

Commissioner of Income-tax, Shilong

Vs

Jai Prakash Singh

Civil Appeal Nos. 2542-2544 of 1977

(B. P. Jeevan Reddy, S. B. Majmudar JJ)

13.03.1996

JUDGEMENT

B. P. JEEVAN REDDY, J. :-

1. These appeals are preferred against the judgment of the Gauhati High Court answering the following question in favour of the assessee and against the revenue :-

"Whether on the facts and in the circumstances of the case, the Tribunal was correct in holding that non-service of notice under Section 143 (2) of the Income-tax Act, 1961, against nine out of the ten legal representatives of the deceased Shri B. N. Singh did not invalidate the assessment orders of the Income-tax Officer relating to the assessment years 1965-66, 1966-67 and 1967-68, and that it was at best an irregularity for which the Appellate Assistant Commissioner was justified in setting aside the assessments and it was not a case fit for cancellation of the assessments"?

2. One B. N. Singh had extensive business interests. He did not file a return for the Assessment Years 1965-66, 1966-67 and 1967-68. He died on April 16, 1967. He left behind ten legal representatives comprising three widows, four sons and three daughters. The eldest son, Jai Prakash Singh, filed the returns for the said three assessment years on March 17, 1970, November 12, 1970, and October 27, 197, respectively. The returns were signed by Jai Prakash Singh alone - not by other legal representatives. In these returns, Jai Prakash Singh disclosed the income received by late B. N. Singh from all his business interests and properties. (It may be emphasised that B. N. Singh died after the close of the accounting year relevant to Assessment Year 1967-68 - in fact, sixteen days after the commencement of the Assessment Year 1967-68). The returns filed by Jai Prakash Singh were scrutinised by the Income-tax Officer who also issued notices under Sections 142 (1) and 143 (2) to him to appear and produce documents, accounts and other material. He complied with the same. No objection was raised by Jai Prakash Singh before the Income-tax Officer in the said assessment proceedings that notice must be given to the other legal representatives of late B. N. Singh. Assessment orders were made mentioning the names of all the ten legal representatives against the column "name of the Assessee". They were described as "legal representatives of late B. N. Singh". Assessment was made in the status of "individual". Appeals were filed by Shri Jai Prakash Singh contending for the first time therein that inasmuch as all the legal representatives of B. N. Singh, were not given notice of the assessment proceedings, the assessments made were illegal and void and must be so declared. The Appellate Assistant Commissioner rejected the contention. While taking note of the fact that "B. N. Singh's death and the names of his legal representatives were intimated to the Income-tax Officer shortly after his death", he held that completing the assessment without serving notices upon all the legal representatives was only an

irregularity in completing the assessment. Accordingly, he set aside the assessment orders and remitted the matters to the Income-tax Officer for making fresh assessments after notice to all the legal representatives. Jai Prakash Singh filed further appeals before the Tribunal raising the very same contention but to no avail. It is then that the aforesaid question was referred for the opinion of the High Court.

3. The High Court referred to the definitions of "assessee" and "legal representatives" in Clauses (7) and (29) of Section 2 as well as to Section 159 of the Act and held that in the absence of service of notice on all the legal representatives, the assessment made upon them is a nullity and not a mere irregularity. It has accordingly set aside the direction of the Appellate Assistant Commissioner (affirmed by the Tribunal) remitting the matters to Income-tax Officer for making fresh assessments after notice to all the legal representatives.

4. The question that arises in these appeals is whether in the facts and circumstances of the case, the orders of assessment made by the Income-tax Officer without notice to all the legal representatives of B. N. Singh are null and void in law or merely irregular/defective proceedings which can be set right by remitting the matters to Income-tax Officer for making fresh assessments with notice to all legal representatives.

5. The expression 'assessee' is defined in Clause (7) of Section 2 in the following words :

"assessee" means a person by whom any tax or any other sum of money is payable under this Act, and includes :

(a) Every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person ;

(b) every person who is deemed to be an assessee under any provision of this Act;

(c) every person who is deemed to be an assessee in default under any provision of this Act."

6. Clause (29) in Section 2 defined the expression "legal representative" in the following words :

"2 (29) "legal representative" has the meaning assigned to it in Clause (11) of Section 2 of the Code of Civil Procedure, 1908 (5 of 1908)."

7. Section 2(11) of the Code of Civil Procedure defines the said expression as follows :-

2(11) "legal representative" means a person who in law represents the estate of deceased person. and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued."

Section 159 of the income-tax Act, which is relevant in this behalf, reads:

"159, Legal representatives. (1) 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

died, in the like manner and to the same extent as the decease.

(2) For the purpose of making an assessment (including an assessment, reassessment of recomputation under Section 147 of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1)-

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representatives and may be continued against the legal representatives from the stage at which it stood on the date of the death of the deceased;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representatives; and

(c) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purpose of the Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub-section (2) of Section 161. Section 162 and Section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability."

8. Dr. Gauri Shankar, learned counsel for the Revenue, contended that in the facts and circumstances of the case the assessment orders cannot be said to be null and void. At worst, they are irregular orders. This is not a case where no notice was served upon the legal representatives and an assessment made. Even before service of any notice, returns were filed by one the legal representatives (Jai Prakash Singh) voluntarily. The returns were filed by Jai Prakash Singh taking advantage of the provisions contained in sub-section (4) of Section 139; actually the time for filing the returns had expired by the time they were filed. The violation, if any, was not serious enough to declare the entire proceedings a nullity. Shri N. R. Choudhary, learned counsel for the assessee, on the other hand, submitted that an assessment made on persons without notice to them is a clear case of violation of principles of natural justice and, hence the assessments are null and void. Since the proceedings are a nullity in law there was no question of sending the matters back to the Income-tax Officer for making fresh assessments. The learned counsel commended the reasoning and conclusion of the High Court for our acceptance.

9. Before we proceed to answer the question it is necessary to keep in mind the facts of the case. B.

N. Singh died on April 16, 1967. He failed to file a return for the Assessment Years 1965-66 and 1966-67 within the time prescribed. So far as the assessment Year 1967-68 is concerned, he, of course, died before the expiry of the period prescribed for filing the return. No return was filed for the Assessment Year 1967-68, also within the prescribed period. Jai Prakash Singh, however, wanted to take advantage of the provision contained in Section 139(4) - which enables an assessee to "furnish the return for any previous year at any time before the end of the period specified in clause (b)" provided the assessment is not made by the time of filing the return. (Clause (b) of the said subsection specifies various periods of limitation; in respect of the assessment years concerned herein, it is four years from the end of the relevant assessment year.) The returns were filed voluntarily disclosing the income received by B. N. Singh during the relevant accounting years by one of his legal representatives inviting an assessment. The names of all the legal representatives were already intimated to the Income-tax Officer (as found recorded in the orders of the appellate Assistant Commissioner and the Tribunal though the occasion for giving such information is not evident from the record. It is also not clear who gave the information regarding the death of B. N. Singh and his legal representatives and in what connection). It is true that the returns were signed only by Jai Prakash Singh and not by the other nine legal representatives, but it should also be remembered that when notices under Sections 142(1) and 143(2) were issued to Jai Prakash Singh, he appeared through his Authorised Representative and produced the relevant books and accounts on the basis of which assessments were made. Jai Prakash Singh did not raise an objection before the Income-tax Officer that unless and until notices to all the other legal representatives are sent, assessment orders cannot be made. He raised this question for the first time in the appeals preferred by him before the Appellate Assistant Commissioner and, thereafter, before the Tribunal. It appears rather curious that Jai Prakash Singh who had voluntarily filed the returns of income should raise this issue; no other legal representative of B. N. Singh has come forward with such a plea. We do not wish to go into the question whether Jai Prakash Singh should at all have been allowed to so turn round and raise this plea in appeal, for the reason that the said issue is not before us in these appeals.

10. We are of the opinion that the High Court was not right in holding in the above circumstances that the assessment orders made are null and void. They are not. At the worst, they are defective proceedings - or irregular proceedings - as has been rightly held by the Tribunal. In *Chatturam v. Commissioner of Income-tax, Bihar*, (1947) 15 ITR 302 : (AIR 1947 FC 32), it has been held by the Federal Court that the liability to pay the tax arises by virtue of Section 3 and 4 of the Indian Income-tax Act, 1922, (charging sections) and that Section 22 and other sections to determine the quantum of tax. The following observations are apposite (para 8 of AIR.) :

"The Income-tax assessment proceedings commence with the issue of a notice. The issue or receipt of a notice is not, however, the foundation of the jurisdiction of the Income-tax Officer to make the assessment or of the liability of the assessee to pay the tax. It may be urged that the issue and service of a notice under Section 22(1) or (2) may affect the liability under the penal clauses which provide for failure to act as required by the notice. The jurisdiction to assess and the liability to pay the tax, however, are not conditional on the validity of the notice. Suppose a person, even before a notice is published in the paper under Section 22(1), or before he receives a notice under Section 22(2) of the Income-tax Office and submits his return, it will be futile to contend that the Income-tax Officer is not entitled to assess the party or that the party is not liable to pay any tax because a notice had not been issued to him. The liability to pay the tax is founded in Sections 3 and 4 of the income-tax Act, which are the charging sections. Section 22 etc, are the machinery sections to determine the amount of tax."

(Emphasis added)

11. In *Maharaja of Patiala v. Commissioner of Income-tax, (Central), Bombay*, (1943) 11 ITR 202 : (AIR 1943 Bom 102), a decision rendered by the Bombay High Court, the facts were these : the late Maharaja of Patiala had income from property and business in British India. He died on March 23, 1938. On November 23, 1938, the Income-tax Officer, Bombay sent two notices under Sections 22(2) and 38 of the Indian Income-tax Act, 1922, addressed to the Maharaja of Patiala requiring him to make a return of his income from all sources for the Assessment Years 1937-38 and 1938-39. They were served upon the successor Maharaja. Returns were filed, signed by the Foreign Minister of Patiala. The Income-tax Officer passed assessment orders describing the assessee as "His Highness.....late Maharaja of Patiala". The succeeding Maharaja appealed against the assessment orders contending that inasmuch as the notices were sent in the name of Maharaja of Patiala and not to him as the legal representative of the Maharaja of Patiala, the assessments made were really addressed to the late Maharaja, who was not alive when the said notices were issued and that they were wrongly served upon him. The argument was rejected by the authorities under the Act as well as by the High Court on reference. The Division Bench comprising Beaumont, C. J. and Kania, J. held that inasmuch as the present Maharaja, (who raised the contention of nullity) was the legal representative of the late Maharaja of Patiala and because the return of the Late Maharaja's income was made by the Foreign Minister on his behalf and because he knew perfectly well that what was being assessed was the income of his predecessor, the assessment made, though not complying strictly with Section 24-B (corresponding to Section 159 of the present Act), is yet valid. The following observations of Beaumont, C. J., are relevant for our purposes (at P. 106 of AIR) :

"In this case the person to be assessed was the late Maharaja, who had died before he was served with any notice under Section 22, and therefore, the provisions of Section 24-B (2) apply, and the Income-tax Officer was entitled to serve on the executor, administrator or other legal representative of the deceased Maharaja a notice under Section 22 (2) or under Section 34 as the case might be, and then proceed to assess the total income of the deceased Maharaja as if such executor, administrator or other legal representative were the assessee. As observed by the president of the Tribunal in his judgment, the Income-tax Officer made no attempt to observe the provisions of that sub-section. He served the notice on the present Maharaja, without showing in what capacity. But the Tribunal have found, as a fact, that the present Maharaja is the legal representative of the deceased Maharaja, and although it would obviously have been better so to describe him in the notice, I am not prepared to say that the notice, was bad, if it was served on the legal representative, merely because it omitted to state that it was served in that capacity. It should have been stated that it was served on the legal representative of the late Maharaja, and that the return required was of the late Maharaja's income. It was not so stated, and the present Maharaja himself may have had taxable income for the years in question; but I think there is a good deal of force in the contention of the Tribunal that any irregularities in this respect were waived by the Maharaja, because returns of the late Maharaja's income were made by the Foreign Minister on behalf of the Maharaja. There is no doubt that the present Maharaja knew perfectly well that what was being assessed was the income of his predecessor."

12. To the same effect are the observations of Kania, J. in his separate but concurring opinion. The decision, one of the earliest on the subject, shows that an assessment made without strictly complying with Section 24-B (Section 159 in the present Act) is not void or illegal and that any

infractions in that behalf can be waived by the assessee.

13. In *Estate of Late Rangalal Jajodia v. Commissioner of Income-tax, Madras*, (1971) 79 ITR 505 : (AIR 1971 SC 147), it was held by this Court (para 13 of AIR) :

"The lack of a notice does not amount to the revenue authority having had no jurisdiction to assess, but that the assessment was defective by reason of notice not having been given to her. An assessment proceeding does not cease to be a proceeding under the Act merely by reason of want of notice. It will be a proceeding liable to be challenged and corrected."

14. The facts in this case are telling. They are : Rangalal Jajodia filed his Income-tax return for the Assessment Years 1942-43 and 1943-44 under the Income-tax Act as well as under the Excess Profits Tax Act. Before the assessments were completed, he died (on January 11, 1946). Rangalal had a son, Shankar Lal, by his pre-deceased wife. He married a second time and had children from the second wife, Aruna Devi. Rangalal executed a Will totally disinheriting Shankar Lal and appointing Aruna Devi and another as executors of his Will. The Income-tax Officer, probably unaware of the Will, gave notice to Shankar Lal, who objected that he is not the legal representative of the deceased and that the second wife (Aruna Devi) and the other executor are the proper persons to be notified. The Income-tax Officer called for a copy of the Will but it was not produced. The Income-tax Officer, thereupon completed the assessment describing the assessee as "the estate of late Shri Rangalal Jajodia by legal heirs and representatives Shri Shankar Lal Jajodia son of Rangalal Jajodia, Smt. Aruna Devi wife of Rangalal Jajodia and her Children". Appeals were preferred by the second wife, Aruna Devi, contending inter alia that the assessments having been made without notice to her or the other executor were illegal and invalid. This plea was rejected by the Appellate Assistant Commissioner and the Tribunal, who remitted the matters to the Income-tax Officer to complete the assessments after notice to Aruna Devi. The High Court too rejected the said contention whereupon the matter was brought to this Court, which held that absence of notice to Aruna Devi makes the assessment merely defective but not null and void. It is in this connection that the aforesaid observation was made. This Court sustained the direction given by the Appellate Assistant Commissioner to the Income-tax Officer to make fresh assessment on Aruna Devi in accordance with the provisions of the Act. This decision, in our opinion, is sufficient to reject the assessee's contention herein. If an assessment made with notice to Shankar Lal (who was not really the legal representative of the deceased Rangalal) and without serving notice upon the lawful legal representatives (Aruna Devi, the other executor or Aruna Devi's children) - that too, despite the objection of Shankar Lal that he is not the legal representative and that notice must be sent to Aruna Devi etc., who are the legal representatives of the deceased Rangalal - is only "defective" and not null and void, it would be rather odd to contend that assessments made on the basis of returns filed by one of the legal representatives (disclosing the total income received by the deceased) is null and void on the ground that notices were not sent to other legal representatives. The principle that emerges from the above decision is that an omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay tax where such liability is created by distinct substantive provisions (charging sections). Any such omission or defect may render the order made irregular - depending upon the nature of the provision not complied with - but certainly not void or illegal.

15. In this view of the matter, we do not think it necessary to refer to certain other decisions of the High Courts cited before us which have turned mainly on the basis of facts in each case. It is equally unnecessary for us to go into the meaning of the expressions "void", "void ab initio", "voidable" or

"a nullity" - a fairly complicated exercise.

16. The appeals are accordingly allowed, the judgment of the High Court set aside and the question referred answered in the affirmative, i. e., in favour of the Revenue and against the assessee. The Revenue shall be entitled to its costs which are quantified at Rupees ten thousand consolidated.

Appeals allowed.