

Additional Income-Tax Officer, Circle I, Salem, and Another

Vs

E. Alfred

Civil Appeal No. 282 of 1960

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

20.10.1961

JUDGMENT

HIDAYATULLAH J. –

Whether the legal representative of a deceased person, who is assessed in respect of the total income of the latter person, as if he were the assessee, can be ordered to pay a penalty under section 46 (1) of the Indian Income-tax Act, is the short question that arises in this appeal.

One Ebenezer died intestate on November 22, 1945, during his year of account which ended on March 31, 1946. He left behind him the respondent, E. Alfred, his son, and eight daughters. For the assessment year, 1946-47, the respondent was assessed under section 24B (2) of the Income-tax Act, after a notice was issued to him under section 22 (2), *ibid*. The assessment was completed on March 26, 1951, and a notice of demand was issued under section 29 of the Act. The respondent appealed against the order of assessment to the Appellate Assistant Commissioner, but during the pendency of the appeal a penalty of Rs. 250 was imposed upon him under section 46 (1) of the Act by the Income-tax Officer, as he had defaulted in payment of tax on the due date. After the appeal was disposed of with very minor modifications, a notice of demand was again issued to him to pay the tax on or before December 15, 1951. On his default, a second penalty of Rs. 10,000 was imposed upon him on March 8, 1952. The respondent then filed a p

In reaching the conclusion that section 46 (1) of the Act did not apply to a legal representative, the learned judges of the High Court held that a legal representative could not be said to be included within the words of that sub-section "when an assessee is in default in making a payment of income-tax" because of the scheme of the Act, particularly section 29, where a distinction is made between "an assessee" and "other person". According to the learned judges, a legal representative is assessed as an assessee under a fiction in section 24B (2), and that fiction comes to an end when the computation of the tax or, in other words, the assessment is made. The learned judges drew a distinction between the three sub-sections of section 24B, and pointed out that sub-section (1) only created a liability on the legal representative for collection of tax but did not refer to him for that purpose as an assessee, and sub-section (3), which did not concern itself with connection, did not refer to the legal representat

We are concerned with the definition of "assessee" before its amendment in 1953. That definition read as follows : "'assessee' means a person by whom income-tax is payable". The generality of this definition is sufficient to include even a legal representative who is to pay the tax, though out of the assets of the deceased person. Section 24B, which makes a legal representative liable, is as follows :

"24B. (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 22 or before he is served with a notice under sub-section (2) of section 22 or under section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of the section 22 or under section 34, as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of section 22, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person."

The scheme of this section, which was inserted by the Second Amendment Act of 1933 and modified further by the Amendment Act of 1939 is as follows : Sub-section (1) of section 24B makes, inter alia, the legal representative liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge, the tax assessed as payable by such person or any tax which would have been payable by him under the Act, if he had not died. By this sub-section, a legal representative is made liable to pay the tax which might have been assessed but not paid by the deceased person or which might be assessed after his death. It covers all situations and contingencies, and makes the liability absolute, limited, however, to the extent to which the estate of the deceased is capable of meeting the charge. The sub-section does not provide for issue of notices, assessment, collection or anything connected with the imposition, levy and collection of the tax. Sub-section (2) and (3) next pro

In the present case, the matter fell to be governed by the second sub-section, because Ebenezer died before the end of his year of account. The service of the notice upon the respondent and his assessment, as if he were the assessee, were made under the second sub-section. By reason of this assessment, the respondent became liable under the first sub-section to pay out of the estate of Ebenezer the tax assessed, to the extent to which Ebenezer's estate was capable of meeting the charge, but he himself was deemed to be the assessee.

No doubt, the fiction made the respondent an assessee for the purpose of assessing the total income of Ebenezer. But the question is whether the fiction came to an end after the assessment, so that he remained a mere debtor thereafter to the department. The answer to this question would determine the further application of the other sections of the Act. When a thing is deemed to be something else, it is to be treated as if it is that thing, though, in fact, it is not. The original assessee being

dead before the notice, either general or special, to him, he could not be treated as an assessee, and the process of the Act is, by the fiction, made available against a different person like a legal representative, who is fictionally deemed to be an assessee, for purposes of assessment. The word "assessment" bears different meanings, and, in one sense, it comprehends, the entire process of computation and levy of the tax. It is in this sense that the legal representative becomes an assessee by the fiction, and it

Under section 45, if a notice of demand is issued under section 29 on an assessee and has not been complied with, the assessee is deemed to be in default, and under section 46 (1), if the assessee is in default, a penalty can be imposed. All these stages the respondent went through in this case. He was himself an assessee qua the assets and liability to tax of Ebenezer; he was, therefore, an assessee in default and liable to the imposition of penalty for this default. The question is whether section 29, which makes a distinction between an assessee and "other person", makes any difference.

The High Court as well as the learned counsel for the respondent (who pressed upon us the reasons of the High Court) referred to the words of section 29 where, in addition to an "assessee" liable to pay the tax, occur the words "other person" liable to pay such tax, and observed that the respondent would fall to be governed by the words "other person" liable to pay such tax and not by the words "the assessee" liable to pay such tax. The High Court reasoned, therefore, that the words "an assessee" in sections 45 and 46 in their application are limited to an assessee, who is assessed on his own behalf and not "other person", who is not an assessee. This distinction, it observed, must be borne in mind in interpreting the word "assessee" used in sections 45 and 46, and so construing limited the word "assessee" in those two sections to an assessee proper. The words "other person" cannot apply to a legal representative, if he is an "assessee" by fiction, and the fiction has to be worked out to its logical conclusi

The appeal thus succeeds, and is allowed with costs here and in the High Court.

Appeal allowed.

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