

D. N. Dutta

Vs

Income-Tax Investigation Commission and Others

(Saroj Kumar Dutta and Others : Interveners)

Civil Appeal No. 237 of 1955

(J. L. Kapur, S. K. Das, M. Hidayatullan JJ)

07.03.1960

JUDGMENT

KAPUR, J. –

This is an appeal by special leave against the report of the Income-tax Investigation Commission Made in R.C. No. 332A and the orders passed thereon by the Central Government dated November 19, 1949, and November 21, 1949, the former under section 8(2) and the latter under section 8A(1) of the Taxation on Income (Investigation Commission) Act (Act XXX of 1947) (hereinafter to be referred as the Act). The appellant is Debendra Nath Dutta and the respondents are the Income-tax Investigation Commission constituted under section 3 of the Act (hereinafter referred to as the Commission) and the Union of India. The facts giving rise to the appeal are that Captain N. N. Dutta, a brother of the appellant was the managing director of a concern called the Bengal Immunity Co. Ltd. During the last war he made large profits which were neither disclosed to nor detected by the Income-tax Department and thus escaped income-tax on what may be termed "concealed income". On March 23, 1949, the Commission made a report to the Central Government under section 5(4) of the Act asking for reference to it self of the case of Captain N. N. Dutta. Almost simultaneously the Commission directed a search to be made of four premises belonging to or in the occupation of Captain N. N. Dutta and his relations as a result of which complete sets of books containing receipts and disbursements of secret profits made by Captain N. N. Dutta came into the possession of the Commission and thus the case of Captain N. N. Dutta came to be investigated after reference to the Commission by the Central Government. This case was R.C. No. 332A. Captain N. N. Dutta at the time of search was away from Calcutta and after his return he offered to make full disclosure and agreed to pay whatever tax the Commission would find due from him but a few days after this offer i.e., on April 6, 1949, he died leaving brothers, nephews and nieces who are shown in the following pedigree table :

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Krishna Kumar Dutta

_____ | _____

| | | |

XiXCD Kamini Kumar Surendra Nath Narendra Nath Debendr

a Nath

Mrinalini (long dead) Captain Dutta

| Charunalini Dutta

| Widow

_____ | _____

| | | | | | | |

Saroj Ajit Kumar Ranjit Kumar Sujit Maya Bela m. Nalima

Kumar Latika Renukana Kumar m.captain A.N.Bose m.Dr.A.

Kalyani Wife wife A.N.Dutta N.Bose

wife

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Kamini Kumar Dutta was his elder brother and the appellant Debendra Nath Dutta the younger brother. The deceased himself was unmarried. Another elder brother of his had died sometime before leaving a widow Charunalini Dutta. As a result of the investigation it was found that a substantial portion of the concealed profits was invested by the late Captain N. N. Dutta in the names of his nephews, the sons of Kamini Kumar Dutta and their respective wives, his niece Maya and his widowed sister-in-law Charunalini Dutta. These profits were invested in Government securities and bank Deposits.

On the death of Captain N. N. Dutta his two brothers Kamini Kumar Dutta and the appellant Debendra Nath Dutta were brought on record as legal representatives. Kamini Kumar Dutta wrote to the Commission that he had no connection with the business of his late brother but as his legal representative he accepted his obligation to pay in full anything due to the State and he also advised his sons to disclose the true state of affairs and to pay whatever sum was justly due. As a result of their co-operation and from the books and materials which had been obtained on search of the premises the total amount of concealed income earned and received by Captain N. N. Dutta during the accounting years 1940-41 to 1947-48, was found to be Rs. 58,24,023 and this was accepted to be concealed income both by Kamini Kumar Dutta and the appellant. The appellant took no part in the enquiry but after the investigation was completed he was summoned to be present at the final hearing. He was informed of the amount which was found to be concealed income and was invited to examine the materials and make such submissions as he thought necessary in regard to that amount. He accepted the amount but he submitted that he had no assets of the deceased in his hands.

On July 5, 1949, Kamini Kumar Dutta's branch made an application for composition under section 8A of the Act. This was recommended by the Commission who in their report stated that the settlement was for the purpose of recovery and was only with regard to Kamini Kumar Dutta and his sons and daughters-in-law but was not made with the appellant. They recommended that for the purpose of assessment to the tax the total concealed income should be allocated between the 8 accounting years in equal amounts. They also recommended a concession in regard to Kamini Kumar Dutta and his branch of the family. The amount to be recovered from that branch came to Rs. 29,74,480. The Commission in its report made it quite clear that the appellant was no party to this composition and no order was being made against or in regard to him but should any assets of the deceased be found to be in his possession or may subsequently come into his possession as a

result of the litigation which he was threatening to commence or otherwise, the Government would be entitled to recover from him the full tax on the concealed income, i.e., on Rs. 58,24,023, "whether in the first instance" or so much of it as may not be recovered from the other branch. Thereupon the Central Government passed two orders, one under section 8A of the Act on November 19, 1949, directing that appropriate proceedings under the Indian Income-tax Act and Excess Profits Tax Act, 1940, be taken against Kamini Kumar Dutta and the appellant, heirs of the deceased, "with a view to assess or reassess the aggregate income of Rs. 58,24,023 referred to in paragraph 24 of the said report" (Report of the Commission). The other order was passed on November 21, 1949, accepting the terms and conditions of settlement offered by the branch of Kamini Kumar Dutta; it directed that demand notices be served by the Income-tax Officer under section 29 of the Income-tax Act and all proceedings under the Income-tax Act or any other Act which might be necessary be taken. On March 24, 1950, the Income-tax Officer, District III-A, Calcutta, passed 8 income-tax assessment orders, 6 excess profits tax assessment orders and two business profits tax assessment orders each in regard to 1/8 of the total sum concealed. The assesseees in all these orders were both the brothers of the deceased, i.e., Kamini Kumar Dutta and the appellant. We have been informed that the branch of Kamini Kumar Dutta have been paying in accordance with the terms of the composition and their liability has been very substantially discharged.

On April 15, 1950, the appellant applied to the Commissioner of Income-tax, West Bengal, under section 8(5) of the Act for a reference to the High Court of Calcutta of 15 questions of law which ultimately were reduced to three. As there were 16 assessment orders the appellant was asked by the Commissioner to submit 16 applications which he did but by an order dated October 3, 1951, he rejected the applications as in his opinion no question of law arose out of the various assessment orders. The appellant then applied to the High Court of Calcutta under section 8(5) of the Act read with section 66(2) of the Income-tax Act and rules were issued by the High Court but on March 3, 1952, they were discharged. Against this order the appellant applied to this court for special leave but on September 28, 1953, leave was refused. In this affidavit the appellant has stated that this court has observed that the appellant's proper remedy was for special leave to appeal against the decision of the Commission contained in their report of November 16, 1949. We have verified from the records of this court that the only order made by this court was refusing to grant special leave and there is no such observation as the appellant has mentioned in his appeal, affidavit and statement of case. The appellant then obtained special leave against the report of the Commission dated November 16, 1949, and the orders made thereon and that is how this appeal has come before us.

It is unnecessary to decide whether in view of the High Court's refusal to direct a case to be stated on the questions of law raised or in view of the refusal by this court to grant special leave against the order of the High Court the appeal is competent because in our opinion there is no substance in the appeal. It was argued on behalf of the appellant that the effect of section 24B(1) of the Income-tax Act is that the liability of the executors, administrators or other legal representatives in regard to the tax payable is the same as was the liability of the deceased person and that the tax is one and therefore the liability of the heirs of the deceased was one and joint. Consequently any composition made with any one of the legal representatives, in this case with Kamini Kumar Dutta and his branch of the family, operated as a discharge of liability of all the heirs and their was no further liability left which could be foisted on to the appellant or attach to any assets which might come into his possession thereafter. Reliance was placed on certain decided cases to support that argument. The first case is *Shaikh Sahad v. Krishna Mohan Basak*. In that case a co-sharer landlord brought a suit for arrears of rent against the heirs of the original tenant of whom two appeared and the third

did not. A money decree was passed against the absent heir for the entire claim but it was held by the High Court that the suit being against the heirs they must be taken to have been recognized as one body of registered tenants holding a single holding and it was not a case of joint contract which could be enforced against any of the joint contractors and section 43 of the Contract Act was inapplicable where parties because jointly interested by operation of law in a contract by a single person. The next case relied upon, i.e., Kasi Kinkar Sen v. Satyendra Nath Bhadra and others, was a case under section 43 of the Contract Act where it was held that whether a promise is joint or several is a question of construction depending upon the intention of the parties to the contract and where several persons jointly inherit a tenancy one of the heirs cannot be made separately liable for the entire rent. Reference was also made to Salmond's Jurisprudence, 11th ed., page 482.

In our opinion these cases have no application to the facts of the present case, because no question of enforcing any contractual liability, either against any of the contracting parties or their heirs, arises here. The tax payable in respect of the concealed income is indeed one, but the liability of the appellant and the co-heir must be determined in accordance with the provisions of the Act. Under section 8(2) of the Act, on the report of the Investigation Commission the Central Government had the power to direct proceedings to be taken under the Income-tax Act against the person to whose case the report related. In the present case the person to whose case the report related was no doubt the deceased and therefore the order made under that section was against his heirs with a view to assess or reassess the aggregate income of Rs. 58,24,023. The application for composition was made only by Kamini Kumar Dutta and his branch of the family and that falls under section 8A(1) of the Act. It provides that in case pending before the Commission if any person applies to it at any time to have the case or any part thereof settled in so far as it relates to him the Commission shall, if it is of the opinion that the settlement applied for may be approved, refer the matter to the Government and if the Government accepts the terms, the Commission shall have the terms thereof recorded and the investigation so far as it relates to covered by such settlement shall be deemed to be closed. This section obviously means that the settlement is with and in regard to the person who offers the settlement and the investigation is closed in regard to him alone. It is this provision which is applicable and operates in cases covered by the Act and no other principle arises in such cases.

Both Kamini Kumar Dutta and the appellant were brought on the record as legal representatives of the deceased. They both admitted the liability of Rs. 58,24,023. The several assessment orders, income-tax assessment orders, excess profits tax assessment and business profits assessment orders, show that the total amount to be released as tax was Rs. 52,34,663 divided into 8 equal parts. The liability of Kamini Kumar Dutta and his branch of the family alone, as a result of composition, came to an end, but that does not mean that the balance of the tax which was exigible must also be taken to have been satisfied. It only means that to the extent that the amount is realized from Kamini Kumar Dutta and his branch of the family the liability to tax will be taken to have been satisfied and the appellant will be liable for the payment of only the balance and to the extent that he has in his possession any of the assets of the deceased or comes into possession of the assets in future.

In our view this appeal is without any merit and is therefore dismissed. The appellant will pay the costs of the respondents.

Appeal dismissed.

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