

INCOME-TAX REFERENCE.

Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Das and
Mr. Justice Mya Bu.

IN RE THE COMMISSIONER OF INCOME-TAX,
BURMA

1933

July 11.

v.

N.N. FIRM.*

Income-tax Act (XI of 1922), s. 26 (2)—Succession to business—Splitting up of business—Same kind of business on same old premises and under same old name.

One person succeeds another person in carrying on a business, profession, or vocation, when he succeeds his predecessor in carrying on the business as a whole. Where a business is split up and thereafter another person carries on part of the business he does not succeed his predecessor in carrying on the business within s. 26 (2) of the Income-tax Act. Where there is no continuity in carrying on the business and one business has come to an end and after a time another business is started, it may be with the same assets and under the same conditions and in the same premises as the old business, the persons carrying on the new business do not "succeed" those who had carried on the old business within s. 26 (2) of the Act.

A Chettyar, his three sons and grandson carried on a joint Hindu family business of money-lending and rice-milling. The family decided to have a partition, and pending arbitration as to the partition of the family property the money-lending business was stopped. One of the sons received a one-fifth share of the assets of the money-lending business, and thereafter started a money-lending business of his own elsewhere and under a different name. His share in the rice mill was bought by the other four members of the family. These four opened new accounts and carried on the business of money-lending in partnership at the old place of business and under the old *vilasam* of the joint family business.

Held, that the members of the new firm did not "succeed" to the business of money-lending of the joint family within s. 26 (2) of the Act.

Bell v. National Provincial Bank of England, (1904) 1 K.B.D. 149; *Maharajahdiraj of Darbhanga v. Commissioner of Income-tax*, I.L.R. 12 Pat. 5; *Reynolds, Limited v. Ogston*, 15 Tax Cases 501; *Stockham v. Wallasey Urban District Council*, 95 L.T. 834; *Western India Turf Club v. Commissioner of Income-tax, Bombay*, 2 I.T.C. 227; *Wilson v. Chibbet*, 14 Tax Cases 407—referred to.

A. Eggar (Government Advocate) for the Crown.
The assessment in the present case ought to have

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been treated as within s. 26 (1) and not s. 26 (2) of the Income-tax Act. What has happened is that there has been a change in the constitution of the firm, and no question of succession arises. However, if there were sufficient materials before the Income-tax authorities to come to the conclusion that there was a succession the High Court will not interfere.

Basu for the assessee. The question referred is not exactly the question that the assessee desired to raise. The question that should have been propounded is whether there was any justification in law for the Income-tax authorities to hold that the assessee had "succeeded" to the old firm. The High Court has power to re-frame questions and decide them.

Succession to a business or firm may be by transfer *inter vivos* or by operation of law. *Maharajahdiraj of Darbhanga v. Commissioner of Income-tax* (1). But there can be no succession to a business piece-meal. Where, as in the present case, the assessee has taken over only a portion of the business it cannot be said that they have succeeded to the old firm. Further, there was an actual cessation of business for some time before the new firm commenced to function. The old firm therefore should be held to have discontinued its business. One of the partners had also retired taking his share in the business with him, and in no sense can the assessee be said to have succeeded to the N.N. family business. *Bell v. National Provincial Bank of England* (2); *Mills from Emelie, Limited v. The Commissioner of Inland Revenue* (3); *Wilson and Barlow v. Chibbet* (4); *Ogston v. Reynolds, Sons &*

(1) I.L.R. 12 Pat. 5.

(2) (1904) 1 K.B.D. 149.

(3) 12 Tax Cases 72.

(4) 14 Tax Cases 407.

Co., Ltd. (1) ; and *Stockham v. Wallasey Urban District Council* (2).

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PAGE, C.J.—The question propounded is : “Whether in this case the Income-tax Officer was justified in holding that the assessee had succeeded to the N.N. family business?” The question is not happily worded, the real question being whether upon the facts as found the Income-tax Officer correctly held that the assessee had “succeeded” to the joint family business carried on under the *vilasam* of N.N.

The material facts are as follows : An undivided Hindu joint family consisting of N.N. Nachiappa Chettyar his three sons and his grandson carried on a family business of money-lending and rice-milling at Bassein. In 1929, the members of the joint family decided to partition the family property, and between October and December 1929, when the partition of the family property was referred to arbitration, no fresh loans were advanced by the N.N. firm. Under the partition N.S.M., one of the members of the family, received, *inter alia*, a one-fifth share of the assets of the money-lending business, and thereafter started a new money-lending business on his own account under a different name and in new premises. As it was considered undesirable by the family that the rice mill should be sold, and the proceeds of the sale divided into five parts, it was arranged between the members of the family that the four other members of the family should buy out N.S.M. by giving him credit in the partition for one-fifth of the value of the rice mill. There can be no doubt, and the assessee does not dispute, that the four members of the family who purchased the share of N.S.M. in

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the rice mill and continued to carry on the rice-milling business as their own in the manner that theretofore had obtained, "succeeded" to the business that had been carried on by the Hindu joint family in the mill. So far as the money-lending business was concerned it appears that the four members of the family other than N.S.M. carried on business at the old premises in the manner in which it had been carried on before the partition took place; and that N.S.M. his two sons and his grandson on the 19th January, 1930, even before the arbitrators issued their award on the 5th February, 1930, opened new accounts in the old business premises, pooling the assets and liabilities of the business that fell to their share in the partition, with a view to forming a partnership for carrying on the business that had belonged to the Hindu joint family. Upon those facts the Income-tax authorities have held that there was a "succession" to the money-lending business of the undivided joint family within s. 26 (2) of the Income-tax Act. In my opinion it is manifest that there was not a "succession" within s. 26 (2) of the Act. In order that a person should be held to have "succeeded" another person in carrying on a business, profession, or vocation, it is necessary that the person succeeding should have succeeded his predecessor in carrying on the business as a whole. Where a business is split up and thereafter another person carries on part of the business I am of opinion that he does not "succeed" his predecessor in carrying on the business within s. 26 (2). Further, where there is no continuity in carrying on the business and when one business has come to an end and after a time another business is started, it may be with the same assets; and under the same conditions and in the same premises as the old business,

the persons carrying on the new business do not "succeed" those who had carried on the old business within s. 26 (2) of the Act. In the present case it is found as a fact that N.N. Nachiappa Chettyar his two sons and his grandson did not carry on or take over from the joint family the whole of the business that had been carried on by the joint family, and also that for three months prior to the partition the business carried on by the Hindu joint family had been discontinued : *Bell v. National Provincial Bank of England* (1) ; *Stockham v. Wallasey Urban District Council* (2) ; *The Western India Turf Club, Limited v. The Commissioner of Income-tax, Bombay* (3) ; *Wilson and Barlow v. Chibbet (H.M. Inspector of Taxes)* (4) ; *Reynolds, Sons & Co., Ltd. v. Ogston (H.M. Inspector of Taxes)* (5) ; and *Maharajadhiraj of Darbhanga v. Commissioner of Income-tax* (6).

For these reasons I will answer the question propounded in the negative—costs ten gold mohurs.

DAS, J.—I agree.

MYA BU, J.—I agree.

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(1) (1904) 1 K.B.D. 149.

(2) 95 L.T. 834.

(3) 2 Tax Cases 227 & 490.

(4) 14 Tax Cases 407.

(5) 15 Tax Cases 501.

(6) (1932) I.L.R. 12 Pat. 5.