# CALCUTTA HIGH COURT

Asit Kumar Ghosh

Vs

Commissioner of Income Tax

(Chakravartti, C.J.)

25.05.1953

## JUDGEMENT

**Chakravartti, C.J**

( 1. ) THE question referred in this case might well have been a larger and a more difficult one, but all that it comprises and all that really arises out of the order of the Tribunal is a very slender point. THE answer to that point, to my mind, is plain.

( 2. ) THE facts are these. THE assessee is the adopted son of one Akshoy Kumar Ghosh who died in 1931, leaving a large estate, a widow and a will. By the will he directed certain payments to be made out of the income of his properties and bequeathed the residue of the estate to his natural son or sons, if any were alive at his death, or, in the absence of such son or sons to the son who might be adopted by his widow for which he gave her the requisite authority. Three persons were appointed executors who were directed to pay the legacies as also to hold and administer the estate, in case there was an adopted son, till that son attained the age of twenty years. In pursuance of the authority given to her by the will, the widow adopted the assessee shortly before her death, which took place in 1933. Of the three executors two accepted the office, took out probate and remained in possession and management of the estate till the year 1948. In that year the assessee was appointed receiver, in a suit brought by him against the executors, by an order made on 12th Aug. 1948, and he was put in possession of the estate on 23rd August following. THE order was an order passed by the Court on its original side. It is important to remember that at the time the assessee was appointed receiver, the administration of the estate by the executors had not been completed. The assessment year in question in the present case is 1944- 45. The notice under s. 22(2) of the IT Act, calling for a return in respect of that year, was issued on 16th Sept., 1944, and naturally it was addressed to the executors. They submitted a return on 22nd June, 1948, but even when the assessee was appointed, receiver and took over the estate from the executors in 1948, the assessment proceeding was still pending. On 15th Sept., 1948, a pleader wrote to the ITO on behalf of the assessee, informing him of the assessee's appointment as receiver and asking him to amend the records by substituting the assessee's name in the place of those of the executors. It was stated that a certified copy of the High Court's order would be produced as soon as it was obtained. Apparently, this intimation was disregarded and further notices continued to be issued in the names of the executors. On 20th Jan., 1949, however, there

was a letter from the assessee himself in which he referred to the application for the substitution of his name made by him earlier and with which he enclosed a copy of an order of this Court dt. 6th Sept., 1948, according, as it was said, to the direction of the ITO. By the said letter the assessee also prayed that a notice might be issued to the executors for the production of accounts, because they were in possession of the books. The assessee was thereafter brought on the record in the place and stead of the executors and the assessment was completed after some examination of the books in which the executors appear to have participated. The assessee did not accept the assessment and preferred an appeal to the AAC. Before that officer it was contended by the assessee that no assessment could be levied on him for the assessment year in question under either s. 41(1) of the IT Act or any other section. The contention was overruled and when repeated before the Tribunal, it met with the same fate. The reason given for the rejection of the plea was that it was at the assessee's own request that he had been substituted and that the order of the High Court which he had produced authorised him to take charge of all proceedings pending against the estate. The assessee thereafter, required the Tribunal to refer the question to this Court and it has been referred in the following form :"Whether in view of the fact that the applicant receiver was substituted for the executors on the records of the assessment on his own application pursuant to the orders of the High Court, the assessment on the applicant for the asst. yr. 1944-45 was sustainable in law." The question assumes that but for the substitution of the assessee at his own request, the assessment levied on him would not have been legal and the only issue raised is whether the substitution validated the assessment. "

( 3. ) ON behalf of the CIT it was conceded by Mr. Meyer that in view of the form in which the question had been framed, it was not open to him to argue in this reference that the assessment made on the present assessee was valid in law, quite apart from the effect of the substitution at his own request. Accordingly, he submitted that the utmost which he would say was that the assessee who had misled the ITO into making an assessment on him, could not be allowed to turn round and repudiate his liability to assessment and further, that the effect of the order of the High Court was to make the assessee the proper person to be brought on the record and assessed. I am unable to accept either of those contentions as sound. A similar assessment made on the same assessee under the Bengal Agrl. IT Act came up for consideration before Mr. Justice Bachawat and myself in the case of *Asit Kumar Ghose vs. Commr. of Agrl. IT*[1] when we held the assessment to be invalid. The assessment year there in question was 1946-47, the relevant accounting year being 1352 B. S. The assessment year in question in the present case is 1944-45, a much earlier year. The relevant provisions of the Indian IT Act and the Bengal Agrl. IT Act in this regard are precisely similar, although in the arrangement of the sections in which they have been enacted there is a slight difference. The question whether a receiver can be validly assessed in respect of the income of a previous period which had been received during their administration by certain executors whom he had replaced and against whom the assessment proceeding had at its inception been initiated is not before us in the present case. The question referred assumes, as I have said, that a receiver could not be so assessed and only asks whether the fact that he got himself substituted on his own application makes any difference. The latter point did not arise in the previous case quite in the same form, although the question whether the compliance by the assessee of notices served upon him during the later stages of the proceedings validated the assessment, was considered. ;

Cases Referred.

1(1952) 22 ITR 177 (Cal)