CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs

Asit Kumar Ghosh

(Chakravartti, C. J.)

25.05.1953

JUDGMENT

Chakravartti, C. J.

1. The question referred in this case might well have been a larger and 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. 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 and 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 requisite authority. Three persons were appointed executors who were directed to pay the legacies as also to hold an administer the state, in case there was an adopted son till that son attained the age of 20 years. In pursuance of the authority given to her by the will, 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 remain in the possession and management till the year 1948. In that year the assessee was appointed receiver, in a suit brought by him was against the executors, by an order made on 12th August, 1948, and he was put in possession of the estate on August 23 following. The order was an order pass by this Court on its original side. It is important to remember that at the time the assessee was appointed receiver, the administration of the state by the executors had not been completed.The assessment year in question in the present case is 1944-45. The notice under Section 22 (2) of the Income-tax Act, calling for return in respect of that year, was issued on 16th September, 1944, and naturally it was addressed to the executors. They submitted a return on 22nd June, 1948, but even when the assessee was appointed a receiver and took over the estate from the executors in 1948, the assessment proceeding was still pending. On 15th September, 1948, a pleader wrote to the Income-tax Officer on behalf of the assessee, informing him of the assessees appointment as receiver and asking him to amend the record by substituting the assessees named in the place of those of the executors. It was stated that a certified copy of the High Courts order would be produced as soon

obtained. Apparently, this intimation was disregarded and further notices continue to be issued in the names of the executors. On 20th January, 1949, however, there was a letter from the assessee himself in which he referred to the application for the substitution of his named made by him earlier and with which he enclose a copy of an order of this Court dated 6th September, 1948, according, as it was said, to the direction of the Income-tax Officer. By the said letter the assessee also prayed that a notice might be issued to the executors for the production of the 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 Appellate Assistant Commissioner. 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 Section 41 (1) of the Income-tax Act or any other section. The contention was over ruled and when repeated before Appellate Tribunal, it met with the same fate. The reason given for the rejection of the plea was that it was at the assessees own request that he had been substituted and that was at 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 assessment year 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.

On behalf of the Commissioner of Income-tax 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 could say was that the assessee who had misled the Income-tax Officer into making an assessment on him, could not be allowed to turn round and repudiate his liability to the 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 Agricultural Income-tax Act came up for consideration before Mr. Justice Bachawat and myself in the case of *Asit Kumar Ghose v. Commissioner of Agricultural Income-tax, West Bengal*[1] when we held the assessment to be invalid. The assessment year there in question was 1946-47, the relevant accounting year being 77352 B. S. The assessment year in question in the present case is 1944-45, a much earlier year. The relevant provisions of the Indian Income-tax Act and the Bengal Agricultural Income-

tax 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.As to the two contentions urged by Mr. Meyer, the first is really a plea of estoppel. I do not, however, see how if the Act does not authorised the assessment of the assessee for the income which had neither been received by him nor received by the executors on his behalf, there could be an estoppel against the statute. Estoppel is only a rule of evidence and not a cause of action. In any event, estoppel is not a basis of liability to assessment under the Indian Income-tax Act, and, therefore, the assessment of a person for an amount of income to which he is a stranger cannot be based on the ground that he himself wanted to be assessed on it. Nor do I find the necessary ingredients of estoppel present in the facts of the case. In order that estoppel can be made out, it must be established that the person sought to be estopped made a representation of fact which was not known to the person to whom representation was made and that by such representation, the latter was made to alter his position which he would not have otherwise done. All that happened in the present case was that the assessee brought the order of the High Court to the notice of the Income-tax Officer and asked to be substituted on the basis of that order, as he understood it. He made no representation of fact on his own account and did not seek either to lead the Income-tax Officer or to mislead him, but only made an application, praying for a certain relief, supported by the evidence on which he relied. On such an application being made, the Income-tax officer was not required to be guided by anything which the assessee had said, but it was has clear duty to consider the application and the evidence adduced in support of it on their merits and allow or disallow the prayer, just as he thought fit. No question of estopped in my view could conceived arise.The next branch of Mr. Meyers argument was that in any event, the order of the High Court required the Income-tax Officer to substitute the assessee or, at any rate, directed the assessee to be substituted in all proceedings pending against the estate. Again, I am unable to agree. I may point out, however, that the order which the Tribunal has included in the paper book is not the order which the assesseee produced before the Income-tax Officer at the time he wrote the letter, dated 20th January, 1949. The document included in the paper book contains the preliminary decree passed in the administration suit on 12th August, 1948, by which the asssessee was appointed receiver "with all the powers provided for in Order XLI, rule I, of the Code of Civil Procedure" except that he would not be allowed to being without leave any suits other than suits for rent and ejectment. It appears that thereafter there was a further order passed on 6th September, 1948, by which the assessee as receiver was given the liberty "to prosecute and/or defend all suits, appeals, executions and others legal proceedings already filed or started by or against the defendants as

executors." It was further directed by the same order that the assessee as receiver would be "at liberty to apply before the appropriate Court for being substituted or being made a party in all such legal proceeding as aforesaid pending in respect of the said estate." Mr. Meyer contended that in view of that order, the assessee had to be substituted if he applied for substitution and, therefore the assessment made on the substitution being applied for and made was perfectly valid. In my view, Mr. Meyer claimed for the order of the High Court far greater effect than it was intended to have or than it cold have in law. That High Court only have the assessee liberty to apply for substitution in legal proceedings pending against the estate, but it did not say that in whatever proceedings the assessee might apply, he would have to be substituted and that the substitution would be valid and effective, even if the relevant law did not permit such substitution. The order of the High Court meant and could only mean that the assessee could have the liberty to apply for substitution in a pending proceeding, if he was so advised. But whether he would be actually substituted or not would depend upon the nature of the proceeding. The present assessment proceeding was a proceeding against the executors in respect of some income which had not been received by them on behalf of the assessee, but which was their own income, in view of the fact that at the relevant time the administration of the estate had not been completed. That is the position in law and so it was declared to be by the Privy Council with respect to the status of these very executors in the case of P. C. Mullick v. Commissioner of Income-tax, Bengal ([1938] 6 ITR 206). There is no provision in the Income-tax Act which provides for the substitution of a subsequently appointed receiver in the place and stead of executors, who had previously been in possession, in an assessment proceeding commenced against the executors in respect of income received by them during their administration. Asked by us if he could point to any such provision in the Act, Mr. Meyer frankly conceded that he was unable to do so. If is could be said under the Income-tax Act that a receiver in such circumstances could be treated as the legal representative of the executors who had previously been in possession, the order of the High Court could be utilized in proof of the fact that the assessee was the receiver in the present case and, therefore, he was the person competent to apply and eligible for substitution. But if the Act itself does not permit such substitution, the order of the High Court could not authorise something for which the Act does not provide. I am accordingly of opinion that the fact that the assessee applied for substitution, "pursuant to the orders of the High Court, " did not in any way strengthen his position or qualify him for substitution, although under the Income-tax Act itself he was not so qualified.Before I started dictating this judgment this morning, Mr. Meyer drew our attention to the decision of the Bombay High Court in the case of Maharaja of Patiala v. Commissioner of Income-tax (Central), Bombay ([1943] 11 ITR 202). The case cited not, as Mr. Meyer frankly conceded, because it covered the point involved in the present case, but because it went very near the point and was an illustration of instances where irregularities in assessment proceedings had been held not to invalidate the ultimate assessment. I am unable to see that the decision cited has any bearing on the question which we have to decide. There the Income-tax Officer intended to call for the return of the old Maharaja of Patiala, but the notice was addressed to the new Maharaja without any indication that it was in respect of the income of the late Maharaja that a return was wanted.

That notice was attended to by the Foreign Minister of the new Maharaja and a return was duly submitted. On that return, an assessment was made and against the name of the assessee in the assessment order written the name "His Highness Maharaja Sir Bhupindra Singh late Maharaja of Patiala." The position, therefore, was that a notice calling for the return was served upon the death of an assessee on his legal representative without, however, the addressee being described as such representative. But the legal representative, so served with the notice understood it to relate to the income of his predecessor and submitted a return for his income. In those circumstances, it was observed by Sir John Beaumont that "any irregularities in this respect were waived by the Maharaja." The learned Chief Justice, however, was careful to add that he did not wish to give any countenance to the idea that the provisions of Section 24B need not be strictly complied with and that he was saying that the assessment was valid, though not strictly made in accordance with the provisions of Section 24B only in the particular facts of that case and having regard to the fact that the question had become one of merely academic interest. Mr. Justice Kania, who agreed with the learned Chief Justice in holding the assessment to be valid, put the true position, if I may say so, more concisely and correctly when he described the argument advanced on behalf of the Department. The argument, he said, was that if the notice had, in fact been served on the legal representative and had been understood by the party receiving it as served on him in that character there was no reason why the assessment itself should be held invalid for the slight irregularity which had occurred. It will be noticed that in that case the new Maharaja of Patiala was, in fact, the legal representative and the only irregularity was that the notice did not describe him as such, but despite that irregularity the notice was understood in its true character and complied with accordingly. In the present case if the assessee as receiver had been the proper person under the Income-tax Act to be substituted in the assessment proceeding, started in respect of the income received by the executors the fact that he had himself applied for substitution might have been sufficient to regularise the proceedings, although the usual notices might not have been served upon him. The position, however, is entirely a different one and in my view wholly incurable.For the reasons given above, the answer to the question referred must, in my opinion, be : "No."As regards the costs of the reference, the conduct of the assessee had been wholly unmeritorious. He shall have no costs.

LAHIRI, J.-I agree.

Reference answered accordingly.

Cases Referred

[1]([1952] 22 ITR 177)