# Addl. Commissioner of Income Tax Vs M. Venkata Narasimha Rao and Co.

**Court:** Andhra Pradesh High Court

**Date of Decision:** April 25, 1975

**Acts Referred:** Income Tax Act, 1961 â€" Section 2(23)
Partnership Act, 1932 â€" Section 4

**Citation:** (1976) 104 ITR 28

**Hon'ble Judges:** Jayachandra Reddy, J; Chinnappa Reddy, J

**Bench:** Division Bench

**Advocate:** P. Rama Rao, Addl. Commissioner, for the Appellant; T. Ramachandra Rao, for the Respondent

## Judgement

Chinnappa Reddy, J.
At the instance of the revenue the Income Tax Appellate Tribunal has stated a case and referred to us the following

question for our opinion :

Whether, on the facts and in the circumstances of the case, Messrs. Venkata Narasimha Rao & Co., Tenali, and Messrs. Raja Fertilisers can he

treated as two separate firms and distinct assessable entities ?

2. The facts are these, Messrs. Venkata Narasimha Rao & Co, is a firm formed in 1956 with two partners, Mallela Venkata Narasimha Rao and

Visveswara Rao, each having a half share. The business of the firm is in chemical fertilisers and oil-cake manures. Messrs. Raja Fertilisers is a firm

formed in 1958 with the very two partners each having a half share as in the other firm. The business of Raja Fertilisers is in chemical fertilisers

only.

3. In the assessment year 1966-67 the Income Tax Officer, Tenali, took the view that Messrs. Venkata Narasimha Rao and Company and

Messrs. Raja Fertilisers were but one firm and not two firms and that their income should be aggregated for the purposes of levy of Income Tax.

The reasons given by the Income Tax Officer for his conclusion were as follows : Both the firms consisted of the same partners and the partners

held equal shares in both the firms. The two firms carried on the same type of business. The deed of partnership of the firm, Messrs. Mallela

Venkata Narasimha Rao & Company, authorised the doing of any other business and, therefore, the business of Raja Fertilisers was nothing more

than an extension of the business of Mallela Venkata Narasimha Rao & Company. That was also the result of the application of Section 16 of the

Partnership Act. There was also interlacing of the finances of the two firms. The ledger account of Messrs. Mallela Venkata Narasimha Rao &

Company in the books of Messrs. Raja Fertilisers showed total cash credits and debits of Rs. 2,35,410 and Rs. 2,16,233. The ledger account of

Messrs. Raja Fertilisers in the books of Messrs. Mallela Venkata Narasimha Rao & Co. showed total credits and debits of Rs. 2,15,433 and Rs.

2,34,610. In the assessment years 1967-68 and 1968-69 the assessees themselves aggregated the income of the two firms and submitted a single

return (the assessment order for the year 1966-67 was made on December 30, 1969). The initial capital with which Messrs. Raja Fertilisers was

formed passed from the books of Messrs. Mallela Venkata Narasimha Rao & Co. The amounts were first shown as drawn by the two partners

from their individual accounts in the books of Messrs. Mallela Venkata Narasimha Rao & Co, and then shown as invested by way of capital in

Messrs. Raja Fertilisers, Assessment orders were made by the Income Tax Officer for the four years 1966-67, 1967-68, 1968-1969 and 1969-

70 on the basis that Messrs. Venkata Narasimha Rao & Co. and Messrs. Raja Fertilisers were but one firm.

4. The assessee''s appeal to the Appellate Assistant Commissioner was rejected and there was a further appeal to the Income Tax Appellate

Tribunal. The Tribunal took the view that there was no legal bar to the existence of two firms with identical partners. According to the Judicial

Member there was no interlacing of finances and, therefore, the two firms should be treated as two distinct entities for the purpose of assessment.

According to the Accountant Member, Messrs. Venkata Narasimha Rao and Company dealt in fertilisers and oil-cake manures while Messrs.

Raja Fertilisers dealt in chemical fertilisers only and, therefore, it could not be said that the two firms were one and the same.

5. Now, Section 2(23) of the Income Tax Act of 1961 defines ""firm."" as having the meaning assigned to that expression in the Indian Partnership

Act, 1932. Section 4 of the Indian Partnership Act, 1932, defines ""partnership ""as"" the relation between persons who have agreed to share the

profits of a business carried on by all or any of them acting for all"" and further proceeds to state ""persons who have entered into partnership with

one another are called individually ''partners'' and collectively a firm'', and the name under which their business is carried on is called the '' firm

name''."" Section 6 of the Indian Partnership Act provides that in determining whether a group of persons is or is not a firm, regard shall be had to

the real relation between the parties as shown by all relevant facts taken together. It follows from Sections 4 and 6 of the Indian Partnership Act

that under the law of partnership a firm has no legal existence apart from its partners and it is merely a compendious name to describe its partners.

(Vide Commissioner of Income Tax, West Bengal Vs. A.W. Figgies and Co. and Others, ). In Dulichand Lakshminarayan Vs. The Commissioner

of Income Tax, Nagpur, , the Supreme Court stated:

..... the general concept of partnership, firmly established in both systems of law (English and Indian), still is that a firm is not an entity or ''person''

in law but is merely an association of individuals and a firm name is only a collective name of those individuals who constitute the firm. In other

words, a firm name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in

partnership. According to the principles of English jurisprudence, which we have adopted, for the purposes of determining legal rights ''there is no

such thing as a firm known to the law'' as was said by James L.J. in Ex parte Corbett: In re Shand 1880 14 Ch D 122.

6. The Supreme Court noticed that under Order XXX, Rule 1, Civil Procedure Code, a firm was permitted to sue or be sued in the name of the

firm if it was represented by two or more partners but was of the view that it made no difference to the general concept of a ""firm"". By reason of

the definition of the expression ""firm"" in Section 2(23) of the Income Tax Act, 1961, the position under the Income Tax Act must necessarily be

similar. However, ""person"" is defined in Section 2, Sub-section (31) of the Income Tax Act of 1961 as including "" ..... (iv) a firm, an association of

persons or a body of individuals, whether incorporated or not, ....."".

7. Section 4 of the Income Tax Act provides for the charging of every ""person"" to Income Tax. Chapter 16 of the Income Tax Act contains

special provisions in regard to the assessment of firms. Thus, while a firm does not assume a legal personality under the Income Tax Act it is

nonetheless treated as a unit for the purpose of taxation even as an individual, a Hindu undivided family and an association of persons or a body of

individuals are treated as units for the purpose of taxation. That a firm is a distinct assessable entity, distinct even from its partners for the purposes

of assessment to tax, does not make it a legal personality, a personality which is denied to it under the partnership law and which continues to be

denied to it under the Income Tax Act in view of Section 2(23) of the latter Act. The general concept of a firm remains unchanged by reason of the

taxability of the firm as a unit just as the general concept is not altered by the capacity to sue or to be sued in the name of the firm as provided in

Order XXX, Rule 1, Civil Procedure Code. If Parliament intended that a firm should be treated as a legal personality under the Income Tax Act it

was wholly unnecessary for Parliament to have defined ""firm"" by reference to the Indian Partnership Act. What we wish to emphasise is that a firm,

which may be a taxable entity, does not on that account acquire or become endowed with the characteristics of a legal personality which it does

not in law possess. If this is the true position in law it may not be very difficult to solve the problem before us.

8. If Arun carries on business at Hyderabad in pulses, if Arjun carries on business in textiles at Bombay and if the revenue discovers that there are

no two such individuals as Arun and Arjun but the same individual is carrying on both the businesses under different names, there will be no

difficulty in holding that the incomes of the two businesses must be aggregated. If the same combination of identical persons carries on two

businesses under different names why should the position be different ? In VISSONJI SONS AND CO. Vs. COMMISSIONER OF Income

Tax, CENTRAL., Beaumont C.J. and Chagla J. said :

In law a firm has no existence independently of its partners, and if there are two firms consisting of exactly the same partners, the real position in

law is that there is only one firm. It may carry on separate businesses, and may carry on those businesses in different names but in fact there is only

one firm in law. I think there is a certain amount of confusion, if I may say so, in the case arising from the failure to appreciate that at the material

dates, there was in law only one firm.

9. We are inclined to accept the observations of Beaumont C. J. as representing the correct position. Though the position appeared to be clearly

stated by the learned judges, Chagla C. J., who was a party to the decision chose to distinguish those observations as mere obiter dicta, in a later

case. In Jesingbhai Ujamshi Vs. Commissioner of Income Tax, Chagla C. J. and Tendolkar J. considered the question whether in law common

partners could constitute two separate firms in respect of different businesses carried on by the partners for the purpose of the Indian Income Tax

Act. They answered the question in the affirmative distinguishing the observations of Beaumont C.J. in the following words;

With great respect to the learned Chief Justice, the actual question that he had to consider in that reference was whether the certain item which the

assessee claimed as a bad debt was a bad debt or not, and the learned Chief Justice disposed of that reference by coming to the conclusion that

this question was really a question of fact and the only question of law that arose was whether there was sufficient evidence to justify the finding of

fact by the Tribunal. Therefore, this particular observation on which the Tribunal has relied was not called for the determination of the reference

and, therefore, it must be looked upon as pure obiter.

10. We are not inclined to reject the observations of Beaumont C, J. in such a summary fashion. As already observed by us, we find great force in

those observations. Chagla C.J., then, proceeded to refer to certain observations of Sir George Rankin C.J., to which we shall presently refer.

According to Chagla C.J., Rankin C. J. had ""conceded that in law the same partners may constitute two different firms in the eye of Income Tax

law, but whether the two businesses were carried on by two separate firms or were the businesses of the same firm was a question of fact to be

determined by the Tribunal."" In conclusion he stated that there was nothing in law to preclude common partners constituting two separate firms for

the purpose of the Income Tax Act and that whether there were two firms or only one firm was a question of fact which should be decided by the

Tribunal on the evidence before us.

11. In In Re: Martin and Co., Rankin C. J. made the following observation :

The proposition that the same persons in the same shares cannot for Income Tax purposes be partners of two entirely separate firms is a highly

abstract proposition. It may or may not be correct but I am not prepared as at present advised to proceed upon so very general a principle without

a careful enquiry into the concrete case and into the matters above mentioned. It may turn out that the case depends on the question of fact

whether the two firms were entirely separate--a question of fact including the question of intention.

12. A perusal of the entire report of the case shows that the statement of case was lacking in several important particulars, including particulars

regarding the number of partners in the two firms at the relevant times. In those circumstances, Rankin C.J. thought that he should not express any

opinion on an abstract proposition of law without having before him all the necessary factual material. It was in that view that he made the

observations and we do not think that we can treat the observations of Rankin C. J. as indicating his preference for the view attributed to him by

Chagla C J.

13. In Jeshinghbhai Ujamshi Vs. Commissioner of Income Tax, Bombay, Chagla C.J. and Tendolkar J. reiterated the view earlier expressed by

them in Jesivgbhai Ujamshi v. Commissioner of Income Tax. In R. N. OSWAL HOSIERY AND MAHABIR WOOLLEN MILLS Vs.

COMMISSIONER OF Income Tax, PUNJAB., Mehar Singh C. J. and Shamsher Bahadur J. followed the decision of Chagla C. J. and

Tendolkar J. in Jesingbhai Ujamshi v. Commissioner of Income Tax and held:

If there were two separate businesses by the two firms composed of the same partners having identical shares they were two different assessable

units.

14. The learned advocates for the revenue and the assessee referred us to some cases arising u/s 24(2) of the Indian Income Tax Act, 1922, as to

the meaning of the expression ""same business"". It is unnecessary for us to refer to those cases as we do not think that they have any bearing on the

question involved in this reference. We only wish to say that all the cases are agreed that a fair and adequate test to determine whether two

businesses are one and the same is that furnished by Kowlatt J. in Scales v. George Thompson & Co. Ltd. 1927 13 TC 83 in the following words

:

Was there any inter-connection, any interlacing, any inter-dependence, any unity at all embracing those two businesses ?

15. In S.S. Subbier and S.R. Narasimhachari, Proprietors, Sri Kothandram Spinning Mills and Kothandram Weaving Mills, Madurai Vs.

Commissioner of Excess Profits Tax, Madras, a case arising under Excess Profits Tax Act, 1940, Rajagopalan and Balakrishna Iyer JJ. quoted

with approval the following passage from an earlier decision of the Madras High Court in R, C. No, 21 of 1951, also a case under the Excess

Profits Tax Act:

The same association of persons commenced two businesses one at Nandyal and the other at Hindupur. In other words, the ownership of the two

businesses is vested in the same association of persons.....There is only one combination of persons that carried on business both at Nandyal and

Hindupur.....So long as the partnership is not a legal entity and has no corporate existence in the eye of the law, it is impossible to treat the same

association of persons as two different legal entities, merely because they were carrying on businesses at two different places under different styles

and names.

16. We must, however, hasten to mention that under the Excess Profits Tax Act of 1940, unlike the position under the Income Tax Act, a firm was

not a taxable unit at all. The question was, therefore, decided with reference to the ordinary law of partnership. But as observed by us earlier, the

meanings of the expressions ""firm"", ""partner"" and ""partnership"" having been statutorily imported into the Income Tax Act from the Indian

Partnership Act, there is no reason why the position should be any different in cases arising under the Income Tax Act, We have already said that

the circumstance that a firm may be taxed as a unit under the Income Tax Act does not endow the firm with a juristic personality. The effect of

incorporating the meaning of the expression ""firm"" into the Income Tax Act from the Partnership Act is not got rid of by the circumstance that a

firm is treated as a taxable unit under the Income Tax Act. In our view, the same principles apply to cases arising both under the Income Tax Act

and the Excess Profits Tax Act.

17. In the light of the foregoing discussion we answer the question referred to us in favour of the revenue. There will be no order as to costs.

Advocate"s fee Rs. 250.