbiah Nadar of Virudhunagar. Subsequently a document was executed on August

10, 1942, which recorded the partition as it had already taken place.

9. Later on, three of the adults sons of the appellant, Ayyamperumal, Rathinasabapathy and Durairaja commenced separate business under the

name and style of V. N. M. A. Ayyamperumal Nadar & Bros. This business was started on January 28, 1942. On the same day the fourth adults

son Rajamanickam also commenced a separate business of his own. The appellant like wise started with a fresh set of accounts the business that

had been allotted to him and his minor sons. This business commenced on January 28, 1942, and the method adopted in commencing this business

was that the business that had been carried on under the two items up to January 27, 1942, had been closed or discontinued.

10. On October 14, 1942, the appellant wrote to the income tax Officer about the partition that had been effected in the family, and informed him

that after the 15th That , Vishu, only the business in the name of V. N. M. Arunachala Nadar at Virudhunagar and Madurai belonged to him. The

details of the business started by his divided sons were also given by him in this communication. Later, in the usual course the appellant was asked

to submit his return for the assessment year 1943- 44 as the karta of the Hindu undivided family, that is to say, the return was expected to be

submitted by the appellant as the head of the undivided family which was till then treated as the assessee. To this notice the appellant sent his reply

on August 10, 1943. He averred that the form which had been sent to him on the basis of the original undivided family continuing during the

accounting year was inappropriate because the family business was stopped on the 14th That , Vishu, and his four adult sons had gone out of the

family and on the 15th That , Vishu, his adult sons had started separate business and he had also started a separate business. He reminded the

income tax Officer that the same information had been submitted by him on October 14, 1942, along with the return made by him for 1942-43.

While this is so", said the appellant in his letter, "whereas I should have received a return in my separate capacity I have received a return in the

character of the family. I am therefore returning this form". The appellant prayed that as per section 25A separate form may be sent to him and to

his sons individually. Apparently this letter was treated by the income tax Officer as an application u/s 25A of the Act and accordingly on October

31, 1945, an order was passed as required by the said section recognising the partition that had been effected in the family on January 27, 1942. It

appears that after the partition took place in January, 1942, the appellant started a new line of business in paddy and rice at Kumbakonam with

one Sadagopa Pillai as his employee in charge of that business at Kumbakonam. To this fact we may have to refer when we deal with Civil Appeal

No. 540 of 1960. It is in the light of these facts that the High Court had to determine the questions referred to it in Reference No. 68 of 1953.

11. The High Court had found that the partition effected in the family of the appellant did not show that only the adult coparceners exercised their

right to become divided in status from the other member of the family, took their share and left the family. A partition under Hindu law can be

partial either as to persons or as to properties; but the High Court took the view that in fact a complete partition had taken place though after the

said portion the appellant and his minor sons again continued as if they were an undivided Hindu family. "Factually, did the Hindu undivided family

continue its existence after 27th January, 1942, for purpose of assessment of income tax", said the High Court, "is the real question for

determination". How this family came into existence it was not necessary to enquire or decide. Whether such a family came into existence in point

of fact is the only point which called for its decision. Dealing with the question from this point of view the High Court referred to the facts found by

the income tax authorities. It referred to the conduct of the appellant, his application made u/s 25A, his declarations to the department, the conduct

of the adult sons, the statements made by all the parties in respect of the portion and particularly to the order passed u/s 25A. It observed that

when the appellant as the head of the new undivided family began his business as a fresh business he expressly stated that the old family business

had been closed on January 27, 1942, and a fresh one had been started on January 28, 1942; in fact fresh accounting books were started on that

basis. The High Court also observed that unless the requirement of section 25A was satisfied an order could not have been made by the income

tax Officer at the instance of the appellant. In other words, accepting the findings made by the income tax authorities which had been expressly

recorded in the statement of the case the High Court was not impressed by the arguments urged before it on behalf of the appellant that under

Hindu Law what had taken place in the family was that the adult members had left the family living the status of the appellant and his minor sons

unaffected. Having come to the conclusion that there was a partition of a general type the High Court naturally answered the question referred to it

in the affirmative and against the appeal. It is the correctness of this answer which is challenged before us by Mr. Sastri.

12. Mr. Sastri contends that the partition deed executed in the case and in fact the general tenor or the conduct of the parties at the relevant time

unambiguously suggests that it was a case where the adult coparceners had left the family after taking their shares and the status of the remaining

coparceners was left unaffected. Mr. Sastri also contends that if the whole family had divided as a result of general partition it would not have been

open in law to the appellant to reunite with his minor sons and so it would be difficult to imagine that the appellant and his minor sons could be

treated as undivided Hindu family after the said general partition. Whether or not in law there could have been a reunion between the appellant and

his minor sons it is unnecessary for us to decide in the present case. In *Balabux v. Rakhmabai* the Privy Council no doubt has observed that no

agreement for a reunion on behalf of separated minor coparcener could be made by his father or mother as his guardian; but, as according to

Mayne it would be open to the father or mother as his guardian to effect a separation on behalf of the minor coparcener, it would be equally open

to the father or mother as his guardian to agree to a reunion on behalf of the minor. However, we do not propose to pursue this matter any further

because for the decision of the present appeals it is unnecessary to decide this question.

13. Returning to the argument urged by Mr. Sastri about the character of the partition effected in the family of the appellant it may be conceded

that there are some features of this partition which indicate that the adult coparceners may have left the family after obtaining their shares from their

father. It is true that even in the case of such a partial partition for determining the shares of the seceding coparceners the shares of all the

coparceners have to be determined as a preliminary step so that the determination of all the shares is not decisive one way or the other; but as the

High Court has pointed out it is really not necessary to consider the academic question under the Hindu laws in the present proceedings, because

the question under the Hindu in the present proceedings, because the question referred for the decision of the High Court has inevitably to be

answered in the light of facts found by the income tax authorities and recorded in the statement of the case, and the statement of the case is

definitely and clearly against the appellant and consistent with the answer made by the High Court to the question under reference.

The statement of the case elaborately refers to the conduct of the parties. It points out that so far as the entries in the old family account books are

concerned all the assets and liabilities were pooled on January 27, 1942, and divided into two halves; this fact considered in the light of the

representation made by the appellant to the income tax Officer that the family business was stopped on the 14th Tithi, Vishu, and a separate and

new business had been commenced thereafter by the parties clearly shows, according to the statement, that a general partition had taken place.

Same is the effect of the admitted circumstance that the appellant closed old books of account in respect of two items of business which came to

him and opened new books of account on January 28, 1942. If the appellant and his minor sons had continued in the same old status of undivided

Hindu family it was hardly necessary, and it would indeed have been inappropriate, to adopt this course. Then against the statement that the

appellant in substance wanted his business to be registered as a new business and accordingly an order u/s 25A was passed to that effect is also

indicative of a general partition. In conclusion, according to the statement, the taking over of various businesses by the two groups itself constitutes

discontinuance of the business carried on by the quondam family and the businesses started by the two groups after the partition were new

businesses and as such this was a case of partition in the family and not one of secession. These findings, the statement adds, were challenged

before the income tax Tribunal but the challenge failed and the Tribunal accepted the conclusions affect recorded by the income tax Officer. It is in

the light of these facts that the question under reference has to be considered, and the facts found unambiguously support the answer given by the

High Court.

14. The statement of the case elaborately refers to the conduct of the parties. It points out that so far as the entries in the old family account books

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Hindu family its was hardly necessary, and it would indeed have been inappropriate, to adopt this course. Then against the statement that the

appellant was in complete control of the business at Madurai and Kumbakonam was contributed by the appellant, that the appellant was in

complete control of the business at Madurai and Kumbakonam, in fact both the businesses were looked upon branches of the business carried on

by him at Virudhunagar. Then the Tribunal examined the books of account and the mode adopted by him. It also considered that the appellant

submitted to the assessment of income tax of the income from all the three businesses only at Virudhunagar, and held that these factors clearly

indicated that the dominant motive in forming the partnerships was the avoidance or reduction of liability to the excess profits tax. It is in the light of

these facts that the attack made by the appellant against the answer given by the High Court to the question referred to it has to be judged. Thus

considered we must hold that there is no substance in the appeal. It accordingly fails and is dismissed with costs. The respondent would be entitled

to get costs in all the appeals in one set.

15. There is no doubt that the facts stated in the statement of the case have to be accepted and their correctness is not open to challenge in

reference proceedings u/s 66 (2). We may, however, very briefly indicate that the facts found in the statement, cannot be said to rest on no

evidence at all; in fact there is ample evidence to support the statement of the case on the material points. The partition deed which was executed

on August 10, 1942, merely records a past event which had already taken place. It is common ground that in point of fact the partition was

effected in the presence of and was determined by Mr. Subbiah Nadar. The partition dad in terms refers to the division of businesses and the

movable and immovable properties of the family. It is styled as a partition release deed and it is executed by the four adult sons of the appellant

who took their shares. When we turn to the statements made by the parties, however, it appears clear that the family business was stopped at the

time of immovable properties on the same day from the accounts between the two groups. Ayyamperumal makes unequally categorical statement

that family business was stopped, accounts were closed and the division followed between the two groups. After this partition was made the

appellant returned the notice served on him for the year 1943-44, applied u/s 25A, obtained an order under that section and asked for due notice

to be served on him in respect of the new business which he had started. Having regard to this material it would be difficult to suggest that the facts

found in the statement of the case are not borne out by any evidence on the record. That is why the High Court has observed that it was

concerned to find the factual position of the family, and in doing so academic questions as to the principles of Hindu law would in necessarily play a

minor part. In our opinion, Mr. Sastri is not right when he contends that the High Court has erred in law in answering the question referred to it in

the affirmative. In the result Civil Appeals Nos. 541 to 544 of 1960 fail and are dismissed with costs.

16. That takes us to Civil Appeal No. 540 of 1960, which arose from reference No. 58 of 1953. In dealing with this appeal some more facts have

to be stated. As we have already seen the appellant and his six minor sons began their new business at Virudhunagar and Madurai after partition.

Thereafter the appellant commenced a fresh line of business in paddy and rice at Kumbakonam with Sadagopa Pillai as we have already pointed

out; Pillai was put in charge of the business at Kumbakonam. The business of oil mills at Madurai was likewise in charge of Rathnaswamy, a

nephew of the appellant, even before January 27, 1942, and Rathnaswamy continued his management after January 28, 1942. For the accounting

year the appellant was assessed to tax on the income of the business carried on at all these places - Virudhunagar, Madurai and Kumbakonam.

17. The claim of the appellant was that in the next year of account which commenced on February 8, 1943, he had formed separate partnerships,

one to carry on the business at Madurai and another to carry on the business at Kumbakonam; Rathnaswamy was taken as partner at Madurai

and Pillai at Kumbakonam. The deeds of partnership were drawn up on January 10, 1944. The accounting year which had commenced on

February 8, 1943, ended on February 6, 1944. The deed, however, recited that the partnership had been formed on February 8, 1943. Both the

documents were substantially in similar terms.

18. On these facts the appellant claimed deduction of previous losses but his claim was rejected by the departmental authorities on the ground that

the two partnerships in question were brought about for the main purpose of avoidance or reduction of liability to excess profits tax. It is in respect

of this conclusion that the question under reference had been framed.

19. In answering the question against the appellant the High Court has observed that in deciding such a question some important considerations

must be borne in mind. Four such considerations have been set out in the judgment of the High Court; first, that the mere fact that a new business

was started at a time when by such starting there would be a reduction of liability is not by itself proof that it was started with the main object of

avoiding the excess profits liability within the meaning of section 10A; second, the onus of proof was on the department to show that the main

purpose was to avoid the payment of tax; third, the relationship between the parties to the transaction is not by itself conclusive to prove that the

motive was the avoidance of liability; and fourth, that it was not sufficient if gaining advantage in the matter of the payment of tax was merely an

incidental advantage because such an advantage may be incidents and not the main motive for the transaction.

20. Having set out these considerations the High Court took into account the findings of fact recorded by the authorities and held that there was

ample material to sustain the final conclusion of the Tribunal and that should be sufficient to dispose of the question under reference. The Tribunal

accepted the findings of the Excess Profit Tax Officer and the findings thus accepted are borne out by the evidence on the record. It cannot be said

that there was no evidence to support the findings. On this view the High Court answered the question against the appellant.

21. Mr. Sastri undoubtedly attempted to argue that the question posed for the decision of the High Court was a mixed question of fact and law and

so the correctness of the findings recorded by the Tribunal was open to challenge before the High Court. We are not impressed by this argument.

Whether or not the main purpose in constituting the two firms was the avoidance or reduction of liability to excess profits tax is, in our opinion,

more a question of fact than a mixed question of fact and law it is abundantly clear that the conclusion of the Tribunal is borne out by overwhelming

evidence on the record. The Tribunal rejected the pleas made by the appellant that he entered into the partnerships because he was afraid of his old

age. It was pointed out that the time when the partnerships came into existence was significant, that the entire finance required for the business at

Madurai and Kumbakonam was contributed by the appellant, that the appellant was in complete control of the business at Madurai and

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both the businesses were looked upon as branches of the business carried on by him at Virudhunagar. Then the Tribunal examined the books of

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three businesses only at Virudhunagar, and held that these factors clearly indicated that the dominant motive in forming the partnerships was the

avoidance or reduction of liability to the excess profits tax. It is in the light of these facts that the attack made by the appellant against the answer

given by the High Court to the question referred to it has to be judged. Thus considered we must hold that there is no substance in the appeal. It

accordingly fails and is dismissed with costs. The respondent would be entitled to get costs in all the appeals in one set.

22. Appeals dismissed.