

SUPREME COURT OF INDIA

Lakshminarain Bhadani

Vs.

Commissioner of Income-Tax, Bihar and Orissa

Civil Appeal No. 23 of 1950

(H.J.Kania,CJI., Patanjali Sastri and N.Chandrashekar Aiyar,JJ., S.R.Dass and Vivian Bose, JJ.,)

11.09.1951

JUDGMENT

H.J.Kania,C.J.,

1. This is an appeal from a judgment of the High Court at Patna. It arises out of an income-tax reference made to the High Court under Section 66 (1) of the Indian Income-tax Act. Briefly stated the facts are that a joint Hindu family, of which the present appellant was the karta, was assessed to income-tax for the year 1939-40. In 1944 the Income-tax Officer considered that certain income of the family taxable in 1939-40 had escaped assessment. In the meanwhile, the joint family had become divided and necessary steps had been taken by the members to have an order passed under Section 25A (1) of the Income-tax Act. The Income-tax Officer issued a notice in the name of the joint Hindu family and served it on the appellant under Section 34 read with Section 22 of the Income-tax Act to make a return in respect of the escaped income and the appellant sent a return in response to that notice. Thereafter, the Income-tax Officer made an assessment on the escaped income of Rs. 37,098 and issued a notice of demand on the appellant as the karta and on the two other members of the joint family. The notice was to require payment of the full amount of tax due on the escaped income and did not apportion the liability for it amongst the three members of the family. The assessee contended that the proceedings were irregular and that he was not liable to pay anything. His contention was rejected by the Income-tax Officer, the Appellate Assistant Commissioner, and the Income-tax Appellate Tribunal. He prayed that a question of law may be referred to the High Court for its opinion. Accordingly the Income-tax Appellate Tribunal referred the following question for the High Court's opinion :-

"Whether in the circumstances of this case proceedings under Section 34 in respect of the assessment year 1939-40 were validly initiated and completed against the Hindu undivided family, which had ceased to exist then, and an order under Section 25A (1) accepting the partition of the Hindu undivided family had already been passed."

2. The High Court expressed the view that there were irregularities both in initiating the proceedings and in completing the same but as there was no prejudice to the appellant, they answered the question in the affirmative and ordered the assessee to pay the costs of the reference. The assessee has come in appeal before us.

3. Mr. Umrigar, on behalf of the appellant, argued only one point for our consideration. He contended that as the High Court had held that the proceedings were irregularly initiated and completed they were invalid and no order for assessment could be made. For this contention he relies on the wording of Section 25A (1). In our opinion, this contention is unsound and the opinion of the High Court that the proceedings were initiated irregularly is also unsound. It does not appear necessary, when proceedings are initiated under Section 34 read with Section 22 of the Income-tax Act, to issue notice to every member of the family. The position is as if the Income-tax Officer was proceeding to assess the income of the Hindu undivided family as in 1939-40. In our opinion, therefore, that contention must be rejected.

The next contention urged by Mr. Umrigar was that Section 25A (2) requires that the assessment should be made against each member of the joint family for a proportionate share of the tax and it is only after one of them had failed to pay such share that the Income-tax Officer could proceed to recover it from the others. The argument so formulated cannot be accepted. On a true construction of Section 25A (1), it appears that the Income-tax Officer in the first place has to make an assessment of the total income as if no partition had taken place. That means that he has to find out what the total income was and calculate the amount of tax payable thereon as if it was payable by one unit. Having done that, it is the duty of the Income-tax Officer under the section to apportion the amount payable by the unit amongst the members of the joint family property allotted to each of them. That duty also appears to be imperative having regard to the concluding words of Section 25A (2). In the present case, the Income-tax Officer has omitted to make any apportionment. That fact is noticed in the judgment of the High Court and also by the Income-tax Appellate Tribunal. In the judgment of the High Court it has been stated that this could be put right. In our opinion, it is necessary that the Income-tax Officer should issue the notice of demand against each of the members of the family in accordance with the concluding words of Section 25A (2) and that should be done.

4. We are unable to accept the second part of the argument of Mr. Umrigar that it is only on the failure or default of payment by one of the members that the Government has the right to recover that portion of the amount from other. The proviso to Section 25A (2) makes the position very clear. In contrast with that the proviso to Section 26 shows that when the Legislature wanted to give power to the Income-tax authority to recover from others only on failure of payment by a party, it said so expressly. The absence of similar words in the proviso to Section 25A (2) must result in the rejection of this part of Mr. Umrigar's argument.

5. As the appeal has failed substantially the appellant is ordered to pay the costs of the appeal.

6. Appeal failed substantially.

