

M. Rajamoni Amma And Another

Vs

Deputy Commissioner of Income-Tax (Assessment) and Others

Civil Appeals Nos. 867 and 868 of 1992

(S. Ranganathan, V. Ramaswami II, Yogeshwar Dayal JJ)

20.02.1992

ORDER

The appellants are directors of a company known as Messrs. Rajmohan Cashews Ltd. For the assessment years 1977-78 to 1982-83, assessments were completed on the company and a demand of Rs. 56 lakhs was raised. This amount was not paid for various reasons and so, on April 30, 1989, the Deputy Commissioner passed an order holding the appellants, who are directors of the company liable to pay the tax due from the company in view of the provisions of section 179 of the Income-tax Act, 1961. The appellants preferred revision petitions before the Commissioner of Income-tax without success. At these two stages, no point was taken on behalf of the appellants that the company was not a private limited company and, therefore, the proceeding under section 179 of the Income-tax Act were unjustified. However, subsequently, this objection was taken in an application under section 154 of the Act filed before the Commissioner of Income-tax. But the Commissioner of Income-tax rejected this contention on the ground that it had not been raised earlier and that there was no mistake apparent on the face of the record which needed rectification. Thereupon, the appellants preferred writ petitions before the High Court. The learned single judge of the High Court dismissed the writ petitions and the appeals before the Division Bench (see [1991] 192 ITR 90) were also unsuccessful.

Before the Commissioner of Income-tax as well as before the High Court, the appellants had produced a letter received by the company from the Registrar of Companies recognising that the company has become a public limited company by virtue of section 43A(1A) of the Companies Act, with effect from October 1, 1975. This letter was dated February 26, 1977. Before the High Court, it appears to have been represented on behalf of the Income-tax Department that no office copy of this letter was found in the office of the Registrar of Companies. The suggestion, therefore, was not that this letter was a fabricated one. The High Court, as already mentioned, dismissed the writ petitions.

Before us, learned counsel for the appellants, relied upon the above communication from the Registrar of Companies but since the genuineness of this letter was doubted, we issued notice to the Registrar of Companies, Kerala. An affidavit has now been filed on behalf of the Registrar. It clearly shows that the company had become a public limited company by virtue of section 43A of the Companies Act with effect from October 1, 1975. As already mentioned, the arrears sought to be recovered from the appellants relate to the assessment year 1977-78 to 1982-83. Obviously, the company being a public limited company, proceedings against the directors for recovery of the tax due from the company cannot be taken, and certainly not proceeded with, under section 179 of the

Income-tax Act, 1961. We need hardly say article 265 of the Constitution clearly prohibits any attempt to recover taxes under the authority of law. It is, therefore, clear that further proceedings against the appellants for recovery of the tax due from the company have to be stayed.

For the reasons stated above, we allow these appeals, quash the order passed under section 179 of the Income-tax Act, 1961, by the Deputy Commissioner and the further orders passed by the Commissioner of Income-tax in revision and under section 154 of the Act. Further proceedings against the present appellants for recovery of the tax due from the company should not be taken. We, however, should not be understood as having in any way restricted the powers of the Department to recover the amounts due from the company by other processes in accordance with law. We also make it clear that any amounts which might have been paid either by the appellants or by the company in the course of the proceedings now under challenge will not be liable to be refunded to the appellants. No costs.

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