

R.S. Balasubramania Mudaliar Vs Commr. of Income Tax Excess Profits Tax, Madras

Court: Madras High Court

Date of Decision: April 9, 1952

Acts Referred: Income Tax Act, 1922 " Section 66, 66(1)

Citation: AIR 1953 Mad 438 : (1952) 22 ITR 370 : (1952) 2 MLJ 739

Hon'ble Judges: Satyanarayana Rao, J; Rajagopalan, J

Bench: Division Bench

Advocate: T.V. Viswanatha Aiyar, for the Appellant; C.S. Rama Rao Sahib, for the Respondent

Judgement

Rajagopalan, J.

The two questions that were referred to us for our decision u/s 66(1) , Income Tax Act, were :

(1) "Whether there was any material for the Tribunal to hold that the business at Madu-rai did not belong to a partnership consisting of R. S.

Balasubramania Mudaliar and Chidambaram, and

(2) Whether there was any material for the Tribunal to hold that business at Chennima-lai, Jaffna and Batticola did not belong to a partnership

consisting of R. S. Subramania Mudaliar and Krishna Mudaliar.

The assessee, Balasubramania Mudaliar, was carrying on business in cloth from the year 1936-37, in partnership with Mariappa Mudaliar.

Balasubramania Mudaliar had a nine annas share and Mariappa Mudaliar, a seven annas share. The Head Office was at Chenni-malai, and there

were branches at Madurai, Coimbatore, Batticola and Jaffna, The claim of the assessee was that the partnership except for the Head Office at

Chennimalai came to end at the end of 1943-44. The assessee further claimed that subsequent to 13-4-1943 he entered into a partnership with

Chidambaram for running the business at Madurai. In the subsequent year Mariappa retired from the partnership at Chennimalai also, and

Balasubramania claimed that he entered into a partnership for running the business at Chen-nimalai, Jaffna and Batticola, with Krishna Mudaliar.

The Income Tax Officer found that the two alleged partnerships were really fictitious, and that after Mariappa had retired from the business, the

business at Chennimalai and also at oil the branches constituted the proprietary concern of Balasubramania alone. This was confirmed on appeal

by the Assistant Commissioner, and on further appeal, by the Appellate Tribunal. It was subsequent to that, that these questions were referred to

us for decision u/s 66(1) of the Act.

2. Both the questions really raised questions of fact and practically none of law. If the assessee, that is, Balasubramania Mudaliar could establish

that there was no material at all on record for the taxing authorities or for the Appellate Tribunal to come to a conclusion, that the partnership

between Balasubramania Mudaliar and Chidambaram and the later partnerships between Balasubramania and Krishna Mudaliar were fictitious,

then, of course, the assessee could claim that those findings of fact, not supported by an evidence on record at all, should not prevail. During

arguments before us learned counsel for the assessee could only urge that on considering the entire evidence on record the points tabulated by the

taxing authorities and by the Tribunal against the view, that the partnerships were real, should not be given any undue weight, and that taking all the

evidence together it was more reasonable to hold that the partnerships were not fictitious but were real. On merely establishing that position, quite

obviously the answer to the question, whether there was any material at all for the Tribunal to hold that the partnerships were fictitious, could not

be answered in the negative.

3. No doubt, the Tribunal found that Mariappa did leave the partnership after ill-feelings had developed between himself and Bala-subramanian.

The Tribunal also found-that the department conceded that Balasubramania Mudaliar had always done business in partnership with others. But

there were also factors which the Tribunal considered, which militated against the truth of the two partnerships pleaded by the assessee. One of the

points taken by the Tribunal was that with reference to the Rs. 3000/- alleged to have been contributed as his share of the capital by Chidambaram

to the partnership between himself and Balasubramania, there was really no acceptable evidence that the Rs. 3,000/- had been found or could

have been found by Chidambaram. The assessee claimed that this Rs. 3,000/- had been contributed by Chidambaram on the date of the

partnership, 13-4-1943. The explanation as to the source from which Chidambaram got Rs. 3,000/- was that he got it from money lying to his

credit in fixed deposit with Arunachalam Nidhi. That money was shown to have been drawn not on 13-4-43 but on 2-7-1943. The further

explanation offered- was that Chidambaram borrowed money in the first instance on 14-4-1943 from one A. P. Swami, and that after withdrawing

the money from Arunachalam Nidhi, Chidambaram repaid A. P. Swami. To support that claim, there was practically no evidence, and the taxing

authorities and subsequently the Tribunal refused to believe that portion of the assessee's story, that any money had been advanced in April 1943,

by A. P. Swami. Yet another factor the Tribunal took into account was that, while Chidambaram, who was admittedly an employee before April

1943 at Madurai, drew a little over Rs. 300/- a year as remuneration before April 1943, he was credited with a sum of Rs. 9,024-4-2 on 12-4-

1944 and Rs. 4,666-10-1 on 12-4-1945 as his one-third share of the profits of the business at Madurai. But though those sums stood to his

credit, his drawings were Rs. 885-14-9 in one year and Rs. 628-8-6 in the next year, sums which bore a closer relation to the remuneration paid

prior to April 1943, than to the sums with which he was credited in the account books as his share of the profits.

Thus, the real position was that the authorities and the Tribunal were not satisfied that Chidambaram contributed any capital; they were not

satisfied that Chidambaram drew any portion of the profits qua profits. We are unable to hold that these were not materials which the Tribunal

could take into account in deciding the question at issue, whether the alleged partnership between Balasubramania and Chidambaram was fictitious

or was real. The mere fact that there was a deed of partnership, and the fact that the account books consistently with the recitals in the partnership

showed contributions of capital and allocation of profits may not be sufficient to establish the truth of that partnership.

4. We have to answer the first question in the affirmative and against the assessee.

The case of the second partnership was slightly worse, if anything, than that of the alleged partnership between Balasubramania and Chidambaram.

The deed of partnership did not stipulate for any contribution of capital by the alleged partnership, Krishna Mudaliar, but the claim was that Rs.

4000/- had been found by Krishna Mudaliar as his share of the capital of that partnership. On investigation, the taxing authorities found that this

sum of Rs. 4,000/-, alleged to have been borrowed from Sri Dandapani Nidhi Ltd., Chennimalai, on 5-9-1944 was really money found by

Balasubramania himself. It was incredible, the Tribunal held, that Krishna Mudaliar could have got Rs. 4,000/- from Dandapani Nidhi on his own

personal security. Thus, as in the previous case, the position was that, though a claim was made that Krishna Mudaliar had contributed his share of

the capital to the partnership, the evidence did not satisfy the taxing authorities that any contribution as such had been made; and in arriving at this

finding, the fact that no contribution of the capital was provided by the deed of partnership was also taken into account. The Tribunal also found

that there was no separate bank account in respect of this business. It also found that the other circumstances mentioned in connection with the

claim, that Chidambaram was a partner of the Madurai business, were also present in this alleged partnership between Subramania Mudaliar and

Krishna Mudaliar. Here again, as in the case of the alleged Madurai partnership, we are unable to hold that there was no material on record on

which the Tribunal could hold that the alleged partnership of Subramania Mudaliar and Krishna Mudaliar was not a true one.

That it is possible on a review of the entire evidence on record by another Judicial Tribunal to come to a different conclusion is certainly no

justification for finding that there was no material for holding that either of these two partnerships were fictitious ones.

The answer to the second question is also in the affirmative and against the assessee. As the assessee has failed, he should pay the costs of the

respondent, the Commissioner of Income Tax, Rs. 250/-.