

Commissioner of Income-Tax, Madhya Pradesh

Vs

Hukumchand Mohanlal

Civil Appeal No. 2421 of 1968

(K.S. Hegde, A.N. Grover JJ)

17.09.1971

JUDGMENT

GROVER J. -

This is an appeal by certificate from a judgment of the Madhya Pradesh High Court in an income-tax reference. The reference related to the assessment made on the assessee for the year 1962-63 for which the accounting period was the year ending March 31, 1962. The assessee carried on business as sole selling agent of M/s. Mohanlal Hargovindas, Jabalpur. The assessee succeeded to this business on the death of her husband on or about February 17, 1960. It would appear that M/s. Mohanlal Hargovindas had recovered a certain amount towards sales tax from the assessee's husband relating to the period January 26, 1950 to March 31, 1951. In an appeal filed by the said firm, however the Assistant Commissioner of Sales Tax remitted the sum of Rs. 24,341 so recovered by the firm by an order dated November 31, 1960. Consequently M/s. Mohanlal Hargovindas refunded that amount to the assessee by means of a draft dated October 31, 1961. This draft was received by the assessee on November 9, 1961, which fell in the accounting period. The Income-tax Officer sought to tax this amount under the provisions of section 41(1) of the Income-tax Act, 1961, hereinafter called the "Act". He did not accede to the contention of the assessee that the income, if at all, was the income of the assessee's deceased husband and not her income. The Appellate Assistant Commissioner dismissed the appeal filed by the assessee. The Tribunal acceded to the contention of the assessee that, since the allowance or deduction in question had been obtained by a different assessee, namely, her husband, she was not liable to pay tax on that amount under section 41(1) of the Act. The Tribunal was moved by the Commissioner of Income-tax for stating a case and referring the following question to the High Court :

"Whether the sum of Rs. 24,341 was liable to tax under section 41(1) of the Income-tax Act, 1961 ?"

The High Court answered the question in favour of the assessee.

Section 41(1) is in the following terms :

"41. (1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee, and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit accruing to him, shall be deemed to be profits and gains of business or

profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance of deduction has been made is in existence in that year or not."

As pointed out by the High Court, under the general law if a trading liability has been allowed as a business expenditure and if this liability is remitted in any subsequent year, the amount remitted cannot be taxed as income of the year of the remission nor can the account for the year in which the liability was allowed be reopened or adjusted. Section 41(1) was enacted to supersede this principle but this section can apply only to the assessee. In the present case if the husband of the assessee had been alive and had received the amount which had been remitted during his lifetime. He would certainly have been liable to pay tax under the provisions of section 41(1). But Kanhaiyalal having died and his widow being the "assessee" she cannot possibly be brought within the section. Section 2(7) of the Act defines the word "assessee". The definition is very general and assessee is stated to mean a person by whom income-tax or super-tax or any other sum of money is payable under the Act and includes every person as mentioned in clauses (a), (b) and (c). The assessee, in the present case, does not fall within any of those clauses. There is no specific provisions in the Act under which it can be said that the assessee is a person by whom income-tax is payable on the amount of Rs. 24,341 which came to her by way of remission on account of what had transpired in the lifetime of her husband. The Act does not contain any provision making a successor in business or the legal representative of an assessee to whom an allowance has already been granted, liable to tax under section 41(1) in respect of the amount remitted and received by the successor or the legal representative. The only provision which relates to the liability of the legal representative is sanction 159 of the Act. Sub-section (1) thereof provides that where a person dies his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not dies on the like manner and to the same extent as the deceased. The corresponding provision in the Income-tax Act, 1922, was section 24B. In *Commissioner of Income-tax v. Amarchand N. Shroff* it was laid down by this court that section 24B did not authorise the levy of tax on receipts by the legal representative of a deceased person in the year of assessment succeeding the year of account being the previous year in which such person dies. The assessee had ordinarily to be a living person and could not be a dead person. By section 24B the legal personality of the deceased assessee was extended for the duration of the entire previous year in the course of which he died. The income received by him before his that previous year became assessable to income-tax in the relevant assessment year. Any income received in the year subsequent to the previous year or the accounting year could not be called income received by the deceased person. Thus the provisions of section 24B did not extend to tax liability of the estate of a deceased person beyond the previous or the accounting year in which that person dies. To the same effect is the decision in *Commissioner of Income-tax v. James Anderson*. Indeed, the learned counsel for the revenue did not and could not rely on the provisions of section 159 of the Act in the present case nor was any reliance placed on any other section in the Act apart from section 41(1). The question referred is also based on that very section. That section, in our opinion cannot possibly apply to the present case because the assessee who is now sought to be taxed is not the assessee contemplated by that section. The assessee within section 41(1), namely, Kanhaiyalal having died the revenue could not take any advantage of its provisions. The High Court rightly observed that the question whether the amount of Rs. 24,341 was liable to tax as the personal income of the assessee did not arise in the present case in which the sole point to be decided was whether that amount was assessable in the assessee's hands under section 41(1) of the Act.

We, therefore, entirely concur in the view of the High Court and agree with the answer returned by it. In the result the appeal fails and it is dismissed with costs.

Appeal dismissed.

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