

BOMBAY HIGH COURT

Commissioner of Income Tax

Vs

D N Mehta

(Beaumont,C.J.)

22.08.1934

JUDGEMENT

Beaumont,C.J

(1.) THIS is a reference made by the Commissioner of Income Tax on his motion under Section 66 (1), Income Tax Act, 1922, in which he raises two questions, the first one being, in effect, whether Section 24-B, which was added to the Income Tax Act by the Income Tax (Second Amendment) Act of 1933 has retrospective effect so as to apply to the case of a person dying before the Amendment Act was passed, and, secondly, whether, if the Amendment Act has retrospective effect, the Commissioner was justified in taking action against the assessee under Section 34, Income Tax Act. It was held by this Court in Commissioner of Income Tax v. Reid, which was decided at the end of the year 1930, that where a person dies after the commencement of the financial year, but before his income has been assessed for the purpose of income tax, his estate is not liable to pay the tax. The amendment Act was passed on 11th September, 1933, no doubt, with a view to removing the difficulties pointed out in that case. In the present case the only material facts are that on 20th April, 1932, a notice was served on Bai Avabai N. Mehta under Section 22(2). Income Tax Act, requiring her to make a return in respect of her income for the year 1932-33. She died on 6th May, 1932, before any return had been made, and the question which arises is whether her estate is liable for the tax in respect of the year 1932-33 under the provisions of the Amendment Act, she having died before the Act was passed. Section 11 of the Amendment Act provides that after Section 24 of the principal Act, the following Sections shall be inserted, namely : Of the sections so inserted, Section 24-B is the material one for the present purpose. That provides in sub-Section (1) that Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge, the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died. Then sub-sections (2) and (3) deal with methods of assessment, and for the present purpose it is only necessary to notice that each sub-section commences with the words, where a person dies. The view taken by the Commissioner is that the principal Act charges tax upon the deceased, and that the Amendment Act merely provides the machinery for making the charge effective so that once the machinery is there, the tax charged can be collected, whatever the date of the death of the deceased. It is, I think, correct to say that Section 3 of the principal Act

charges the tax upon every one coming within the purview of the Act who was alive at the beginning of the financial year, but in the case of a person dying before assessment, that liability was inchoate only, and crystallized into an enforceable liability for the first time on the passing of the Amendment Act. It is therefore not quite accurate to say that the Amendment Act merely deals with machinery; it does for the first time impose an enforceable liability. The principle which must always be applied in construing a taxing Act is that the Government must show that the tax sought to be recovered has been imposed in language which admits of no reasonable doubt. The opening words of each sub-section to Section 24-B : Where a person dies, though the use of the present tense is not altogether appropriate on any reading of the Act, seem to me more appropriate to future than to past deaths. If the Legislature had intended the Act to have a retrospective effect, it would have been very easy to have said, dies whether before or after the passing of this Act. Inconvenience and hardship might be caused by making the tax payable out of an estate which has been distributed on the basis of the then existing law. The Advocate General has relied on Section 19 of the Amendment Act, which introduces into the principal Act Section 49-B, under which a refund may be claimed by the personal representative of a deceased person who was entitled to such refund, and he suggests that Section 24-B and 49-B should be read together and both given retrospective effect. But even if the latter section applies to a death before the Act came into force, it does not, I think, follow that we should give a similar meaning to Section 24-B. In my opinion the legislature has not shown with sufficient clearness an intention to make section 24-B retrospective, and I think therefore we must answer the first question in that sense.

(2.) THE second question in terms does not arise, but as the subject has been discussed in argument, and the Advocate-General had invited the Court to give some guidance upon it to the Commissioner, I would say that, had I been of opinion that Section 24-B was retrospective, I should still have thought that Section 34 had no application in the present case. Sub-Section (1), Section 24-B makes the estate of a deceased person liable for tax under two heads, first, for tax assessed as payable by such person, and secondly, for any tax which would have been payable by him under the Income Tax Act if he had not died. It is not easy to see what tax falls under that second head, because the deceased would not have become liable for tax merely by continuing to live it would have been necessary to make an assessment of his income. However, whatever the meaning of sub-Section (1) may be, the construction of sub-Sections (2) and (3) to my mind presents no difficulty : sub-Section (2) deals with the case of the deceased person not having been served with a notice under sub-Section (2) of Section 22 or Section 34, as the case may be, the latter section coming into operation where there has been an assessment upon the deceased under Section 22 (2), but some income has escaped assessment, so that if the deceased had lived he would have received a notice under Section 34. In either of those events the sub-section in effect provides that the Income Tax Officer can serve the appropriate notice on the personal representative, and then proceed to assess the total income of the deceased person as if such representative were the assessee. THEN sub-section (3) deals with the case in which a notice has been served on the deceased under sub-Section (2) of Section 22, and the notice has either not been complied with at all, or has been complied with imperfectly. In either of those events the Income Tax Officer can make an assessment of the total income of the deceased person, and determine the tax payable by him on the basis of such assessment, and he can call for the production of accounts and documents or other evidence from the personal representative. That

is the sub-section which would have applied to this case if we had thought that the Act had retrospective effect, because the deceased had been served with a notice under sub-section (2) of Section 22 and had not complied with it. But if the estate of the deceased is assessed either under sub-Section (2) of sub-Section (3) of Section 24-B I do not myself follow how, at any rate in a normal case, there is any occasion to introduce the provisions of Section 34, because the estate has not escaped assessment, but has been assessed under the Amendment Act. We therefore answer Question No. 1 by declaring that the provisions of Section 24-B introduced by the Amendment Act apply only to cases in which death took place later than midnight on 10th September, 1933. Question No. 2 does not arise. THERE will be no order as to costs. I have assumed that the reference in the Commissioners questions to Section 24-B (2) was a slip, and that it was intended to refer to Section 24-B. Sen, J. - It seems to me that the questions referred to us have not been accurately framed. The provisions of sub-Section (2) of Section 24-B do not appear applicable to the facts of this case. Here admittedly the deceased was served with a notice before she died, and sub-Section (2) provides for the case in which a person dies, before he is served with a notice under sub-Section (2) of Section 22 or Section 34, as the case may be. It is true that after Avabais death action purporting to be under Section 34 has been taken by the Income Tax Authorities, and that no notice was sent to Avabai under Section 34, but I am of opinion that in the circumstances of this case no action under Section 34 was called for. It therefore seems that this was a case falling under sub-Section (3) of Section 24-B, which provides for the case in which a person dies without having furnished a return which he has been required to furnish under provisions of sub-Section (2) Section 22. This Court has already held in Commissioner of Income Tax, Bombay Presidency v. National Mutual Life Association of Australasia Ltd., that the High Court has power under Section 66 (5) to amend the question asked by the Commissioner, and after raising the real question to answer it. We accordingly substitute Section 24-B for Section 24-B (2) in the two questions referred to us. Question No. 1 referred to us amounts to this. Does Section 24-B apply to the estate of a person who died prior to the date of the enactment of the said section, viz., 11th September, 1933, in other words, has the new section retrospective operation ? It was held in Commissioner of Income Tax v. Reid, that if in a case of this nature a charge was created on the income under Section 3 of the Act, the requisite machinery for assessment and collection of the tax charged was wanting in the Act. The new section has apparently been enacted with the object of providing such machinery. It purports to create a liability to pay the charges arising under Section 3. It is a well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, though such an Act is not to be so construed as to furnish a chance of escape and means of evasion : see Maxwell on Interpretation of Statutes, Edn. 7, pp. 246 and 248. The liability to pay created by the new section must be construed as a new charge upon a subject : and it does not appear to me that the language of Section 24-B is altogether free from ambiguity. All the sub-sections of the said section begin with the words : Where a person dies. This is capable of meaning, where a person has died before the date of this amendment or shall die thereafter as well as Where a person shall die on this section becoming part of the Act. It was held in In re Athlumne (p. 555 of 1828, 2 Q. B.) : Perhaps no rule of construction is more firmly established than this - that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. ;

