

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice D. J. Wadia.

THE COMMISSIONER OF INCOME-TAX, BOMBAY, SIND AND BALUCHI-
STAN v. THE AHMEDABAD MILLOWNERS' ASSOCIATION.*

1939
March 20

*Indian Income-tax Act (XI of 1922), ss. 66 (2), 3—Association of Companies—
Whether within the term "Association of individuals" and chargeable to
income-tax.*

On a true reading of s. 3 of the Income-tax Act the words "other association of individuals" mean other association of human beings and therefore an association of companies is not chargeable to income-tax under s. 3 as an association of individuals.

REFERENCE made by the Commissioner of Income-tax, Bombay Presidency, Sind and Baluchistan.

The Ahmedabad Millowners' Association was composed of 61 members 60 of whom were limited companies and one was an individual. In the course of the assessment proceedings for the year 1937-38 the association contended that they were not chargeable to income-tax as under the charging s. 3 of the Act the only persons liable were an "individual, Hindu undivided family company or other association of individuals" and that they were neither of these, being an association of limited companies. The Income-tax Officer assessed them as coming under the definition "other association of individuals". There was an appeal against the assessment to the Assistant Commissioner who upheld the decision of the Income-tax Officer.

The assessee applied to the Commissioner to revise the assessment or submit the case under s. 66 (2) to the High Court, and the Commissioner formulated the following question of law—

"Whether the Association constituted as aforementioned and having the members mentioned in paragraph 4 hereof has been correctly treated by the

* Civil Reference No. 16 of 1938.

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Assistant Commissioner as chargeable to income-tax under s. 3 of the Act as being an 'association of individuals' "

and in submitting the question gave the following opinion—

" . . . under Rule 4 of the Rules framed by the Association, an individual, a company or a firm can be its member. As far as individuals are concerned, there is nothing to be said. As regards firms, the decisions of the Lahore High Court in the case of (1) *Sir Gopalji & Co. v. Commissioner of Income-tax, Punjab*, (5 I. T. C. 257) and (2) *The Mian Channu Factories Union v. Commissioner of Income-tax, Punjab and North Western Frontier Provinces* (9 I. T. C. 246) and of the Allahabad High Court in the case of *Jai Dayal Madan Gopal* (6 I. T. C. 226) show that, in the words of the Allahabad High Court, 'a firm is not a person, it is not an entity but is merely a collective name for the individuals who are members of the partnership' and that when a firm purports to be a member of an association, in reality the individual members thereof are the members of the association. If A, B and C, form a firm known as X, 'firm X' is merely a collective name for A, B and C, and to say that 'firm X' is a member of an association is equivalent to stating that the individuals A, B and C are the members thereof. Hence if a firm is a member of this association, it means that the individuals who compose it are the members. . . ."

"As regards limited companies, the word 'individual' is not defined either in the Income-tax Act or the General Clauses Act. The dictionary meaning of the word as given in Webster's dictionary is 'an indivisible entity or a totality which cannot be separated into parts without altering the character and significance of those parts' and the Roman Empire is mentioned therein as a 'historical individual'. Hence there can be no doubt that a company which is a separate legal entity can be said to be an 'individual' being 'an indivisible entity' and 'a totality which cannot be separated into parts without altering the character and significance of those parts'. Moreover, the contention of the Association that it is an association of limited companies only is not correct as individuals and firms can become its members and, as a matter of fact, an individual is one of its members . . ."

The reference was heard.

Purshottam Tricumdas, for the assessee.

M. C. Setalvad, Advocate General, for the Commissioner.

BEAUMONT C. J. This is a reference by the Commissioner of Income-tax under s. 66 (2) of the Income-tax Act, in which he raises the question: "Whether the Association

constituted as aforementioned and having the members mentioned in paragraph 4 hereof has been correctly treated by the Assistant Commissioner as chargeable to income-tax under s. 3 of the Act as being an 'association of individuals'."

The Association in question is the Ahmedabad Millowners' Association, and according to the finding of the learned Commissioner it consisted, during the year of assessment, of 61 members, 60 of whom were limited companies and one was an individual person. It is clear, therefore, that if the Association is to be assessed as an association of individuals, it must be on the basis that a limited company is an individual for the purposes of the charging section in the Income-tax Act. The learned Commissioner, relying on the dictionary meaning of "individual", holds that a company is an individual, since it is an indivisible entity. I am disposed to agree that if one takes merely the dictionary meaning "individual" would include a limited company, although I think so to use the word would not be in accordance with its popular use by people speaking the English language. But whatever the dictionary or popular meaning may be, we have to deal with the word in the context in which it appears in the Income-tax Act. The phrase in s. 3 is: "Income, profits and gains of every individual, Hindu undivided family, company, firm or other association of individuals". The same words appear in various places in the Act, including ss. 55 and 56 under which super-tax is charged, although in those sections the disjunctive "or" is used before "other association of individuals" instead of the copulative "and." The question is whether "other association of individuals" includes an association of companies. It seems to me quite clear on the context that it cannot do so. "Individual" where first used, must mean human-being, because it is used as something distinct from a joint family, firm, and company. The whole expression seems to me to be

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“ every human-being, Hindu undivided family, company, firm and other association of human-beings ”. One cannot give to the word “ individuals ” in the expression “ association of individuals ” a different meaning to that which the word “ individual ” bears where it appears in the same phrase.

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In my opinion, therefore, the answer to the question raised by the learned Commissioner must be in the negative. The assessee to get costs, to be paid by the Commissioner, on the Original Side scale.

B. J. WADIA J. I agree.

Attorney for Assessee : Messrs. *Dhru & Co.*

Attorney for Commissioner : Mr. *H. F. Mulla*, Solicitor to Central Government at Bombay.

Answer accordingly.

N. K. A.

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Before Mr. Justice Kania.

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AMRITLAL RAICHAND JHAVERI (A FIRM), PLAINTIFFS v. BHAGWANDAS FATECHAND AND OTHERS, DEFENDANTS. *

Indian Sale of Goods Act, (III of 1930), ss. 24 and 27—Transfer of title to goods—Delivery of goods to broker—Jangad, meaning of.

The relation of a dealer and a broker is that of a principal and agent and not that of a seller and a buyer.

Where an owner delivers goods to an agent (broker) (who is not a mercantile agent as defined in the Sale of Goods Act) on terms agreed between them and on Jangad i.e., for approval by a prospective customer or to be shown for approval, neither

*O. C. J. Suit No. 394 of 1936.