

## INCOME-TAX REFERENCE.

Before Derbyshire C. J. and Costello J.

*In re* B. N. ELIAS.\*

1935

July 10, 11.

*Income-tax*—“*Other association of individuals*,” *Meaning of—Liability to income-tax and super-tax—Indian Income-tax Act (XI of 1922), ss. 3, 55, 66 (2)—Indian Income-tax (Amendment) Act (XI of 1924), ss. 3, 7.*

By the Indian Income-tax (Amendment) Act of 1924, the words “individual Hindu undivided family, company, firm and *other association of individuals*” were substituted for the former words in section 3.

Those words, “association of individuals” have to be construed in their plain, ordinary meaning.

Where persons have joined themselves together and remained joined together for the purpose of buying, holding and using certain house property in order to make gain by it,

*held* that in so doing they had become an “association of individuals” within the meaning of sections 3 and 55 of the Indian Income-tax Act.

*Smith v. Anderson* (1) referred to.

*Held* further, that the said association could be said to be the owner of the property within the meaning of section 9 of the Income-tax Act.

REFERENCE under section 66(2) of the Indian Income-tax Act at the instance of the assessee.

The facts of the case, and the arguments in the Reference appear sufficiently in the judgment.

*S. N. Banerjee* and *H. N. Bhattacharjee* for the assessee.

*A. K. Roy*, Advocate-General, *Radhabinode Pal* and *Rameshchandra Pal* for the Income-tax Department.

DERBYSHIRE C. J. This matter arises out of a statement of case under the Indian Income-tax Act, 1922, section 66, by the Commissioner of Income-tax of Bengal. For the year of assessment 1933-34, the

\*Income-tax Reference, No. 2 of 1935, under section 66 (2) of the Indian Income-tax Act.

Income-tax Officer for district III (1) made an assessment in respect of certain property in Calcutta, called the Norton Buildings. In the assessment the name of the assessee was stated to be B. N. Elias for self and B. S. Benjamin, Sir Victor Sassoon and A. J. Raymond, 19-D, Bowbazar Street. Status (whether individual, registered or unregistered firm, Hindu undivided family, company or other association of individuals)—Association of individuals. Sources of income with exact nature of business—House property. It was stated that the members of the association have the following interest: B. N. Elias—one-third, B. S. Benjamin—one-third, Sir Victor Sassoon—one-sixth and A. J. Raymond—one-sixth. The income returned was Rs. 68,209. On that the aforesaid individuals were charged to tax as follows:—Income-tax—Rs. 8,881-6; surcharge on income-tax—Rs. 2,220-6; super-tax—Rs. 2,360-1; surcharge on super-tax—Rs. 590, in all Rs. 14,051-13. It is said by the assessee that this assessment is wrong, because it assesses them as an “association of individuals” and thus exposes them to a higher rate, and a higher amount of both income-tax and super-tax.

The history of the ownership of this property, as far as it is relevant in this case, is as follows:—By a deed of conveyance, dated the 9th January, 1920, this property was purchased by Rachael Bekhor, Captain E. V. Sassoon, A. J. Raymond and B. N. Elias, and their respective shares in the property purchased were one-third, one-sixth, one-sixth and one-third. In the deed of purchase those four individuals were described as the purchasers. The deed says:—

The purchasers, which expression shall, unless excluded by or repugnant to the context, include them and each of them and their and each of their heirs, executors, administrators, representatives and assigns of the third part.

The deed also recites that the purchasers were “to have and to hold the said premises ..... absolutely “and for ever as tenants in common in the following “shares or proportions”. The proportions have been set out above.

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On the 15th September, 1921, Rachael Bekhor by a deed of that date declared that her share of the cost of the building had been provided by B. S. Benjamin and that that share was conveyed to her in trust by Mr. Benjamin and that she undertook to convey the said property, or any part of it, to such person or persons as Mr. Benjamin might direct and that Mr. Benjamin was then the owner of the one-third share originally belonging to Rachael Bekhor. We are told that this property is let out as offices. In 1920, E. V. Sassoon, Rachael Bekhor and A. J. Raymond executed a power-of-attorney which recited as follows:—

Whereas we jointly or severally are now seized or possessed or may hereafter become seized or possessed of lands, messuages and tenements at Calcutta and whereas we are desirous of appointing some fit and proper person to transact, conduct and manage on our behalf our affairs in relation thereto and have for such purpose selected Benjamin Nissim Elias of Calcutta, Now know ye that we the said Ellice Victor Sassoon, Rachael Nissim Bekhor and Abraham Jacob Raymond jointly and severally do and each and every of us doth by these presents make, constitute and appoint the said Benjamin Nissim Elias our true and lawful attorney for us and in our name or for and in the name of any of us,

1. To conduct and manage all and singular our affairs in relation to lands, messuages and tenements of which we are or any of us is now jointly or severally seized or possessed or of which we or any of us may hereafter be jointly or severally seized or possessed at Calcutta,

2. For the purpose aforesaid to demand, recover and take possession of all and singular the lands, messuages, tenements now belonging or which may hereafter belong to us or any of us absolutely or by way of legal or equitable mortgage or in which we have or any of us has a beneficial interest either along or jointly with others and to view the state thereof and to give proper notices and directions for repairing the same and to oversee, let, sublet and manage the same.

3. To pay or allow all taxes, rates, charges, expenses and outgoings due and payable or to become due and payable for or on account of the said lands and immovable properties,

4. To contract with any person for leasing all or any of our immovable properties and any such person to let into possession thereof and to set fines for new leases and to accept surrender of leases and for that purpose for us and in our name and for and in the name of any of us to make, seal, deliver and execute any lease or grant or other lawful deed and instrument whatsoever which shall be necessary or proper in that behalf and also in our name or in the name of any of us to sign and give lawful notice to quit to any tenant of the said premises.

5. For us and in our name and for our benefit or for and in the name of and for the benefit of any of us to enter into, sign, execute, seal and deliver such agreement or agreements with any firm or individual as may be necessary for the sale exchange or letting on lease of any of our immovable properties and also to sign, execute, seal and deliver all conveyances, deeds,

supplicates, receipts and other documents required to be signed or executed and to carry such agreement or agreements into effect and to appear before such Collector, Special Collector and other authorities and to give all such consents and do all such acts in the premises as to the attorney may appear to be necessary or desirable.

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6. For us and in our name or for and in the name of any of us to ask, receive and recover from all receivers tenants and all other occupiers whatsoever of any of our lands, houses, hereditament and other immovable properties all rents, arrears of rent, services, issues, profits, emoluments and sums of money now due owing and payable or at any time hereafter to become due owing and payable in respect of the same premises in any manner whatsoever and also on non-payment of any part thereof to enter and distrain and the distress and distresses there found to retain and keep or to sell and dispose of according to law.

7. For us and in our name or for and in the name of any of us to sell all or any part of our lands, hereditaments, houses and other immovable properties and to give receipts for all or any part of the purchase or other consideration money.

Then follow other provisions :—

9. For us and in our name and for and in the name of any of us to appear before any Registrar or Joint Registrar or Sub-Registrar of Assurances or other proper officer or officers appointed under any Act for the time being in force for the registration of deeds, assurances, contracts or other instruments and there and then or at any time thereafter to present for registration and register or cause to be registered this power-of-attorney and any deed or document executed hereunder and answer such enquiries make such acknowledgments and sign such papers and documents as may be necessary and also to do and execute such further acts and things as may be deemed expedient for registering or otherwise giving validity according to law to any deed or deeds or instrument or instruments which may be necessary for effectuating any act empowered by these presents.

On the 14th January, 1924, Mr. B. S. Benjamin executed a similar power-of-attorney appointing Mr. B. N. Elias his attorney in Calcutta. The property, we are told, has been managed by Mr. Elias from the date of his appointment down to the present time, in accordance with those powers-of-attorney. Previous to the year 1933-34, the Income-tax Officer had not assessed the owners of this property as an "association of individuals". The question that we have to decide is whether the petitioners, Mr. Elias, Mr. Benjamin, Sir Victor Sassoon (as he now is) and Mr. A. J. Raymond constitute an "association of individuals" within the meaning of section 3 of the Income-tax Act. Section 3 reads as follows :—

Where any Act of the Indian legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at that rate or those rates shall be charged for that year

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in accordance with, and subject to the provisions of, this Act, in respect of all income, profits and gains of the previous year of every individual Hindu undivided family, company, firm and other association of individuals.

Previous to the year 1924, the words of the section in question were "individual company, firm and Hindu undivided family". By the Indian Income-tax (Amendment) Act of 1924 (Act XI of 1924) the words "individual Hindu undivided family, company, firm and other association of individuals" were substituted for the former words. Those words "association of individuals" have to be construed in their plain, ordinary meaning. There is no difficulty about the word "individuals". "Associate" means, according to the Oxford Dictionary, "to join in common purpose, or to join in an action". Did these individuals join in a common purpose, or common action, thereby becoming an "association of individuals"? In my view, they did. In the first place, they joined together in the purchase of this property on the 9th January, 1920. In the second place, they have remained joined as owners of this property from the date of the purchase down to the present time. Thirdly, they have joined together, as the powers of attorney show, for the purpose of holding this property and of using it for the purpose of earning income to the best advantage of them all. Under these circumstances, it seems to me that looking at the position and construing the words of the Act in their ordinary common meaning, the four persons named are an "association of individuals". In arriving at that conclusion, I am fortified by the words of Lord Justice Cotton in the case of *Smith v. Anderson* (1). There the learned Lord Justice discusses the meaning of the word "association" as used in section 4 of the Companies Act of 1862. The word occurs along with the words "company or partnership". Cotton L. J. says at page 282 :—

I do not think it very material to consider how far the word "association" differs from company or partnership, but I think we may say that if "association" is intended to denote something different from a company

or partnership, it must be judged by its two companions between which it stands, and it must denote something where the associates are in the nature of partners. It seems to me (not that I think it material) that it might have been intended to hit the case which we have frequently seen, of a number of persons or a number of firms joining themselves together for the purpose of carrying on a particular adventure in order to make gain by it.

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Three specific questions were put before this Court for answer in the statement of case by the Commissioner of Income-tax. They are as follows:—

(1) Whether in view of the circumstances of this case the petitioners constituted an Association of Individuals within the meaning of section 3 of the Indian Income-tax Act ?

In my view the answer to that question must be "Yes."

(2) Assuming that they constituted such an Association of Individuals whether in the circumstances of this case the said association can be said to be the owner of the property within the meaning of section 9 of the Income-tax Act ?

It was admitted by Mr. Banerjee for the assessee that he could not contend to the contrary. The answer to question 2, in my opinion, must be "Yes".

(3) If such an Association of Individuals cannot be treated as owners of the property, whether the said association can be assessed under section 12 of the Income-tax Act in respect of the income derived from the property in question ?

In my view, having regard to the answers that I consider should be given to questions 1 and 2, question 3 does not fall to be answered.

The Commissioner of Income-tax will get the costs of this hearing—7 gold mohurs for the vakil and the two advocates' costs will be such fees as have already been paid to them.

COSTELLO J. The question which the assessee originally desired to have put before this Court, was formulated by the assessee as follows:—

Whether in view of the circumstances of the case the petitioners were legally treated as an "Association of Individuals" and whether the joint assessment on them has been rightly made.

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The Commissioner of Income-tax, Bengal, thought fit, as he said, to dissect the issue and he formulated the three questions, which have been referred to by my Lord the Chief Justice; but actually having regard to the way, in which this case has been argued by Mr. S. N. Banerjee on behalf of the assessee, all that we are required to do is to answer a question which can be stated in the terms originally put forward by the assessee. Put quite shortly the question is whether the combination composed of Mr. B. N. Elias, Mr. B. S. Benjamin, Sir Victor Sassoon and Mr. A. J. Raymond can properly be described for the purpose of assessment of income-tax as an "Association of Individuals" within the meaning either of section 3 of the Income-tax Act, 1922, or of section 55 of that Act. In point of fact one gathers that the assessee is rather more concerned about section 55 than section 3, because the former section is that dealing with super-tax.

In my opinion, it is of considerable importance to observe the conjunction and sequence of the descriptive words in both those sections. As my Lord has already pointed out these sections were amended by the Act of 1924. By section 3 of that Act and by section 7 of that Act the words, as they originally stood in section 3 and in section 55, were transposed and the expression "Association of Individuals" was interpolated into the sections. It is of considerable significance, in my opinion, for our present purpose that, as section 55 now stands, the expression "other association of individuals" immediately follows the expression "unregistered firms", the whole sentence being "There shall be charged, levied and paid for that year in respect of the total income of the previous year of any individual Hindu undivided family, company, unregistered firm or other association of individuals not being a registered firm an additional duty of income-tax in this Act referred to as super-tax". Mr. Banerjee was at very great pains to

demonstrate to us that the combination of individuals, with which we are concerned, could not properly be described as partnership and he emphasised the fact that they were co-owners of the property, which is known as the "Norton Buildings". I have no doubt whatever that Mr. Banerjee was perfectly justified and correct in inviting us to take the view that this was not a partnership but it seems to me, bearing in mind the juxtaposition, which I have mentioned, that, although these four persons did not constitute a body, which was the same as partnership, it was in many respects similar to a partnership and was approximate to a partnership and it may well be that the intention of the legislature was to hit combinations of individuals, who were engaged together in some joint enterprise but did not in law constitute partnerships, within the definition of partnership either as originally given in the Contract Act or as now given in section 4 of the Partnerships Act.

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Mr. Banerjee invited us to take upon ourselves the difficult, if not indeed impossible, task of laying down a general definition of the expression "association of individuals". In my opinion that is not desirable from any point of view whatever. Each case must be decided upon its own peculiar facts and circumstances. When we find, as we do find in this case, that there is a combination of persons formed for the promotion of a joint enterprise banded together, if I may so put it, as co-adventurers—to use an archaic expression—then I think no difficulty whatever arises in the way of saying that in this particular case these four persons did constitute an "association of individuals" within the meaning of both section 3 and section 55 of the Indian Income-tax Act, 1922.

I, therefore, entirely agree with what has fallen from my Lord the Chief Justice and I am of opinion that the first question propounded by the Commissioner of Income-tax, Bengal, should be answered in the affirmative. As has been pointed out by my Lord, the



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other two questions scarcely need any answer from us because they have not been seriously discussed by Mr. Banerjee. It really follows from the answer, which we have given to the first question, that the answer to the second question will also be in the affirmative. And the third question does not arise for decision.

Advocate for the assessee: *H. N. Bhattacharjee*.

Advocate for the Income-tax Department:  
*Rameshchandra Pal*.

G. S.