

## SPECIAL BENCH.

*Before Sir Owen Beasley Kt., Chief Justice,  
Mr. Justice Ramesam and Mr. Justice Cornish.*

1932,  
January 6.

THE COMMISSIONER OF INCOME-TAX, MADRAS,  
PETITIONER,

v.

MESSRS. BEST & CO., LTD., MADRAS (ASSEESSES),  
RESPONDENTS.\*

*Indian Income-tax Act (XI of 1922), sec. 26 (2)—“ Any business ” in—Meaning of—Several businesses owned or controlled by a company—Sale of one of, to another company—Purchaser company “ successor ” of vendor company within meaning of sec. 26 (2) if—Assessability of purchaser company under sec. 26 (2).*

Where a company, which owns or controls several other companies, sells one of them to another company, the purchaser company is the successor of the vendor company within the meaning of, and can be assessed under, section 26 (2) of the Indian Income-tax Act of 1922, even in the absence of proof that the purchaser company succeeded to all the other companies owned or controlled by its vendor. Upon whom the burden is ultimately to fall is a matter of arrangement between the vendor company and the purchaser company.

The words “ any business ” in section 26 (2) do not mean ‘ each and every business ’ carried on by the former owner of a business.

The effect of section 26 (2) is that, where a person who was not the former owner of a company is found to be owning that company in the year of assessment, that person is to be assessed.

REFERENCE to the High Court under section 66 (2) of the Indian Income-tax Act (XI of 1922) in the matter of Messrs. Best & Co., Ltd., Madras.

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\* Original Petition No. 78 of 1930.

*Advocate-General (A. Krishnaswami Ayyar)* for  
 assessees.

*M. Patanjali Sastri* for Commissioner of Income-tax.

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### JUDGMENT.

BEASLEY C.J.—The following question has been referred to us by the Income-tax Commissioner, viz.,

“Whether the transfer by the petitioners of Eagle Rolling Mills to a Limited Company on the 31st December 1926 constitutes the latter company successor to the petitioners within the meaning of section 26 (2) of the Act.”

Section 26 (2) of the Indian Income-tax Act reads as follows:

“Where, at the time of making an assessment under section 23, it is found that the person carrying on any business, profession or vocation has been succeeded in such capacity by another person the assessment shall be made on such person succeeding as if he had been carrying on the business, profession or vocation throughout the previous year, and as if he had received the whole of the profits for that year.”

As the question referred shows, there was a transfer by the petitioners of the Eagle Rolling Mills to another company at the end of 1926. Messrs. Best & Co., the petitioners here, were up to that time the owners not only of the Eagle Rolling Mills but of other companies carrying on a very extensive business in Madras. On the 31st December 1926 the petitioners transferred the business of the Eagle Rolling Mills to a company formed expressly for the purpose of buying it. The petitioners claimed the benefit of the deductions allowed in the shape of depreciation and also for expenditure for the purpose of earning profits in the year of account under section 10 (2) of the Act. The Income-tax authorities, however, under section 26 (2) assessed the new company holding that the new company had succeeded Best & Co. as owners of the Eagle Rolling Mills. The point taken here by the petitioners is that,

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in accordance with the decision in *Commissioner of Income-tax v. Arunachelam Othettiar* (1), section 10 (1) of the Indian Income-tax Act, where it deals with the ascertainment of the profits of a business, means the ascertainment of the profits of each and every business carried on by an assessee, that is to say, that the profits and losses of all the businesses can be lumped together and so can the other items allowable as deductions and the resulting profit is assessable to income-tax. It is consequently argued that the use of the words "any business" in section 26 means "each and every business" carried on by the former owner of a business and that as, in this case, the new company has not succeeded to all the businesses which Messrs. Best & Co. own and control, section 26 (2) has no application and that the proper persons entitled to be assessed and to claim the deductions are the petitioners. As the learned Income-tax Commissioner points out, to introduce the words "each and every" into section 26 (2) in place of "any" would be to deprive it of any logical meaning and indeed to make an absurdity of it. It would mean this that, where a company, which owns or controls a dozen other companies, sells one of them to another company, unless the Income-tax authorities can show that the purchasing company succeeded to all the other companies owned or controlled by its vendor, it cannot be assessed under section 26 (2). That, to my mind, is an impossible position. Section 26 was designed for the purpose of making somebody assessable to income-tax; and the whole scheme of the Act is not to assess two people at the same time but is to find somebody who is either properly assessable or more conveniently assessable; and what section 26 (2) says

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(1) (1923) I.L.R. 47 Mad. 660 (S.B.).

is that, where a person who was not the former owner of a company is found to be owning that company in the year of assessment, that person is to be assessed. That is not only a convenient course but seems to me to be a just one. Upon whom the burden is ultimately to fall is a matter of arrangement between the vendor company and the purchaser company. Taking this view, in my opinion, our answer to the question referred must be that the new company is the successor of the petitioners. Costs to the Commissioner Rs. 250.

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RAMESAN J.—I agree.

CORNISH J.—I agree.

Attorneys for assesseees : *King and Partridge.*

A.S.V.

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## APPELLATE CIVIL.

*Before Sir Owen Beasley Kt., Chief Justice,  
and Mr. Justice Curgenvven.*

POORNANANTHACHI (PETITIONER IN CIVIL MISCELLANEOUS  
PETITION No. 1494 OF 1931), PETITIONER,

1932,  
February 8.

v.

T. S. GOPALASWAMI ODAYAR, AND TWELVE OTHERS (RES-  
PONDENTS IN CIVIL MISCELLANEOUS PETITION No. 1494  
OF 1931), RESPONDENTS.\*

*Code of Civil Procedure (Act V of 1908), O. XLV, r. 7, as amended  
by Act XXVI of 1920, sec. 3—Time for furnishing secu-  
rity—Extension—Power of High Court—Judicial Com-  
mittee Rules (1920), r. 9—Inability to raise funds—If a  
ground for extension.*

The High Court has no power to extend the time for furnish-  
ing security beyond the time set out in Order XLV, rule 7, of the

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\* Civil Miscellaneous Petition No. 6139 of 1931.