

Before Prem Chand Jain and J. M. Tandon, JJ.

MEERA AND COMPANY—Applicant

versus

COMMISSIONER OF INCOME TAX PUNJAB, J & K
AND CHANDIGARH, PATIALA—Respondent

Income Tax Reference No. 22 of 1972.

September 6, 1978.

Income Tax Act (43 of 1961)—Sections 2(31) (i) and (v), 4, 160, 161 and 166—Individual carrying on business under trade name—Such individual dying interstate—Business Developing by succession on widow and minor children—Widow continuing the business for herself and minor children—Income from such business—Whether assessable in the status of 'body of individuals'—Sections 160, 161 and 166—Whether applicable.

Held that the expression 'body of individuals' used in section 2(31) (v) of the Income Tax Act 1961 must receive a wide interpretation, perhaps not wide enough to include a combination of individuals who merely receive income jointly without anything further as in the case of co-heirs inheriting shares or securities, but certainly wide enough to include a combination of individuals who have a unity of interest but who are not actuated by a common design and one or more of whose members produce or help to produce income for the benefit of all. When, the business which was owned by the deceased assessee alone came to be owned by the legal heirs as a group after his death, the fact that the minor heirs had no legal capacity to enter into an agreement and they could only act through their guardian would be irrelevant for determining their status as constituents in the "body of individuals" in terms of sections 2(31) (v), as the business was carried on by the guardian for herself and her minor children. The expression 'body of individuals' need not necessarily be the result of an agreement, arrangement or design. The assessee therefore, cannot be treated as an individual as defined in section 2(31) (i). As such the assessee is a 'body of individuals' as defined in section 2(31) (v) of the Act and shall be taken as a person for the purposes of the charging section 4 of the Act and the provisions of sections 160, 161 and 166 of the Act will not be applicable.

(Paras 7, 9 and 10)

Income-tax Reference under section 256(1) of the Income-tax Act, 1961 made by The Commissioner of Income-tax, Punjab, J & K and Chandigarh, Patiala referring the following question of law to this Hon'ble High Court arising out of I.T.A. Nos. 191, 198, 192, 193 and 194 of 70-71. (Assessment years 1963-64 to 1967-68 respectively).

"Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the assessment of the body of individuals identified as M/s. Meera and Company should be made under section 4 read with section 2(31)(v) and not under section 160, 161 or 166 ?"

G. C. Sharma, Senior Advocate, Delhi, with A. Vishwanathan, Devinder Verma, and S. S. Mahajan, Advocates, for the Petitioner.

D. N. Awasthy, Senior Advocate, with B. K. Jhingan, Advocate, for the respondent.

J. M. Tandon, J.

(1) This order will dispose of Income-tax References Nos. 22 to 26 of 1972, all relating to the same assessee (M/s. Meera and Co.), referred to us by the Income-tax Appellate Tribunal on the following questions:—

1. Whether on the facts and in the circumstances of the case, the Tribunal was right, in law, in holding that Meera and Co. is a body of individuals and is assessable as such ?
2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessment of the body of individuals identified as Meera and Co. should be made under section 4 read with section 2(31)(v) and not under section 160, 161 or 166 ?

2. The facts of the case, which are not disputed, are that Shri Prem Narain, an individual, carried on business under the name M/s. Meera and Co. at Ludhiana. Assessments to income-tax were made on him in his trade name M/s. Meera and Co. He died intestate on August 25, 1962, survived by his mother, widow and three minor children. All the assets of the deceased including the business styled as Meera and Co. devolved on his five legal heirs. The mother of the deceased relinquished her interest in the assets of

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the deceased against a lump sum payment. For the purpose of these references, we are concerned with the widow and three minor children of the deceased. The business of M/s. Meera and Co. was continued as a single unit in the same name by Shrimati Krishna Gupta, widow of the deceased, obviously on her behalf and on behalf of all the three minor children as their guardian. The accounts were maintained in the name of M/s. Meera and Co. The yearly profits were ascertained and divided. The income-tax returns for the assessment years 1963-64 to 1967-68 were filed by Shrimati Krishna Gupta on behalf of M/s. Meera and Co. The status of the assessee was described as 'association of persons'. These returns reflected the entire income from business previously carried on by Shri Prem Narain, deceased. On January 25, 1968, Shrimati Krishna Gupta filed the return under protest and further revised the returns for the assessment years 1963-64 to 1966-67, declaring the same income that had been shown in the returns already filed but without specifying the status therein. It was contended that the income from the business should be assessed in equal shares in the hands of four legal heirs of the deceased. The minor children of the deceased also filed separate returns where the share of profit from M/s Meera and Co. was included for rate purposes only. The Income-tax Officer did not agree with the altered position taken by the assessee that the income from the business was liable to be assessed in equal shares in the hands of the four heirs of the deceased. He held that the business was for one and common unit and the same was assessable in the status of 'body of individuals'. The assessee, being dis-satisfied with the order of the Income Tax Officer, filed an appeal and the Appellate Assistant Commissioner held that the entire income of the business was assessable in the hands of Shrimati Krishna Gupta as a person carrying on business in individual capacity. The Revenue and the assessee both filed appeals before the Income Tax Appellate Tribunal. The Accountant Member of the Appellate Tribunal found that the business was carried on as an organic unity by Shrimati Krishna Gupta on her own behalf and on behalf of her three minor children as their natural guardian. On the death of Shri Prem Narain, his estate fell to his legal heirs under section 8 of the Hindu Succession Act as tenants-in-common. The special provisions regarding the minors and guardians contained in sections 160, 161 or 166 of the Income Tax Act (hereinafter referred to as the Act), shall apply which otherwise override the general provisions contained in sections 4 and 2(31) (v) of the Act. The Judicial Member took a different

view. According to him, the entity was liable to be assessed under section 4 read with section 2(31)(v) of the Act. He repelled the contention of the assessee for assessment under the special provisions meant for representative assessee, that is, sections 160, 161 etc. He opined that before the assessee could be so treated, he must filter through the charging section 4, read with section 2(31)(v) of the Act and if he cannot do so, he must stay there. In the event of the assessee being a body of individuals, as defined in section 2(31) (v), the question of the applicability of sections 160, 161 etc. of the Act did not arise. As the two members of the Appellate Tribunal differed, the matter was referred to a third member who agreed with the view taken by the Judicial Member and the appeals of the assessee were consequently dismissed. The assessee having approached the Appellate Tribunal for making a reference to the High Court on questions of law, the two questions detailed above have been referred. It is under these circumstances that this matter has come up before us.

(3) Section 4 of the Act is a charging section and sub-section (1) thereof reads as under :—

“4. (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year or previous years, as the case may be, of every person :

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.”

The term “person” is defined in section 2(31) of the Act and it reads as under :—

“2(31) ‘Person’ includes—

(i) an individual,

(ii) * * * * *

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(iii) * * * * *

(iv) * * * * *

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) * * * * *

(vii) * * * * *

It is the common case of the parties that the assessee in the instant case is not an association of persons. The assessee would, therefore, be a body of individuals or an individual as defined in sub-clause (v) or sub-clause (i) respectively. The fate of the case will follow the finding on this point. Should the assessee be liable to be assessed as an individual, the provisions contained in sections 160, 161 etc. of the Act shall stand attracted and in that case the income from the business may be liable to be assessed in equal shares in the hands of the heirs of Shri Prem Narain deceased. In the event of the assessee being treated as a body of individuals, it shall have to be treated as an entity for the purposes of charging section 4 of the Act and in that case, the question of the applicability of the provisions contained in section 160, 161 etc. should not arise.

(4) The contention of the learned counsel for the assessee is that the term 'body of individuals' which is liable to be treated as a person in terms of section 2(31)(v) of the Act postulates more than one individual. In the present case, Shrimati Krishna Gupta remains the sole individual in spite of having two capacities, namely, in her own right and as guardian of her minor children. The minors are in the position of beneficiaries and their guardian a trustee. For the purpose of status of the assessee, it is the trustee who is to be accounted for and not the beneficiaries. Shrimati Krishna Gupta in her two capacities, therefore, could not be treated as a body of individuals. She would, therefore, retain the status of an individual with the result that the provisions contained in sections 160, 161 etc. shall stand attracted.

(5) The second contention of the learned counsel for the assessee is that section 4 of the Act, which is the charging section, is subject

to the other provisions contained in the Act. It means that the other provisions contained in the Act shall govern the charging section. Chapter XV of the Act deals with liability in special cases and sections 160, 161 and 166, dealing with the income of a minor, lunatic or idiot as also of the guardian in receipt of the income of such minor, lunatic or idiot are included therein. In the instant case, Shrimati Krishna Gupta acted on behalf of her minor children in running the business in the name M/s. Meera & Co. The income from the business representing the share of the minors accrued to them or to their guardian representing them. It being the case, the mode of assessment as contained in Chapter XV of the Act shall get precedence and the assessee will be liable to be assessed thereunder.

(6) The learned counsel for the Department has argued that after the death of Shri Prem Narain, his widow and three minor children shall constitute a body of individuals in terms of section 2(31) (v) of the Act, liable to be assessed as such. The minors shall be treated as constituents of the body of individuals along with their mother who in fact was controlling the business on their behalf as also her own. It has further been argued that as the assessee is liable to be assessed under section 4 of the Act as a person being a body of individuals in terms of section 2(31)(v), the special provisions contained in Chapter XV of the Act will have no application.

(7) In *Deccan Wine and General Stores v. Commissioner of Income-tax, A.P.*, (1), a similar situation arose. On the death of an individual, his widow and two minor children succeeded the business as legal heirs. It was claimed that each of the three legal heirs should be assessed separately in their individual status of their respective one-third share of income from the business. The Income-tax Officer did not agree and held that the three legal heirs constitute a body of individuals, liable to be assessed as such. This view was maintained right up to the Appellate Tribunal. On a reference made to the High Court at the instance of the assessee, it was held that the High Court at the instance of the assessee, it was held that the own irrespective of the fact that it may have some characteristics common with an 'association of persons' but it could not be the same thing as, or a mere species of, an 'association of persons'. An

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'association of persons' does not mean any and every combination of persons. It is only when they associate themselves in an income-producing activity that they become an 'association of persons'. The expression 'body of individuals' should receive a wide interpretation, perhaps not wide enough to include, combination of individuals who merely receive income jointly without anything further as in the case of co-heirs inheriting shares or securities, but certainly wide enough to include a combination of individuals who have a unity of interest but who are not actuated by a common design and one or more of whose members produce or help to produce income for the benefit of all. The three individuals (mother and her two minor children) had common interest in the business carried on for the benefit of all of them by one of them and, therefore, they would constitute a 'body of individuals'.

(8) In *Commissioner of Income-tax, Gujarat III v. Harivadan Tribhovandas* (2), the expression 'body of individuals' was again examined. It was held that the words 'body of individuals' mean a conglomeration of individuals, who are carrying on some activity with the object of earning income. The body of individuals must be carrying on an activity with a view to earning income because it is only with such a body of individuals that the Act is concerned.

(9) Applying the ratio of these authorities to the facts of the present case, Shrimati Krishna Gupta and her three minor children would constitute a 'body of individuals'. The learned counsel for the assessee has contended that the points now argued before us were not raised in *Deccan Wine and General Stores case* (supra), and further no minor was involved in *Commissioner of Income-tax v. Harivadan Tribhovandas* (supra). The learned counsel has conceded that if the children of Shri Prem Narain deceased had been major at the time of his death, then they would have constituted a body of individuals in spite of the fact that their mother had carried on business in the name of Meera and Co. in the same fashion. According to him, the fact that the children of the deceased were minors at the time of his death and continued to be so thereafter would make the difference. We are unable to agree. The business being run by Shri Prem Narain deceased in the name of Meera and Co. devolved on his legal heirs after his death. The business which during the life time of the deceased was owned by him alone came

to be owned by his legal heirs as a group after his death. The business was continued after the death of Shri Prem Narain by his widow Shrimati Krishna Gupta. The share of the minors in the assets including the goodwill was continued to be utilised for producing income. The control of the business was in the hands of Shrimati Krishna Gupta. Moreover, there can be no manner of doubt that the business was carried on for their common benefit by one of them representing all of them. The expression 'body of individuals' need not necessarily be the result of an agreement, arrangement or design. It might arise out of a certain situation. In the instant case, a situation arose on the death of Shri Prem Narain. The business came to be owned by Shrimati Krishna Gupta and her three minor children on the death of their predecessor-in-interest Shri Prem Narain. In this situation, Shrimati Krishna Gupta being the only adult member in the group of the legal heirs of the deceased continued the business for the benefit of all. The fact that the minors had no legal capacity to enter into an agreement and they could only act through their guardian, is irrelevant for determining their status as a constituent in the body of individuals in terms of section 2(31)(v) of the Act. The income from the business being run in the name of Meera and Co. has not accrued to Shrimati Krishna Gupta alone. The income has accrued or shall be deemed to have accrued to the body of individuals consisting of Shrimati Krishna Gupta and her three minor children. The minors are, therefore, constituents of the body which carried on the business through Shrimati Krishna Gupta, for the benefit of all. Consequently, the assessee cannot be treated as an individual as defined in section 2(31)(i) but shall have to be stamped as a body of individuals in terms of section 2(31)(v).

(10) The assessee being a body of individuals as defined in section 2(31)(v) of the Act, shall be taken as a 'person' for purposes of charging section 4 of the Act. The assessee being an entity liable to be charged under section 4, the question of application of the provisions contained in Chapter XV of the Act relating to minors and guardians will not arise.

(11) In view of discussion above, the two points referred are replied in favour of the Department as under:—

1. The Tribunal was right in law in holding that Meera and Co. is a body of individuals and is assessable as such.

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2. The Tribunal was again right in holding that the assessment of the body of individuals indentified as M/s. Meera and Co. will be made under section 4, read with section 2(31)(v) and not under sections 160, 161 and 166 of the Act.

The parties are left to bear their own costs.

H. S. B.

Before Rajendra Nath Mittal, J.

SURESH KUMAR—*Defendant-Appellant*.

versus

BHIM SAIN—*Plaintiff-Respondent*

Regular Second Appeal No. 344 of 1976.

September 14, 1978.

Haryana Urban (Control of Rent and Eviction) Act (II of 1973)—Section 1 and 12—Haryana Urban (Control of Rent and Eviction) Amendment Act (XVI of 1978)—Section 2—Property exempt from the provisions of the Act—Section 2 of the Amending Act withdrawing the exemption—Whether retrospective—Decree passed by trial Court before the amendment—Appellate Court—Whether bound to take into account the change in law—Jurisdiction of Civil Court to pass decree of ejectment—Whether barred.

Held that by section 2 of the Haryana Urban (Control of Rent and Eviction) Amendment Act, 1978 sub-section (3) of section 1 of the Haryana Urban (Control of Rent and Eviction) Act, 1973, was substituted from the date of enforcement of the parent Act. The said section in unambiguous terms says that the sub-section shall always be deemed to have been substituted. The language of section 2 of the Amendment Act clearly indicates that the amendment has been made with retrospective effect.

(Para 5)

Held, that it is a well established principle of law that the hearing of an appeal under the processual law of the country is in the nature of re-hearing and therefore in moulding the relief to be granted in appeal, an appellate court is entitled to take into account even facts and events which have come into existence since the decree appealed