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to the hands of the assessee, and on that basis he was allowed a deduction in respect of the maintenance. But in this case the assessment being on a Hindu undivided family, it seems to me that the whole of the income of the Hindu undivided family is liable to assessment, and that it is impossible to deduct this sum payable to the widow of a deceased brother, who gets it in her capacity ultimately as a member of the joint family. I think, therefore, that the first question, "In the circumstances of the case, has the Income-tax Officer correctly computed the income from house property at Rs. 4,767"? should be answered in the affirmative, and the second question, whether the assessee is entitled to any deduction from the above income of Rs. 4,767 in respect of Rs. 165 per mensem paid to Bai Nambai on account of maintenance under the consent decree, should be answered in the negative. Assessee to pay the costs of the Commissioner of Income-tax on the original side scale to be taxed by the Taxing Master—less Rs. 100.

BLACKWELL, J. I agree, and have nothing to add.

Answers accordingly.

Y. V. D.

CIVIL REFERENCE.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Blackwell.

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March 30

THE COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY, SIND AND ADEN, (REFEROR) *v.* LAXMIDAS DEVIDAS AND VASANJI RUTTONSEY, (ASSESSEES).*

Indian Income-tax Act (XI of 1922), sections 3, 9 and 9(1)—"Association of individuals", meaning of—Two persons associating in buying property for deriving profits—Whether they are an association of individuals and taxable as owner of property.

Where two persons associate together for the purpose of buying property and managing it so as to produce income, they are an "association of individuals" within

*Civil Reference No. 17 of 1936.

the meaning of section 3 of the Indian Income-tax Act, 1922, and such an association can be said to be owner of the properties within the meaning of section 9 of the Act and can be assessed as owner of properties under section 9 (*1*) of the Act.

In re B. N. Elias, [1] followed.

Mufti Mahammad v. *I. T. Commissioner*,[2] dissented from.

Per Beaumont C. J. In my opinion the only limit to be imposed on the words "other association of individuals" is such as naturally follows from the fact that the words appear in an Act, imposing a tax on income, profits and gains, so that the association must be one which produces income, profits or gains.

REFERENCE made by the Commissioner of Income-tax, Bombay Presidency, Sind and Aden, under section 66 (2) of the Indian Income-tax Act, 1922.

Property of an association of two individuals.

In the year 1933, two persons Laxmidas Devidas and Vasanji Ruttonsey joined together in purchasing certain immoveable properties in Bombay, contributing the purchase price thereof in equal shares out of their own moneys. Laxmidas Devidas was then a minor and his affairs were managed by his father and natural guardian, Devidas Raghavji. Having purchased the properties as aforesaid, the assessees jointly held and managed the same for the purpose of acquiring gain and shared the income thereof equally, the minor's father and natural guardian acting throughout for and on behalf of his son.

For the purposes of assessment to income-tax for the financial year 1935–36, the assessees put in a return declaring an income from the said properties of Rs. 12,941. The Income-tax Officer computed the income from the properties at the same amount under section 9 of the Act, and assessed the assessees as an "association of individuals".

The assessees thereupon appealed to the Assistant Commissioner of Income-tax objecting to being taxed jointly on the above amount on the ground that they could not be treated as an "association of individuals" within the meaning of section 3 of the Act and that each of them should

(1) (1935) 63 Cal. 538. (2) [1936] A.I.R. All. 817.

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have been assessed individually as a co-owner on his share in the income from the above properties. The Assistant Commissioner therefore confirmed the order of the Income-tax Officer.

Being dissatisfied with this decision, the assessees submitted a petition to the Commissioner of Income-tax, requiring that Officer to refer the case under section 66 (2) of the Act to the Honourable High Court. The Commissioner submitted the following questions for decision by the Honourable Court :—

1. Whether in the circumstances of the case, the assessees constituted an association of individuals within the meaning of section 3 of the Income-tax Act, 1922 ?

2. Whether the said association can be said to be the owner of the properties within the meaning of section 9 of the Income-tax Act and was rightly assessed as such ?

3. Whether the assessees were in any event rightly assessed as owner of the said properties under section 9 (*1*) ?

In giving his opinion, the Commissioner submitted that the answers to the above questions should be in the affirmative for the following reasons :—

" section 9 (*1*) of the Act clearly lays down that ' the tax shall be payable by an assessee under the head "Property" in respect of the *bona fide* annual value of property consisting on any buildings or lands appurtenant thereto of which he is the owner '. That this is income chargeable under the head ' Property ' referred to in section 6 of the Act is undisputed. Hence tax on the annual value of the property must be levied on the owner thereof as laid down in the said section 9(*1*) of the Act. The only question for decision is ' who is the owner of these properties ? ' On the facts found, namely, that the assessees purchased the properties jointly for the purpose of holding and using the same in order to acquire gain and remained united with each other as owners of the said properties, managing them jointly, collecting the rents jointly and paying the expenses jointly, it is submitted that it was incumbent on the Income-tax Officer to assess them as an association of individuals owning the properties. Section 9 refers to ' annual value of property consisting of any buildings or lands appurtenant thereto ' and it is submitted that there can be no such thing as the annual value of an undefined ½ part of a building and that the section on the face of it does not contemplate any division of a building into separate parts for assessment purposes or anyting of the kind. Neither Laxmidas nor Vasanji Rutansey is by himself the owner of the buildings in question. The two combined jointly own it and as far as section 9 goes, it clearly provides that ' the tax shall be payable ' by the assessee who is the owner, viz., the above two persons jointly. The words used in section 9 (*1*) are ' *The tax shall be payable by an assessee*..... ' and

indeed the section is, as above suggested, itself a charging section in respect of the particular head of income therein referred to, namely, property. Turning, however, to the main charging section, viz., section 3, under it, tax is to be charged on every individual, Hindu undivided family, company, firm and any other association of individuals. The words 'any other association of individuals' mean an association which is neither a Hindu undivided family nor a company nor a firm and the words do include persons associating together to acquire, hold and manage jointly house property and earn income therefrom. Hence even under section 3, the assessment is unobjectionable. The Calcutta High Court case of *Messrs. B. N. Ellias and others* (63 Cal. 538) on which the Income-tax Officer relied was, it is submitted, correctly decided."

The reference was heard.

Sir Kenneth Kemp, Advocate General, with *G. Louis Walker*, Government Solicitor, for the referror.

C. K. Daphtary with Messrs. *Popatlal & Co.*, for the assessees.

BEAUMONT C. J. This is a reference made by the Income-tax Commissioner under section 66 (2) of the Indian Income-tax Act, 1922; and the short question raised is whether the assessees are an association of individuals within the meaning of section 3 of the Act.

The Commissioner finds as a fact that the assessees in the year of assessment joined together in purchasing certain immoveable properties in Bombay, contributing the purchase moneys in equal shares, that the properties were managed by or on behalf of the owners, and such management resulted in certain profits or gains. One of the assessees was a minor during the year of assessment, and he contracted through his father and natural guardian.

The short question is, whether when two persons associate together for the purpose of buying property and managing it so as to produce income, they are an association of individuals within section 3 of the Act. Now, section 3 imposes a tax "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." I agree with the view expressed by the Calcutta High

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Court in *In re B. N. Elias*(1) that the words "association of individuals" have to be construed in their plain, ordinary meaning. In that case, the Court was dealing with an association of three individuals, who had combined together to purchase various properties which they proposed to manage for the purpose of making profits; and those three individuals were held to be an association of individuals within the meaning of section 3. I think the principle of that case must apply equally where the association consists only of two individuals and there is only a single property which is managed and produces income.

I cannot agree with the view expressed by the Allahabad High Court in *Mufti Mahomed* v. *I. T. Commr.*(2) that the words "association of individuals" should be read *ejusdem generis* with the word immediately preceding, viz., "firm". The so-called *ejusdem generis* rule,—which, I cannot help thinking, is sometimes misapplied in India,—is merely a rule of construction. When you have general words following particular words, the general words are limited to things which are *ejusdem generis* with the particular words. But that rule being one of construction should never be invoked where its application appears to defeat the general intent of the instrument to be construed. Moreover, I know of no authority for applying the rule so as to limit the meaning of the general words to the last of the particular words preceding. Here, there are three associations of individuals referred to in section 3 of the Act,—a Hindu undivided family, a company and a firm; and those three associations of individuals are marked by widely different characteristics. A Hindu undivided family is an association united by ties of birth; members of a company are associated in such a manner that they become a legal entity; and a firm is an association depending on contract but is not in itself a legal entity; and I think it would be very difficult,—if not impossible,—to suggest any other association of individuals

(1) (1935) 63 Cal. 538. (2) [1936] A.I.R. All. 817.

which embodies substantially the peculiarities of the three particular types to which the Act refers. In my opinion, the only limit to be imposed on the words "other association of individuals" is such as naturally follows from the fact that the words appear in an Act imposing a tax on income, profits and gains, so that the association must be one which produces income, profits or gains. It seems to me that an association of two or more persons for the acquisition of property which is to be managed for the purpose of producing income, profits or gains falls within the words "other association of individuals" in section 3; and under section 9 of the Act, the association of individuals is the owner of the property, and as such is assessable.

The fact that one of the assessees during the year of assessment was a minor, does not, I think, affect the question. In point of fact, the two assessees have associated together for the purpose of the acquisition of this property. Whether or not the minor is bound by any contract entered into by his father on his behalf is immaterial for the purposes of the reference. What we have got is the ownership of property by two persons, and the production by that property of profits or gains.

The first question raised is :

"Whether in the circumstances of the case, the assessees constituted an association of individuals within the meaning of section 3 of the Income-tax Act ?"

In my opinion, that question should be answered in the affirmative.

The second question is :

"Whether the said association can be said to be the owner of the properties within the meaning of section 9 of the Income-tax Act, and was rightly assessed as such ?"

That question again must be answered in the affirmative.

The third question is :

"Whether the assessees were in any event rightly assessed as owners of the said property under section 9 (*1*) ?"

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The answer to that question would seem to follow from the answer to question No. 2, and must also be answered in the affirmative.

The assessee should pay the costs on the original side scale,—less 100 rupees.

BLACKWELL J. I am of the same opinion. Section 9 (*1*) of the Act provides that: "The tax shall be payable by an assessee under the head 'Property' in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner." According to the scheme of the Act, property is assessable in terms of that section, and not in terms of income from a business, as it is suggested by the assessees in this case that the owners of this property should be assessed. The only question with which we are concerned is, who was the owner or who were the owners of this property? On the facts as found by the Commissioner, the owners of the property are the two individuals who owned it in equal shares.

It has been contended on behalf of the assessees that they do not constitute an association of individuals owning property, that the words "association of individuals" in section 3 are referable only to an association of individuals who are joined together for purposes of business and that each of the assessees should have been assessed individually as a co-owner on his share in the income from the properties. I cannot agree with this contention. If it were right, it would involve spliting up the annual value of the property into the undefined shares of the persons who owned it as tenants-in-common. That seems to me not permissible, having regard to the words of sub-section (*2*) of section 9 of the Act, which are as follows:—"For the purposes of this section, the expression 'annual value' shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year". In my view, that

means the property as a whole, and not divided, separate portions of it. I think it is perfectly clear that these two individuals were associated together for the purpose of acquiring the property and deriving profits from it, and that they are assessable as an association of individuals.

It has been contended that as one of the assessees at the time when the property was acquired, and during the year of assessment, was a minor, he could not be associated with the major assessee to acquire the property. I do not think we are concerned with what was the legal effect of the contract of purchase entered into. In my opinion, the minor was none the less associated with the major assessee in acquiring the property,—although he was a minor at the time; and I think that all we have to decide is whether, as a matter of fact, these two persons were associated together as individuals for acquiring the property.

I agree that the questions must be answered, as they have been answered by the learned Chief Justice.

Answers accordingly.

J. G. R.

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice.

KARIMUNNISA BEGUM, WIDOW OF KAJI MIRSYED ALISAHEB (ORIGINAL DEFENDANT No. 2), APPLICANT *v.* KAJI MIR JAMALUDDIN VALADE MIR MASUM ALIKHAN AND OTHERS (ORIGINAL DEFENDANTS Nos. 1 AND 3 AND PLAINTIFF), OPPONENTS.*

Civil Procedure Code (Act V of 1908), section 152— Mistake in consent order—Application to correct mistake—Power of Court to entertain application.

The Court has, under section 152 of the Civil Procedure Code, 1908, power to entertain an application in order to correct a clerical or arithmetical mistake in a consent order.

*Civil Revision Application No. 61 of 1936.