A

M. M. IPOH & ORS.

v.

COMMISSIONER OF INCOME-TAX, MADRAS

July 26, 1967

B [J. C. SHAH, S. M. SIKRI AND V. RAMASWAMI, JJ.]

Income-tax Act, 1922, s. 3—Whether violative of Art. 14 of the Constitution—Quasi-Judicial function of Income-tax Officer in assessing income to tax and duty to prevent evasion—If constitute sufficient guidance—Individuals minor and firm trading together—Whether association of persons—Whether doctrine of res judicata applies to finding in assessment proceedings in one year in relation to proceeding for another year—Whether determination and declaration necessary as to who is principal officer of an association of persons before assessment proceedings take place.

C

The Karta of a Hindu undivided family was assessed to income-tax from year to year until the assessment year 1953-54 either as an individual or as the Karta. But later, the Income-Tax Officer issued notices to him under s. 34(1) of the Income-tax Act, 1922, for the assessment years 1951-52 to 1953-54 and under s. 22(2) for the years D 1954-55 to 1956-57 for assessment of the income as having been received by an association of persons consisting of the Karta and his minor son in 1951-52, and the Karta, his minor son and a firm in the years 1952-53 to 1956-57, and assessed the income received as income and associations of persons. The Appellate Assistant Commissioner and the Tribunal, in appeals filed before them, substantially confirmed the order of the Income-tax Officer. The High Court, upon a reference, held that the income for the assessment year 1951-52 did E not accrue to an association of persons, but confirmed the view taken by the Income-tax Officer in respect of the income for the years 1952-53 to 1956-57.

The Karta then moved the High Court under Art. 226 of the Constitution and contended that s. 3 of the Income-tax Act, 1922, invested the Income-tax Officer with arbitrary and unguided power to assess the income of an association of persons in the hands either F of the association or of the persons constituting that association and it therefore offended Art. 14 of the Constitution. The High Court rejected the petitions.

In appeals to this Court against the decisions of the High Court in the writ petition and the reference under s. 66 of the Income-tax Act.

G HELD: (i) S. 3 of the Income-tax Act, 1922, was not violative of Art. 14 of the Constitution. The duty of the Income-tax Officer is to administer the provisions of the Act in the interests of public revenue, and to prevent evasion or escapement of tax legitimately due to the State. Though an executive Officer engaged in the administration of the Act, the function of the Income-tax Officer is fundamentally quasi-judicial. His decision to bring to tax either the income of the association collectively or the shares of the members of the association separately is not final: it is subject to appeal H to the Appellate Assistant Commissioner and to the Tribunal. The nature of the authority exercised by the Income-tax Officer in a proceeding to assess to tax income, and his duty to prevent evasion or escapement of liability to pay tax legitimately due to the State, constitute adequate enuciation of principles and policy for the guidance of the Income-tax Officer. [72B—H]

Suraj Mall Mohta & Co. v. *A. V. Visvanatha Sastri and Anr.* (1954) 26 I.T.R. 1, distinguished. A

Shri Ram Krishna Dalmia v. *Shri Justice S.R. Tendolkar and Ors.* [1959] S.C.R. 279, *Jyoti Pershad* v. *The Administrator for the Union Territory of Delhi*, [1962] 2 S.C.R. 125 and *Commissioner of Income-tax U.P.* v. *Kanpur Coal Syndicate*, (1964) 53 I.T.R. 225, referred to.

B

There is no force in the contention that s. 23A of the Income-tax Act, as it was incorporated by Act 21 of 1930 laid down certain principles for the guidance of the Income Tax Officer in exercising his option, but since the repeal of that section by Act 7 of 1939, the discretion vested in the Income-tax Officer to select either the income of the association or the individual member is unfettered. By the repeal of s. 23A(1) the essential nature of the power of the Income-tax Officer was not altered. He remained as before under a duty to C administer the Act, for the benefit of public revenue, but his powers were to be exercised judicially and so as to avoid double taxation of the same income. [73A-B; 74F—G]

(ii) There was abundant material on the record to prove that the Karta, his minor son and the firm formed an association in the years 1952-53 to 1956-57.

Under s. 2(9) of the Income-tax Act, 1922, read with cl. (42) of D s. 3 of the General Clauses Act, a firm is a person within the meaning of the Income-tax Act and a firm and an individual or group of individuals may form an association of persons within the meaning of s. 3 of the Income-tax Act. [75F, G]

There is nothing in the Act to indicate that a minor cannot become a member of an association of persons for the purposes of the Act. In any event the High Court had rightly held that the mother E and guardian of the minor son must, on the facts, be deemed to have given her implied consent to the participation of the minor in the association of persons. [75H]

Commissioner of Income-tax, Bombay v. *Laxmidas & Anr.* (1937) I.T.R., 584 and *Commissioner of Income-tax, Bombay North, Kutch Saurashtra* v. *Indira Balkrishna*, (1960) 39 I.T.R. 546, referred to.

(iii) The doctrine of *res judicata* does not apply so as to make F a decision on a question of fact or law in a proceeding for assessment in one year binding in another year. The assessment and the facts found are conclusive only in the year of assessment: the finding on questions of fact may be good and cogent evidence in subsequent years, when the same question falls to be determined in another year but they are not binding and conclusive. The finding recorded by the High Court that in the year 1951-52 there was no association of persons constituted by the Karta and his minor son did G not in the present case have any effect on the finding of the Tribunal that in year 1952-53 and the subsequent years such an association existed. Furthermore, the association of persons which traded in 1952-53 and the subsequent years was different from the association in 1951-52 because in 1952 an association was formed of the Karta, his son and a firm. [75B-C]

(iv) If the person described as a principal officer of an associa- H tion is duly served with a notice under s. 23(2) in the manner prescribed by s. 23(2), an adjudication of his status as the principal officer, before assessment proceedings may take place, is not obligatory. The order assessing the association containing a finding that the person served is the principal officer is sufficient compliance with the

A requirements of the statute. It is open to the association to challenge the finding of the Income-tax Officer in appeal before the Appellate Assistant Commissioner and in further appeal to the Appellate Tribunal. But the order declaring him as the principal officer of an association of persons will not be deemed to be void merely because the proceeding for assessment was not preceded by a declaration of his status as the principal officer. [80G-81B]

B *Commissioner of Income-tax, Punjab & N.W.F.P.* v. *Nawal Kishore Kharaiti Lal*, (1938) 6 I.T.R. 61, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1060—1064 of 1965.

Appeals by special leave from the judgment and order dated April 3, 1961 of the Madras High Court in Tax Case No. 201 of C 1960.

AND

Civil Appeals Nos. 1103—1107 of 1966.

Appeals by special leave from the judgment and order dated November 29, 1963 of the Madras High Court in Writ Petitions D Nos. 1374—1378 of 1961.

M. M. Nambiyar, K. Narayanaswami, B. Manivannan, B. Parthasarathy, J. B. Dadachanji, O.C. Mathur and *Ravinder Narain*, for the appellants (in all the appeals).

S. T. Desai, R. Ganapathy Iyer and *R. N. Sachthey*, for the E respondent (in all the appeals) and for the Attorney-General for India (in C. As. Nos. 1103—1107 of 1966).

The Judgment of the Court was delivered by

Shah, J.—Meyyappa (I), Alagammal his wife, and Chokalingam and Meyyappa (II) his two minor sons formed in 1940 a F Hindu Undivided Family which traded in the name of "M.S. M.M.". The family carried on extensive business in money-lending, rubber plantations, and in real estates in the Federated States of Malaya, Burma and India.

The property of the undivided family was divided between the three male members on February 22, 1940. To Meyyappa (I) were allotted at the partition "business of the family" at G Rangoon and at Karaikudi in the Ramnath District and three rubber estates in the Federated States of Malaya and some houses. Even after the partition Meyyappa (I) continued to remain in management on behalf of himself and his two minor sons of all the properties and the businesses carried on by the family when it was joint, and the businesses were carried on in the name of H "M.S.M.M.".

The houses and the three rubber estates allotted exclusively to Meyyappa (I) were entered in the books of accounts opened in the name of "M.M. Ipoh" from the date of the division. In

December 1941 Alagammal gave birth to a son who was named Chettiappa. Meyyappa (I) and Chettiappa then constituted a Hindu coparcenary which owned the property and the business as allotted to Meyyappa (I) in the partition of 1940. On December 30, 1949 a deed of partition was executed between Meyyappa (I) and Chokalingam (who had by then attained the age of majority), in respect of the businesses carried on in the name of "M.S.M.M." The businesses were thereafter carried on in partnership between Meyyappa (I) representing himself and the minor Chettiappa and Chokalingam Meyyappa (II) was admitted to the benefits of that partnership. On April 13, 1950 partition was effected between Meyyappa (I) and the minor Chettiappa by posting entries in the books of account of M.M. Ipoh. It was agreed that the properties entered in the books of account of M.M. Ipoh shall be held by Meyyappa (I) and Chettiappa in two equal shares, and that the properties shall continue to remain in the management of the firm M.S.M.M. to the benefit of which Chettiappa was admitted. A deed of partition recording the terms of that partition was executed on May 28, 1953 by Meyyappa (I) and Alagammal acting as guardian of the minor Chettiappa.

In 1951 Meyyappa (I) acceded to a demand made by Chockalingam on behalf of the M.S.M.M. firm for a half share in the "M.M. Ipoh properties". There was however no division of the properties by metes and bounds, and the management of those properties as a single unit continued to remain with the M.S.M.M. firm as before.

Meyyappa (I) was assessed under the Indian Income-tax Act 1922 to tax year after year till the assessment year 1953-54 in respect of the income from the "M. M. Ipoh properties" as a respect individual or as a *karta* of a Hindu undivided family. Later the Income-tax Officer, Karaikudi, Ramnath District, issued notices under s. 34(1) of the Income-tax Act for the assessment years 1951-52 to 1953-54 and under s. 22(2) for the years 1954-55 to 1956-57 for assessment of the income of "an association of persons styled M. M. Ipoh". The Income-tax Officer rejected the contentions raised by Meyyappa (I) that there was no association of persons of the nature described in the notices and brought to tax the income of the "M.M. Ipoh properties" as income received by an association of persons formed by Meyyappa (I) and Chettiappa in 1951-52, and by Meyyappa (I), the M.S.M.M. firm and Chettiappa in the years 1952-53 to 1955—57.

In appeals filled by M. M. Ipoh, the Appellate Assistant Commissioner confirmed the orders passed by the Income-tax Officer subject to the modification that the income from the houses be assessed under s. 9(3) of the Income-tax Act in the hands of the members individually, and not as the collective income of the association of persons. The Appellate Tribunal confirmed the order of the Appellate Assistant Commissioner.

A The Tribunal drew up a statement of case and submitted under s. 66(1) of the Indian Income-tax Act, the following question for determination of the High Court of Madras:

> "Whether the assessments on the 'Association of persons' for assessment years 1951-52 to 1956-57 are valid?"

B and declined to submit a statement of the case on five other questions, the first out of which alone is material in these appeals and need be set out:

> "Whether on the facts and in the circumstances of the case, there are any materials to hold the assessee as the principal officer of M.M. Ipoh assessed in the status
C of an association of persons?"

At the hearing of the reference on the principal question, the High Court on the application of the assessee proceeded to deal apparently without any objection from the Commissioner with the additional question which had not been referred by the Tribunal.

D

The High Court held that the income brought to tax in the assessment year 1951-52 did not accrue to an association of persons, but the income in the years 1952-53 to 1956-57 accrued to an association of persons formed by Meyyappa (I), M.S.M.M. firm and the minor Chettiappa. The High Court was of the view
E that Meyyappa (I) acted on behalf of Chettiappa in forming the association, that the affairs of this association were under the management of Meyyappa (I) during the account years relevant to the assessment years 1952-53 to 1956-57, that the association of persons was engaged in a joint enterprise for the purpose of producing income, that there being "unity purpose and objectivity" the ultimate object of the association to earn income on
F behalf of the members of the association was "fully established". The High Court also held that by the notices for assessment of the income for the years 1952-53 to 1954-55 Meyyappa (I) did in fact have notice of the intention of the Income-tax Officer to treat him as the principal officer of the association, and the proceedings for assessment and reassessment were properly commenced. The
G High Court accordingly by order dated April 3, 1961 answered the first question in favour of the assessee in respect of the assessment year 1951-52 and against the assessee for the subsequent five assessment years. The High Court recorded in answer to the second question that the Income-tax Officer was justified in holding Meyyappa (I) to be the principal officer of "M.M. Ipoh".

H On November 21, 1961 five petitions were moved in the High Court of Madras under Art. 226 of the Constitution for a writ of prohibition restraining the Income-tax Officer from enforcing the demands made by him in respect of the tax assessed against

"the association of persons M.M. Ipoh". In support of the petitions it was urged that s. 3 of the Indian Income-tax Act invested the Income-tax Officer with arbitrary and unguided power to assess to tax the income of an association of persons in the hands either of the association or of the persons constituting that association, and on that account s. 3 offended Art. 14 of the Constitution, and was to that extent void. The High Court rejected the petitions. Against the orders passed by the High Court in the petitions for writs, Meyyappa (I) has appealed. Against the orders recorded by the High Court in references under s. 66 the association of persons "M.M. Ipoh" has appealed.

Section 3 of the Income-tax Act invests the taxing authority with an option to assess to tax the income collectively of the association of persons, in the hands of the association or in separate shares in the hands of the members of the association. Counsel for the assessee contends that the Act sets out no principles and discloses no guidance to the Income-tax Officer in exercising the option: the Act therefore confers arbitrary and uncontrolled authority upon the Income-tax Officer to select either the association or its members for assessment to tax according to his fancy, and may on that account be discriminatively administered by subjecting persons similarly situate to varying rates of tax.

Counsel in support of that plea relied upon the judgment of this Court in *Suraj Mall Mohta & Co.* v. *A. V. Visvanatha Sastri and Anr.*(1) but that case is of little assistance to the assessee. In *Suraj Mall Mohta's case*(1) this Court declared sub-s. (4) of s. 5 of the Taxation of Income (Investigation Commission) Act 30 of 1947 and the procedure prescribed by that Act, insofar as it affected the persons proceeded against under that sub-section, invalid as a piece of discriminatory legislation and on that account offending against Art. 14 of the Constitution of India. The Court held that sub-s. (4) of s. 5 of Act 30 of 1947 dealt with the same class of persons who fall within the ambit of s. 34 of the Indian Income-tax Act 1922 and whose income can be brought to tax by proceeding under that section: The result in the view of the Court was that some assessees who had evaded payment of tax by failing to disclose fully and truly all material facts necessary for assessment of tax could be dealt with under Act 30 of 1947 at the choice of the Commission, though they could also be proceeded with under s. 34 of the Indian Income-tax Act. Persons discovered as evaders of income-tax during an investigation under s. 5(1) of Act 30 of 1947, and persons discovered by the Income-tax Officer to have evaded payment of tax had in the view of the Court common properties and .....common characteristics", and since the procedure prescribed under Act 30 of 1947 was more

(1) (1964) 26 I.T.R. 1.

A drastic and deprived the assessee of valuable rights of appeal, second appeal and revision, s. 5(4) of Act 30 of 1947 under which a person could be selected for discriminatory treatment at the choice of the Investigation Commission was void as infringing the guarantee of equality before the law.

But here no question of application of a more drastic pro-
B cedure, or deprivation of valuable rights of appeal and revision, by the adoption of one of two alternative procedures arises. The procedure for assessment is the same whether the income is assessed in the hands of the association or the share of each member of the association is assessed separately. In *Shri Ram Krishna Dalmia* v. *Shri Justice S. R. Tendolkar and Ors*,(1) S. R. Das,
C C. J., observed at p. 299:

> "In determining the question of the validity or otherwise of ..... a statute the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but
D will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion or classification. After such scrutiny, the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection
E or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself."

F In *Jyoti Pershad* v. *The Administrator for the Union Territory of Delhi*(2) this Court observed that where the Legislature lays down the policy and indicates the rule or line of action which should guide the authority, Art. 14 is not violated, unless the rules or the policy indicated lay down different criteria to be applied to persons or things similarly situate. It is not however essen-
G tial for the Legislature to comply with the guarantee of equal protection that the rules for the guidance should be laid down in express terms. Such guidance may be obtained from or afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well-known facts of which the Court might take judicial
H notice or of which it is apprised by evidence before it in the form of affidavits, (b) or even from the policy and purpose of the enactment which may be gathered from other operative provisions

(1) [1959] S.C.R. 279. (2) [1962] 2 S.C.R. 125.

applicable to analogous or comparable situations or generally from the object sought to be achieved by the enactment. A

Section 3 of the Income-tax Act does not, it is true, expressly lay down any policy for the guidance of the Income-tax Officer in selecting the association or the members individually as entities in bringing to tax the income earned by the association. Guidance may still be gathered from the other provisions of the Act, its B scheme, policy and purpose, and the surrounding circumstances which necessitated the legislation. In considering whether the policy or principles are disclosed, regard must be had to the scheme of the Act. Under the Act of 1922 the Income-tax Officer is required to issue a general notice calling upon all persons whose total income during the previous year exceeds the minimum not C chargeable to tax to submit a return of income. The Income-tax Officer may also serve an individual notice requiring a person whose income in the opinion of the Income-tax Officer is liable to tax to submit a return of income. Primarily the return of income would be made by an association, where the association has earned income, and the Income-tax Officer would also call upon D the association to submit a return of its income, and would ordinarily proceed to assess tax on the return so made. But for diverse reasons, assessment of the income of the association may not be possible or that such assessment may lead to evasion of tax. It would be open to the Income-tax Officer then to assess the individual members on the shares received by them. The duty of the Income-tax Officer is to administer the provisions of E the Act in the interests of public revenue, and to prevent evasion or escapement of tax legitimately due to the State. Though an executive officer engaged in the administration of the Act the function of the Income-tax Officer is fundamentally quasi-judicial. The Income-tax Officer's decision of bringing to tax either the income of the association collectively or the shares of the members of the association separately is not final, it is subject to appeal F to the Appellate Assistant Commissioner and to the Tribunal. In *Commissioner of Income-tax, U.P.* v. *Kanpur Coal Syndicate*(1) it was held by this Court that the Appellate Tribunal has ample power under s. 33(4) to set aside an assessment made on an association of persons and to direct the Income-tax Officer to assess the members individually or to direct amendment of the G assessment already made on the members. Exercise of this power is from its very nature contemplated to be governed not by considerations arbitrary but judicial. The nature of the authority exercised by the Income-tax Officer in a proceeding to assess to tax income, and his duty to prevent evasion or escapement of liability to pay tax legitimately due to the State, constitute, in our H judgment, adequate enunciation of principles and policy for the guidance of the Income-tax Officer.

(1) [1964] 53 I.T.R. 225.

A Counsel for the appellants contended that s. 23-A of the Income-tax Act, as it was incorporated by Act 21 of 1930, laid down certain principles for the guidance of the Income-tax Officer in exercising his option, but since the Legislature by Act 7 of 1939 repealed that provision the discretion vested in the Income-tax Officer to select either the income of the association or the B individual members is unfettered. To appreciate the argument it is necessary to set out in some detail the legislative history. Under the Indian Income-tax Act, 1922, as originally enacted, an association of persons or individuals was not an entity the income whereof was charged to tax. By 11 of 1924 "association of individuals" was added in s. 3 and an entity of which the income C is charged to tax under the Income-tax Act, but the Act as it stood amended contained no statutory safeguard against double taxation of income earned by an association of individuals. S. 14(1) of the Act (as it then stood) which aimed at avoiding double taxation of the same income was applicable to the income of a Hindu undivided family, to the income of a company distributed as dividends to share-holders, and to the income of a firm pro- D fits whereof were assessed in its hands. The Legislature amended s. 14 of the Act by Act 22 of 1930 and remedied the defect by modifying cl. (c) of sub-s. (2) of s. 14 of the Act and provided that "any sum which he (the assessee) received as his share of the profits or gains of an association of individuals, other than a Hindu undivided family, company or firm, where such profits or E gains have been assessed to income-tax", shall not be subject to tax. The Legislature also enacted Act 21 of 1930 which made several modifications in the Income-tax Act. It provided for registration of firms and added s. 23A which provided:

> "(1) Where the Income-tax Officer is satisfied that any firm or other association of individuals carrying on F any business, other than a Hindu undivided family or a company, is under the control of one member thereof, and that such firm or association has been formed or is being used for the purpose of evading or reducing the liability to tax of any member thereof, he may, with the previous approval of the Assistant Commissioner pass G an order that the sum payable as income-tax by the firm or association shall not be determined, and thereupon the share of each member in the profits and gains of the firm or association shall be included in his total income for the purpose of his assessment thereon."

H A similar provision with regard to companies was also incorporated in sub-s. (2) of s. 23A. Broadly speaking, by the amended provision discretion was given to the Income-tax Officer to treat as separate entities for the purpose of taxation the individuals formed any association carrying on business, of which only one

member was competent to bind the association by his acts, and to give to the Income-tax Officer discretion to treat the members of a company as separate entities in certain conditions. But s. 23A (1) as enacted by Act 21 of 1930 applied only to firms and association of individuals if the management was in the hands of one person: it did not in terms apply to cases where the management was in the hands of more persons than one, even if it was formed for the purpose of evading or reducing the liability to tax of any member thereof. By Act 7 of 1939 the expression "association of persons" was substituted for "association of individuals"; s. 23A(1) was deleted; and sub-s. (5) was added to s. 23. Sub-section (5) of s. 23 prescribed the mechanism for bringing to tax the income of a firm registered or unregistered. If the firm was registered, the share of each partner was to be separately taken into account together with his other income and brought to tax. If it was an unregistered firm, the income of the firm itself was brought to tax, unless the Income-tax Officer was of the opinion that the correct amount of the tax including super-tax, if any, payable by the partners under the procedure applicable to a registered firm would be greater than the aggregate amount payable by the firm and the partners if the firm is assessed as an unregistered firm. In respect of unregistered firms a practical scheme which aimed at preventing evasion of tax was devised by enactment of s. 23(5)(b).

After the repeal of s. 23A (1) as introduced by Act 21 of 1930 no similar provision conferring discretion upon the Income-tax Officer similar to the discretion which is prescribed by the terms of s. 23(5)(b) in respect of the income of the unregistered firms was expressly enacted. But it cannot be inferred that it was intended to make the discretion of the Income-tax Officer *qua* the assessment to tax the income of an association of persons in the hands of individual members collectively, arbitrary or unfettered. By the repeal of s. 23A(1) the essential nature of the power of an Income-tax Officer was not altered. He remained as before under a duty to administer the Act, for the benefit of public revenue, but his powers were to be exercised judicially and so as to avoid double taxation of the same income.

This resume of the legislative provisions discloses that the relevant provisions were made with a view to ensure against evasion of tax, while ensuring that the same income shall not be charged more than once.

The policy and the purpose of the Act may be gathered from "other operative provisions applicable to analogous or comparable situations": *Jyoti Pershad's case*(1) at p. 139: and there can

(1) [1962] 2 S.C.R. 125.

A be no doubt that an unregistered firm and an association of persons are closely analogous. If the income is earned by an association of persons, normally a return would be made or asked for under s. 22 from the association, and the income of the association would be brought to tax. If, it appears to the Income-tax Officer that by taxing the association of persons evasion of tax B or escapement of tax liability may result, he is given a discretion to tax the individual members: but the discretion is to be exercised judicially and not arbitrarily, and its exercise is capable of rectification by superior authorities exercising judicial functions.

It cannot therefore be said that there is, by investing authority in the Income-tax Officer to select the association of persons C or individual members thereof for the purpose of assessing to tax the income of the association, denial of equality before the law between persons similarly situate within the meaning of Art. 14 of the Constitution so as to render s. 3 insofar as it confers power upon the Income-tax Officer to select either the association of persons or the members thereof for assessment to tax in respect D of the income of the association void. Appeals Nos. 1103—1107 of 1966 must therefore fail.

In the group of appeals which arise out of the order passed by the High Court in exercise of its advisory jurisdiction under the Income-tax Act, counsel for the assessee urged that there was no association in fact; that Chettiappa being at all material E times a minor there could in law be no association of which the income could be brought to tax, and that in any event there was no evidence to prove that any one on behalf of Chettiappa had assented to the formation of the association.

The expression "person" is defined in s. 2(9) of the Indian Income-tax Act, 1922 as including "a Hindu undivided family F and a local authority". The definition is inclusive and resort may appropriately be had to the General Clauses Act to ascertain the meaning of the expression "person". Clause (42) of s. 3 of the General Clauses Act defines a "person" as inclusive of any company, association or body of individuals whether incorporated or not, and that inclusive definition in the General Clauses Act G would also apply under the Income-tax Act. A firm is therefore a "person" within the meaning of the Income-tax Act, and a firm and an individual or group of individuals may form an association of persons within the meaning of s. 3 of the Indian Income-tax Act.

There is nothing in the Act which indicates that a minor H cannot become a member of an association of persons for the purposes of the Act. In *Commissioner of Income-tax, Bombay* v. *Laxmidas and Anr.*(1) it was held that the fact that one of the

(1) [1937] I.T.R. 584.

individuals was a minor did not affect the existence of the association, if in point of fact, the assessees had associated together for the purpose of gain. In *Commissioner of Income-tax, Bombay North, Kutch and Saurashtra* v. *Indira Balkrishna*(1) it was held "that the word "associate" means, ... 'to join in common purpose, or to join in an action'. Therefore, an association of persons must be one in which two or more persons join in a common purpose or common action, and as the words occur in a section which imposes a tax on income, the association must be one the object of which is to produce income, profits or gains."

In the case before us, there is abundant material, to prove that Meyyappa (I), his minor son Chettiappa and M.S.M.M. firm formed an association in the years 1952-53 to 1956-57. To review the relevant facts: the "M.M. Ipoh properties" which were allotted to Meyyappa (I) at the partition in 1940 became on the birth of Chettiappa, Properties of a coparcenary, and it is common ground that Chettiappa acquired a share in the income which Meyyappa (I) received from the M.S.M.M. firm: the "M.M. Ipoh properties" were used in a trading venture and were managed by the M.S.M.M. firm: the selling agency was common between M.S.M.M. firm and "M.M. Ipoh": the stocks and expenditure of the M.M. Ipoh firm were not separately determined and common books of account were maintained for the management of the M.M. Ipoh properties and the M.S.M.M. firm dealings.

Alagammal—mother of Chettiappa—had executed the deed of partition dated April 13, 1950 as the guardian of Chettiappa. By the deed she acknowledged having received the share of Chettiappa in the property. The Tribunal found that the management was entrusted to the M.S.M.M. firm on behalf of "M.M. Ipoh", and that in entrusting the management Alagammal must have given her consent. In paragraph 11 of the statement of the case, the Tribunal observed:

> "The integrity and management of the estates have continued undisturbed right throughout the period, only the holding thereof by various members having changed from time to time. The volition necessary is only all too apparent; the entrustment of the management to M.S.M.M. firm for a proper management implies a prior agreement to which the guardian of the minor must have given her consent too."

These observations relate to the entire period of six years 1951-52 to 1956-57. In the view of the High Court division of the status of joint Hindu family on April 13, 1950 between Meyyappa (I) and Chettiappa was brought about not as a result of any mutual agreement between the coparceners, but by Meyyappa (I) in exercise of his power to do so under the Hindu law, and "solely from the feature that the share of minor son Chhettiappa was not separated by metes and bounds, a conclusion could

(1) [1960] 39 I.T.R. 546.

A not be "reached that Meyyappa (I) and Chettiappa continued as members of an association of persons. The minor had no volition of his own to express, and the fact that at the partition the minor was represented for purposes of form and nothing more by his father, cannot be taken to mean that the mother as his guardian exercised any volition on behalf of the minor." In the view of
B the High Court "to form an association of persons no agreement enforceable at law was necessary": but that "is not the same thing as to say that an agreement—express or implied—may be inferred, where none can possibly exist." The High Court rejected the contention raised on behalf of the Revenue that the father must have acted as the guardian of the minor in forming the association in 1951-52. The High Court however held that in
C the year 1952-53 and subsequent years an association of persons was formed and Meyyappa (I) joined that association on behalf of himself and Chettiappa. Counsel for the assessee contends that once the High Court reached the conclusion that in the year 1951-52 there was no association of persons, the conclusion that an association of persons existed in the subsequent years could
D not be reached in the absence of positive evidence to show that after the close of the year 1951-52 an association of persons was actually formed.

We are not called upon in these appeals to consider whether the learned Judges of the High Court were right in the view which they have taken insofar as it relates to the assessment year
E 1951-52. We are only called upon to consider whether the conclusion of the Tribunal that in fact an association of persons existed in the year 1952-53 and subsequent years was based on any evidence. In our judgment the facts proved clearly show that there was such an association in the years 1952-53 and the subsequent years. Pursuant to the three partitions no division
F by metes and bounds of the shares of the owners was made, only the shares in the income of the owner were entered in the books of account. There was common management of the properties, and there was even a common selling agency. Alagammal had acted as a guardian of Chettiappa in the deed of partition. The Tribunal inferred that Alagammal must have assented to the for-
G mation of the association on behalf of Chettiappa and in the various transactions relating to the entrustment of management. It is true that this finding related to the year 1951-52 as well, and the High Court has disagreed with that finding insofar as it related to the year 1951-52. But on that account the finding of the Tribunal in respect of the subsequent years cannot be discarded. The Association which has earned income in the years
H 1952-53 and thereafter is an association different from the association in 1951-52. In 1951 Chokalingam had demanded a share in the "properties of M.M. Ipoh" and he was given a half share. The shares of Meyyappa (I) and Chettiappa in the properties were

reduced, and thereafter ownership in the "properties of M.M. Ipoh" and its activities vested in an association formed by Meyyappa (I), the M.S.M.M. firm and Chettiappa. It is common ground that "M.M. Ipoh" was a trading venture and its management was entrusted in the relevant years to the M.S.M.M. firm. A

The doctrine of *res judicata* does not apply so as to make a decision on a question of fact or law in a proceeding for assessment in one year binding in another year. The assessment and the facts found are conclusive only in the year of assessment: the findings on questions of fact may be good and cogent evidence in subsequent years, when the same question falls to be determined in another year, but they are not binding and conclusive. The finding recorded by the High Court that in the year 1951-52 there was no association of persons constituted by Meyyappa (I) and Chettiappa for earning income from M.M. Ipoh properties will not in the present case have any effect on the finding of the Tribunal that in year 1952-53 and the subsequent years such an association existed. It must again be remembered that the association of persons which traded in 1952-53 and the subsequent years was an association different from the association in 1951-52. After the reduction in the shares of Meyyappa (I) and Chettiappa in the "M.M. Ipoh properties" a fresh arrangement for entrustment of the management of the properties to the M.S.M.M. firm was necessary and according to the findings of the Tribunal, Alagammal assented on behalf of Chettiappa to that arrangement. B C D E

Counsel for assessee contended that for the finding that Alagammal assented on behalf of Chettiappa to form an association was not supported by any evidence on the record. But from readjustment of the shares in the "M.M. Ipoh properties", admission of Chettiappa to the benefits of M.S.M.M. firm and the management of "M.M. Ipoh properties" to continuing to remain with the M.S.M.M. firm, with a common selling agency, and the execution of the deed of partition by Alagammal, an inference could reasonably be made that a person purporting to act as guardian of Chettiappa concurred in forming the association and that the person so concurring was Alagammal. The finding recorded by the Tribunal is one of fact, and was not liable to be questioned before the High Court. It is also pertinent to note that the finding that Alagammal acted on behalf of Chettiappa in forming the association for the years 1952-53 was never challenged and was not sought to be made the subject of a question in an application to the Tribunal under s. 66(1) and no question in that behalf was referred to the High Court. It is true that the High Court was of the view that in the years 1952-53 to 1956-57 Meyyappa (I) acted on behalf of Chettiappa in forming the association. But the High Court in a reference under s. 66 of the Income-tax Act was incompetent to disturb what was F G H

A essentially a finding of fact recorded by the Tribunal and arrive at another finding.

On the other question which has been answered by the High Court the Tribunal declined to submit a statement of the case, because in their view it did not arise out of their order. They pointed out that a ground in support thereof was taken in the B memorandum of appeal, but as it was not pressed before the Appellate Assistant Commissioner, they did not deal with it. The High Court observed that the Tribunal was bound to deal with the question irrespective of whether it was agitated before the Appellate Assistant Commissioner. Even assuming that the second question was properly raised in the form and in the man- C ner in which it was raised by the High Court, the answer to the question must, on the facts found, be against the assessee. Counsel for the assessee contended that there were no materials on which the Tribunal could hold that Meyyappa (I) was the principal officer of "M.M. Ipoh", and since the Income-tax Officer had made no enquiry before issuing the notice treating Meyyappa (I) D was the principal officer of "M.M. Ipoh", Meyyappa (I) could not be so treated for the purpose of the proceedings for assessment. Under s. 22(2), the Income-tax Officer may, if in his opinion the income of a person is liable to income-tax, serve a notice upon him requiring him to furnish a return in the prescribed form. The notice under s. 34 for re-assessment must also contain all or any of the requirements which may be included in a notice under sub-s. E (2) of s. 22. Such a notice may be served under s. 63(2) of the Income-tax Act upon the principal officer of an association of persons. Under the definition in s. 2(12) a "Principal officer"—omitting parts not material—"used with reference to . . . any association means—(a) . . . . (b) any person connected with the authority, company, body, or association upon whom the Income- F tax Officer has served a notice of his intention of treating him as the principal officer thereof;". The Income-tax Officer Karaikudi assessed the income of "the association M.M. Ipoh by its principal officer M.S.M.M. Meyyappa Chettiyar". No objection was ever raised before the Income-tax Officer about the regularity of the proceedings and the Income-tax Officer found that Meyyappa G (I) was the principal officer of the association. Even before the Appelate Assistant Commissioner it was not argued that Meyyappa (I) was not the principal officer. For the first time that ground was taken before the Tribunal. The notices served on Meyyappa (I) are not printed in the record prepared for use in this Court. In the orders of assessment for the year 1952-53 and the subsequent years it is recorded that action was taken to bring H to tax the income of "M.M. Ipoh", and in response to the notices the principal officer Meyyappa (I) had filed returns. The assessee submitted an application under s. 66(2) during the course of the hearing before the High Court of the question referred by the

Tribunal. The High Court granted that application and without calling for a formal statement of the case on the question sought to be raised, heard the parties. It may be reasonably assumed that the assessee was prepared to argue the case on the footing that the statements in the orders of the Income-tax Officer were correct. In the circumstances it must be held that the Income-tax Officer did, serve a notice of his intention to treat a person connected with the association as the principal officer thereof. The Income-tax Officer assessed the income of the association as represented by Meyyappa (I) its principal officer. There is, in our judgment, nothing in the Act which supports the contention of counsel for the assessee that before proceedings in assessment can commence against an association of persons a notice must in the first instance be issued and an order passed after giving opportunity to the person proposed to be treated as the principal officer opportunity to show cause why he should not be so treated. It is open to the Income-tax Officer to serve a notice on a person who it is intended to be treated as the principal officer. The person so served may object that he is not the principal officer or that the association is not properly formed. The Income-tax Officer will then consider whether the person served is the principal officer and whether he has some connection or concern with the income sought to be assessed. There is in the Income-tax Act an analogous provision in s. 43 of the Act which authorises the Income-tax Officer to treat a person as a statutory agent of the non-resident for the purpose of assessing him to tax, the income received by the non-resident. It was held by the Judicial Committee in *Commissioner of Income-tax, Punjab & N.W.F.P.* v. *Nawal Kishore Kharaiti Lal*(1) that it is not necessary for the validity of a notice calling for a return of the income under s. 23(2) served on a person as agent of a non-resident under s. 43, that it should have been preceded not only by the notice of intimation prescribed by s. 43, but also by an order declaring the person to be agent of the non-resident or treating him as such. The Income-tax Officer may postpone any final determination of the dispute until the time comes to make an assessment under s. 23 of the Act. In our judgment, the same principle applies to a case in which in the assessment of the income of an association of persons or person is to be treated as a principal officer of that association. If the person described as a principal officer of an association is duly served with a notice under s. 23(2) in the manner prescribed by s. 63(2), an adjudication of his status as the principal officer before assessment proceedings may take place is not obligatory. The order assessing the association containing a finding that the person served is the principal officer is sufficient compliance with the requirements of the statute. It is open to the association to challenge the finding of the Income-tax Officer

(1) [1938] 6 I.T.R. 61.

A in appeal before the Appellate Assistant Commissioner and in further appeal to the Appellate Tribunal. But the order declaring him as the principal officer of an association of persons will not be deemed to be void merely because the proceeding for assessment was not preceded by a declaration of the status of the person treated as the principal officer.

B The appeals Nos. 1060—1964 of 1965 must also fail and are dismissed with costs. There will be one hearing fee in appeals Nos. 1103—1107 of 1966 and one hearing fee in appeals Nos. 1060—1064 of 1965.

R.K.P.S. *Appeals dismissed.*