

already pointed out that expression can only be true and appropriate with regard to immoveable property. That expression in our opinion, has no meaning when it is applied to income from dividend or interest on deposit. Again, this second decision of Sir John Beaumont, C. J. was given when there was no provision corresponding to s. 9 (3). Therefore, if we omit "immoveable property" which could be managed for the purpose of producing income and which in fact was managed by these widows, but which is now exempted under s. 9 (3), then there is no other income shown in their assessment with regard to which it could be said that that income was earned by these three widows by reason of their association or that they performed any operation as an association which resulted in producing the income or which even helped in producing the income.

Therefore, in our opinion, the Tribunal was in error in coming to the conclusion that these three widows could be assessed in the status of an association of persons with regard to the income which they earned as heirs of their deceased husband.

We therefore answer question (1) in the affirmative, question (2) in the negative, question (3) in the negative and question (4) as unnecessary. The Commissioner to pay the costs.

Attorneys for Appellant:—Arvind B. Patwa.

Attorneys for Respondent:—N. K. Petigara.

Order accordingly.

P. M. P.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

SHREE CHANGDEO SUGAR MILLS, LTD., BOMBAY, APPLICANTS *v.*
THE COMMISSIONER OF INCOME TAX, BOMBAY CITY, BOMBAY,
RESPONDENT.*

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Indian Income-Tax Act (XI of 1922), s. 23A (1), third proviso and Explanation thereto—Company "to which the provisions of this sub-section apply": meaning of.

The expression "company to which the provisions of this sub-section apply" in the explanation to sub-s. (1) of s. 23A of the Indian Income-Tax Act, 1922 merely refers to the nature of the Company which is defined in the third proviso to the section. In determining whether the Company is one contemplated by the Explanation the material question to

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consider is not whether it is a Company in respect of which the powers under sub-s. (1) of the section can be or are exercised but whether it is a company in which the public are substantially interested. If the company is one in which the public are not substantially interested then it is a Company to which the provisions of sub-s. (1) apply.

In respect of the assessment year 1947-48 the Income-Tax Officer passed an order against C. S. Mills, Ltd., assessee, under s. 23A (1) of the Act inasmuch as the Mills had not declared any dividend out of its profits for the year of account ending September 30, 1947. The register of the assessee showed that 11 directors held 41,500 shares, the managing agency firm constituted by some of the directors held 2,300 shares, M. M. Co., Ltd., held 11,880 shares and three outsiders held 4,320 shares. It was admitted that the M. M. Co., Ltd., was a Company in which the public were not substantially interested. But the contention of the assessee Mills was that inasmuch as the powers under s. 23A (1) of the Act had not been exercised against M. M. Co., Ltd., it was not a Company to which "the provisions of this sub-section applied" within the meaning of the Explanation to the section. The Income-Tax Appellate Tribunal supporting the view of the Taxing Department negatived the contention. On reference,

Held, that as the M. M. Co., Ltd., was a Company in which the public were not substantially interested it was a Company to which s. 23A (1) applied and in determining whether the assessee Mills were a Company in which the public were substantially interested the shares held by the M. M. Co., Ltd., had to be excluded by reason of the Explanation to the section.

Held, therefore, that at the relevant time the assessee Mills could be deemed to be a Company in which the public were not substantially interested.

Raghuwanshi Mills, Ltd. v. Commissioner of Income-Tax, Bombay City, Bombay,⁽¹⁾ referred to.

Facts material to the report are sufficiently set out in the Judgment.

At the instance of the Applicants the following question was referred to the High Court of Judicature at Bombay:—

"Whether at the relevant time the assessee Company could be deemed to be a Company in which the public were substantially interested?"

N. A. Palkhivala with *S. P. Mehta* and *B. A. Shah* for the Applicants.

M. P. Amin, Advocate General with *G. N. Joshi* for the Respondent.

Chagla C. J.—A very short question arises on this reference as to whether at the relevant time the assessee could be deemed to be a company in which the public were substantially interested. The register of this company at the relevant date shows that 11 directors held 41,500 shares, the managing agency firm which was constituted by some of the directors held 2,300 shares, the Mysore Merchants Ltd. held 11,880 shares, and three outsiders who were members of the public held 4,320 shares. If the holding of the Mysore Merchants Ltd. can be considered to be a holding of members of the public, then this assessee

company would not be a company in which the public were not substantially interested, and therefore the attempt of Mr. Palkhivala was to satisfy us that the shares held by Mysore Merchants Ltd. were shares held by members of the public. This view was not accepted by the Tribunal and hence this reference.

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Turning to s. 23A, sub-s. (1) provides that in the case of a company which has distributed less than 60 per cent of the assessable income, the income may be assessed in the hands of the shareholders, the dividend income, notwithstanding their not being distributed, being deemed to be the income of the shareholders. That is substantially the provision of sub-s. (1). Then the relevant proviso is the third proviso which is to the following effect:

“Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.”

There is an explanation to this proviso and although that explanation says it is for the purpose of this sub-section, strictly it is for the purpose of the third proviso, and the explanation is:

“a company shall be deemed to be a company in which the public are substantially interested if shares of the company (I am quoting only the relevant portion) carrying not less than 25 per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by the public (not including a company to which the provisions of this sub-section apply).....”

Therefore, from the category of the public a company to which the provisions of this sub-section apply, has been excluded, and the narrow question that we have to consider is whether Mysore Merchants Ltd. is a company which has been excluded by reason of this explanation.

It is admitted that Mysore Merchants Ltd. would satisfy the definition of a company in which the public are not substantially interested, but the ingenious argument advanced by Mr. Palkhivala is that it is not sufficient to look at the register of the shareholders of the Mysore Merchants Ltd., we must go further and determine whether it made profits, whether it did not distribute 60 per cent of its dividends, and apply all the provisions contained in sub-s. (1) of s. 23A. In our opinion that is not correct construction to be put upon the expression used by the Legislature in this explanation. Looking to the scheme of the section the marginal note which may be looked at in order to understand the drift of the section is “Power to assess

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individual members of certain companies." Therefore, the power conferred under s. 23A is not with regard to all companies but only certain companies, and although s. 23A speaks of "any company", s. 23 (1) must be read along with the third proviso and when so read it is clear that the provisions of s. 23A only apply to a certain type of companies, the nature of which is defined in the third proviso. When the Legislature refers to "a company to which the provisions of this sub-section apply" it is referring to the nature of the company and the nature of that company is the nature defined in the third proviso. Sub-s. (1) refers to the conditions which have got to be present before the power conferred by s. 23A can be exercised. But that is not the relevant question for the purpose of deciding whether it is a company to which this sub-section applies. Before you consider whether the provisions of s. 23A apply or not you have to decide whether the company is one which comes within the ambit of s. 23A, and therefore the material question is whether the company contemplated by the explanation is a company in which the public are or are not substantially interested. If it is a company in which the public are not substantially interested then it is a company to which s. 23A applies. Once s. 23A applies, then the further consideration would arise whether the conditions of the exercise of the power under s. 23A have been satisfied or not.

It is then urged by Mr. Palkhivala that under cl. 14 of the Part B states (Taxation Concessions) Order, 1950, the provisions of s. 23A shall not be applied in respect of profit and gains of any previous year ending before the appointed day, unless the State law contained a provision corresponding thereto, and what is urged is that under this clause the Mysore Merchants Ltd. was exempted from the application of the provisions of s. 23A and therefore it is suggested that this is not a company to which s. 23A applies and the holding of this company would be a holding by members of the public. In the first place, we are not applying s. 23A to the Mysore Merchants Ltd. In the second place, what cl. 14 means is that when there is a company to which s. 23A applies, it would not be liable to tax provided that company satisfies the provisions of cl. 14. But the very assumption underlying the enactment of cl. 14 is that the provisions of s. 23A do apply to that company. It is precisely because they do apply that an exemption is granted to that company under certain circumstances. Therefore, in our opinion, cl. 14 of the Taxation Concessions Order does not help Mr. Palkhivala either.

The final contention urged by Mr. Palkhivala was that the directors are members of the public and therefore the holding by them will be holding by members of the public. There is a

decision of this Court directly in point on this question in *Raghuvanshi Mills Ltd. v. C. I. T. Bombay City*,⁽²⁾ and Mr. Palkhivala concedes that in view of that decision he cannot ask us to come to a contrary conclusion.

The result is that the answer to the question submitted to us will be in the negative. The Assessee to pay the costs.

Attorneys for Appellant:—S. P. Mehta.

Attorneys for Respondent:—N. K. Petigara.

Order accordingly.

P. M. P.

2. (1953) 24 I. T. R. 338.

APPELLATE CRIMINAL

Before the Chief Justice, Mr. M. C. Chagla and Mr. Justice Desai.

PRALHAD KESHAV ATRE *v.* THE COMMISSIONER OF POLICE,
BOMBAY, AND ANOTHER.*

Preventive Detention—Preventive Detention Act (IV of 1950), ss. 3, (1) (a) (ii), s. 3, (3), 4, 5, 9, and 10—Constitution of India, Arts. 162 245 (1)—Concurrent List, Entry 3—Construction of Preventive Detention Act—Basic principles of—Whether instigation to observe hartal in order to bring about the complete stoppage of work and business extraneous to s. 3 (1) (a) (ii)—Whether Detaining Authority can impute an unlawful object in respect of an innocent activity and treat it as an illegal activity for purposes of s. 3 (1) (ii)—Whether a Detaining Authority can rely on the defiance or disobedience of its own orders prohibiting assemblies or processions as a ground for detention—Whether s. 5 of the Preventive Detention Act contravenes Art. 162 of the Constitution of India—Whether Parliament can legislate so as to confer upon the State or an Officer of a State a power to detain a person beyond its territorial jurisdiction—Whether ss. 9, 10 of the Preventive Detention Act ultra vires—Whether a corrigendum to the grounds for detention order shows lack of application of mind—Whether High Court can go into the truth or otherwise of grounds or particulars supplied to a detainee?—Nature of particulars to be supplied.

When the validity of detention of a citizen is challenged before it, the Court must see that every constitutional safeguard which the Preventive Detention Act provides has been satisfactorily assured to the person detained.

If the Court comes to the conclusion that any constitutional safeguard has not been carried out, then even though the detention might be *bona fide*, even though it may be the result of high policy, the Court must set the detainee free.

*Criminal Application No. 253 of 1956.

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