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ESTATE OF LATE RANGALAL JAJODIA

v.

COMMISSIONER OF INCOME-TAX, MADRAS

November 19, 1970

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[J. C. SHAH, G. K. MITTER, K. S. HEGDE, A. N. GROVER
AND A. N. RAY, JJ.]

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Income-tax Act, 1922, ss. 34(3) 2nd Proviso and 24B—Assessee dying before completion of assessment—Assessment completed by I.T.O. on assessee's legal representatives including disinherited son—A.A.C. setting aside assessment and directing I.T.O. to make fresh assessment on executors under assessee's will—Case whether covered by s. 34(3) 2nd proviso for purpose of extending limitation—Procedure for re-assessment—Applicability of s. 24B.

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R filed his income-tax and excess profits tax returns before the Income-tax Officer/Excess Profits Tax Officer for the assessment years 1942-43 and 1943-44 and the corresponding chargeable accounting periods. He complied with the statutory notices issued to him by the said Revenue Officer but died before the assessments could be made. He was survived by A, his second wife, his children by her, and by S, his son by a pre-deceased wife. In his will A and another person B were named as executors and S was disinherited. S performed the obsequies at the funeral of R and on this information the Revenue Officer gave notice to S asking him to show cause why assessment should not be made on him as the legal representative of R. It was objected by S that he was not legal representative, but he failed to produce a copy of the will. The Revenue Officer thereupon completed the assessments on the estate of R by his legal heirs and representatives among whom he included S, A and her children. On appeal by S the Appellate Assistant Commissioner, before whom a copy of the will was produced, set aside the assessments and directed the Revenue Officer to make fresh assessment on the executors in accordance with s. 24B of the Income-tax Act, 1922. Pursuant to the direction the Revenue Officer issued notice to the executors. R's widow A accepted the notice and requested the Revenue Officer to issue the copies of the record to enable her to make representation. The Revenue Officer held that it was not necessary to go through the formalities again. He completed the assessments on 29th October 1952 more than four years after the end of the assessments years 1942-43 & 1943-44 respectively. In appeal by A the Appellate Assistant Commissioner held that the assessments were validly made on a valid direction by the previous Appellate Assistant Commissioner. He however set aside the assessments and directed the Revenue Officer to complete them after giving the executrix a fresh opportunity to object to the assessment. The Tribunal upheld the order of the Appellate Assistant Commissioner. In reference the High Court held that the first assessment having been made on S who was not a legal representative, the direction given by the Appellate Assistant Commissioner was outside the scope of s. 34(3) of the Act. The High Court also gave a finding that s. 24B was applicable to the proceedings but that in the present case the section had not been complied with inasmuch as the procedure for making assessment had not been followed *de novo*. In appeals before this Court filed by the Revenue as well as by A the questions that fell for consideration were : (i) whether s. 34(3) 2nd proviso saved the assessments in the

present case from the bar of limitation and (ii) whether s. 24B applied to the case.

HELD : (i) The second proviso to s. 34(3) of the Act applied to the present appeals because, first, the proceedings against R commenced on filing of returns before the Income-tax authorities; secondly, the assessment proceedings continued after the death of R against the legal representatives S and A; thirdly, the assessment proceedings on being set aside and not cancelled pursuant to the appeal filed by S on the ground that notice was not given to A were continued and fourthly, the setting aside of the assessment was only on the ground that notice was not given to A and therefore the finding and direction was vital to the assessment proceedings. The High Court was in error in holding that the assessments were barred by limitation. [815 C-D]

Income-tax Officer, Sitapur v. Murlidhar Bhagwandas, 52 I.T.R. 335 and *S. C. Prashad & Anr. v. Vasantsen Dwarkadas & Ors.* 49 I.T.R. 1, distinguished.

(ii) The High Court correctly held that s. 24B of the Act applied to present case. The third sub-section of s. 24B deals with a case of a person dying after having furnished a return. Further in the present case the Income-tax Officer had reason to believe the return to be incorrect and he called upon R to furnish evidence. The Act further confers power on the Revenue Officer to make the assessment and determine the tax payable by the deceased on the basis of the assessment and for that purpose to issue appropriate notice which would have had to be served upon the deceased had he survived and in that behalf to require from the executor, administrator or other legal representatives of the deceased person any accounts or documents or further evidence which he might under the provisions of ss. 22 and 23 require from the deceased person. [815 G-H]

[Counsel for the Revenue did not impeach the conclusion of the High Court that in relation to A the provisions of s. 24B of the Act were to be followed *de novo*.]

CIVIL APPELLATE JURISDICTION ; Civil Appeals Nos. 2332 to 2335 and 2336 to 2339 of 1966.

Appeals from the judgment and order dated August 16, 1966 of the Madras High Court in Tax Case No. 171 of 1962 (Reference No. 96 of 1961).

A. K. Sen and *T. A. Ramachandran*, for the appellant (in C.As. Nos. 2332 to 2335 of 1966) and the respondent (in C.As. Nos. 2336 to 2339 of 1966).

S. Mitra, *G. C. Sharma*, *B. D. Sharma* for *R. N. Sachthey*, for the respondent (in C.As. Nos. 2332 to 2335 of 1966) and the appellant (in C.As. Nos. 2336 to 2339 of 1966).

The Judgment of the Court was delivered by

Ray, J. These appeals are by certificate against the judgment dated 16 August, 1965 of the High Court of Madras on

- A** a reference under section 66(1) of the Indian Income-tax Act, 1922 (hereinafter referred to as the Act).

B Seven questions were referred to the High Court. The reference involved first the construction of the second proviso to sub-section (3) of section 34 of the Act, and, secondly, the applicability of section 24B(3) of the Act to the assessments made on the executor to the estate of late Rangalal Jajodia.

C In order to appreciate the scope of the reference, it is necessary to refer to the facts which gave rise to the questions. Rangalal Jajodia (hereinafter referred to as the deceased) filed income-tax returns for the year 1942-43 and 1943-44 as well as his excess profits tax returns for the corresponding chargeable accounting periods ending 31 December, 1941 and 31 December, 1942 before the Income-tax Officer, Excess Profits Tax Officer, Madras, Special South Circle. On receipt of the returns, the officer issued the requisite statutory notices to the assessee for production of accounts and also other evidence in support of the returns under sections 22(4) and 23(2) of the Act and under the corresponding provisions of section 30 of the Excess Profits Tax Act, 1940. Rangalal Jajodia complied with the aforesaid notice. But before the assessment to the income-tax and excess profits tax could be made Rangalal Jajodia died on 11 January, 1946.

E Rangalal Jajodia was survived by Shankarlal Jajodia son by a pre-deceased wife, Aruna Devi, the second wife and children by the second wife. Rangalal Jajodia had made a will on 16 April, 1945 whereby Aruna Devi and one Ram Kumar Bhuwalka were executor and executrix respectively. Shankar Lal Jajodia was disinherited under the will. Shankarlal Jajodia however performed the funeral obsequies for the deceased. The Revenue on the basis of that information issued notice to Shankarlal Jajodia asking him to show cause why the assessment of the deceased should not be made on him as the legal representative. Shankarlal Jajodia objected to the course stating that he was not the legal representative and that his step mother Aruna Devi and Ram Kumar Bhuwalka as the executrix and executor respectively were the proper persons on whom proceedings were to be taken. The Revenue called for a copy of the will which however was not produced. The assessment was completed on 28 February, 1947 on the materials describing the assessee as "the estate of late Shri Rangalal Jajodia by legal heirs and representatives, Shri Shankarlal Jajodia, son of Rangalal Jajodia, Shrimati Aruna Devi, wife of Rangalal Jajodia and her children".

H The assessment orders were served on Shankarlal Jajodia who appealed to the Appellate Assistant Commissioner contend-

ing that he was not the legal representative. At the hearing of the appeals on 30 April, 1952 Shankarlal Jajodia produced a copy of the will. The Appellate Assistant Commissioner set aside the assessment and directed the Revenue Officer to make a fresh assessment on the executors in accordance with section 24B of the Act. Pursuant to the direction of the Appellate Assistant Commissioner the Revenue Officer informed the executrix and Ram Kumar Bhuwalka of his proposal to make assessment on them as the legal representatives of Rangelal Jajodia. Ram Kumar Bhuwalka who had refused to act as an executor intimated the fact to the Revenue Officer. Aruna Devi the executrix accepted the notice but requested the Revenue Officer to furnish her with copies of the returns, notes of examination and correspondence between the deceased and the Revenue to enable her to make representations. The Revenue Officer however took the view that under section 24B of the Act it was not necessary to go through all the formalities once again and that the assessments were required to be done only for the purpose of inviting objections, if any, to the *locus standi* of Aruna Devi as the legal representative of the deceased. On the said view the Revenue Officer completed the income-tax and excess profits tax assessments on the estate of late Rangelal Jajodia by executors Mrs. Aruna Devi and another. The assessments were made on 29 October, 1952 more than four years after the end of assessment years 1942-43 and 1943-44 respectively.

The executrix Aruna Devi appealed against the assessments contending before the Appellate Assistant Commissioner that the assessments were barred by limitation and that the previous Appellate Assistant Commissioner's direction to make assessments on her was invalid. It was also contended that reasonable opportunities were not given to Aruna Devi before the assessments were made. The Appellate Assistant Commissioner on 16 April, 1955 held that the assessments were validly made on a valid direction by the previous Appellate Assistant Commissioner. He however set aside the assessments directing the Revenue Officer to complete them after giving the executrix a fresh opportunity to object to the assessment. Aruna Devi appealed to the Appellate Tribunal. The Tribunal rejected the appeals on the ground that the assessments had been set aside by the Appellate Assistant Commissioner with the direction to give sufficient opportunities to her. On a reference taken by Aruna Devi to the High Court, the High Court held that the Tribunal ought to have properly disposed of the appeals on all

- A the contentions raised therein. Pursuant to the order of the High Court the Tribunal heard the appeals on merits on 9 June, 1961 and held that the re-assessment made by the Revenue Officer on Aruna Devi, the executrix was valid and that the assessments were saved from the bar of limitation by the second proviso to section 34(3) of the Act. The Tribunal also held
- B that the assessments were validly made under section 24B(3) of the Act.

- The High Court on reference under Section 66(1) of the Act held that the second proviso to section 34(3) applied to save re-assessment from the bar of limitation but that in the present
- C appeals, the first assessments which were made on Shankarlal Jajodia were set aside on appeal because these were not made on the real legal representatives of the deceased and therefore no direction or finding could be made by the Revenue Authority in any such appeal as would remove the bar of limitation on the re-assessment later made on the executor who was to be regarded
- D as an entirely different assessee. The High Court also held that the direction or finding given by the Appellate Assistant Commissioner for making the assessment on the executors was unnecessary for the disposal of the appeals filed by Shankarlal Jajodia and therefore the direction and the findings were outside the scope of the second proviso to section 34(3) of the
- E Act.

- As to section 24B sub-clause (3) of the Act, the High Court held that the section applied to the assessments in the present appeals but the High Court negated the contention of the Revenue that the assessments made on the executrix were made
- F in proper compliance with the procedure prescribed under section 24B(3) of the Act. The High Court held that it was a condition precedent to the validity of assessment to be made on the legal representatives that the procedure prescribed for making the assessment on the deceased assessee was to be repeated as regards the assessment on the legal representative irrespective of the fact that such procedure was followed during the life time of
- G the deceased.

- The relevant provisions of section 34(3) of the Act necessary for the purpose of the present appeals are the second proviso to the said sub-section. The said second proviso is as follows :
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“Provided further that nothing contained in this section limiting the time within which any action may

be taken or any order, assessment or re-assessment may be made, shall apply to a re-assessment made under section 27 or to an assessment or re-assessment made on the assessee or any person in consequence or of to give effect to any finding or direction contained in an order under-section 31, section 33, section 33A, section 33B, section 66 or section 66A".

Counsel for the Revenue in C.A. No. 2336-2339 of 1966 contended that the second proviso saved the assessment from the bar of limitation by reason of an order of assessment having been made in consequence of a finding or direction given by the Appellate Assistant Commissioner and secondly that Aruna Devi was a person intimately connected with the assessment and that in fact the assessment was made on her, but the assessment was set aside because no notice was given to her. Counsel for the appellant Aruna Devi in C.A. No. 2332-2335 of 1966 on the other contended first that Aruna Devi was not an assessee and therefore the benefit of the second proviso to section 34(3) of the Act would not avail. Secondly it was said that Aruna Devi was not intimately connected with the assessment and was not an assessee, because there was no proceeding in law under the Act against Aruna Devi and therefore she was not an assessee.

An assessee is defined in section 2(2) of the Act meaning a person by whom income-tax or any other sum of money is payable under this Act, and includes every person in respect of whom any proceeding under the Act has been taken for the assessment of his income or of the loss sustained by him or of the amount of refund due to him. It was said on behalf of the appellant Aruna Devi that the estate cannot be an assessee and in order to make the legal representative an assessee a proceeding must be taken against the executor under the Act. It was also said that in the final assessment Aruna Devi was assessed as an executrix but no proceeding for assessment was taken against Aruna Devi as an executrix. Emphasis was placed on the fact that the proceeding was against the estate which was unknown to law and even if the proceeding against the estate could be held to be a valid proceeding Aruna Devi was never given any notice and therefore no proceeding was taken against her.

The assessment order shows the name of the assessee as the estate of late Shri Rangalal Jajodia by legal heirs and representatives Shri Shankarlal Jajodia, son of Shri Rangalal Jajodia, Smt. Arun Devi wife of Rangalal Jajodia and her children. Rangalal Jajodia had filed the return. He died before the assessment was completed. The assessment was made on Aruna

- A Devi as legal representative. She was described as legal representative but not as an executrix. The liability under the Act in case of death of a person is of the executor, administrator or legal representative to 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 paid by him under the Act if he had not died.
- B The Revenue in the assessment proceedings described the estate of Rangalal Jajodia by the legal heirs and representatives. It cannot be denied that an executor is also a legal representative.

- What happened in the present assessment proceedings was that the proceedings were commenced during the life-time of Rangalal Jajodia by reason of the returns being filed by and notices under sections 22(3) and 23(2) of the Act having been served on Rangalal Jajodia during his life-time. The assessment order contains intrinsic evidence to that effect as also of repeated intimation having been given to Shankarlal Jajodia after the death of Rangalal Jajodia. No reply having been received from Shankarlal Jajodia, the assessment was completed under section 24B of the Act through the legal heirs and representatives including Aruna Devi. The Appellate Assistant Commissioner on an appeal preferred by Shankarlal Jajodia set aside the assessment because no notice was given to Aruna Devi though the assessment proceeding was against her as a legal representative. 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. Similarly, if there is a mistake as to name or there is a misdescription of the name, the proceeding will be liable to be challenged and corrected by giving notice to the assessee subject to such just exceptions as an assessee can take under law. The direction given by the Appellate Assistant Commissioner was to make fresh assessment on Aruna Devi in accordance with the provisions of the Act.

- G Counsel for Aruna Devi relied on the decision of this Court in *Income-tax Officer, Sitapur vs. Murlidhar Bhagwandas*, 52 I.T.R. 335 in support of the proposition that no finding was necessary in the present case because Aruna Devi was not an assessee and was a different person. We find that Aruna Devi was an assessee in the income-tax proceedings, but the proceedings were not in compliance with the Act by reason of the failure of giving the requisite notice of assessment and the requisite notice of demand. In *Murlidhar's* case (supra) the assessee appealed against an assess-
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ment order and the Appellate Assistant Commissioner held that the income was received in the previous accounting year and directed that the amount should be deleted from the assessment year 1949-50 and included in the assessment year 1948-49. Pursuant to that direction the Income-tax Officer initiated re-assessment proceedings in respect of the year 1948-49 and served a notice on 5 December, 1957. The question was whether the second proviso applied and saved the notice in respect of the year 1948-49. It was held that the jurisdiction of the Appellate Assistant Commissioner under section 31 of the 1922 Act was strictly confined to the assessment order of the particular year under appeal and the assessment or re-assessment made in consequence of or to give effect to any finding or direction contained in an order under section 31, section 33A, section 33B, section 66 or section 66A must necessarily relate to the assessment of the year under appeal. The expression 'finding and direction' in the second proviso to section 34(3) was held to be a finding necessary for giving relief in respect of the assessment in question and that direction which the appellate or the revisional authority was empowered to give under the sections mentioned in that proviso. The finding in *Murlidhar's* case (supra) that the income belonged to the year 1948-49 was not a finding necessary for the disposal of an appeal in respect of the year of assessment in question.

Counsel for Aruna Devi contended that the expression 'any person' occurring in the second proviso to section 34(3) of the act could not be referable to a stranger and that Aruna Devi was a stranger. In support of that proposition reliance was placed on the decision of this Court in *S. C. Prashar & Anr. v. Vasenisen Dwarkadas & Ors.* 49 I.T.R. 1. The facts of that case are entirely different and are of no assistance for the reason that in the present appeals Aruna Devi was impleaded as a party to the assessment proceedings as a legal representative of Rangalal Jajodia. The words 'any person' were construed in *Murlidhar's* case (supra) to be confined to a person intimately connected with the assessment year under appeal. It was said in that case that "modification or setting aside assessment made on a firm, joint Hindu family, association of persons, for a particular year may affect the assessment for the said year on a partner or partners; of the firm, member or members of the Hindu undivided family or the individual, as the case may be. In such cases though the latter are not *eo nomine* parties to the appeal, their assessments depend upon the assessments on the former. The said instances are only illustrative. It is not necessary to pursue the matter further. We would, therefore, hold that the expression 'any person' in the setting in which it appears must be confined to a person intimately connected in the aforesaid sense with the assess-

- A ments of the year under appeal." In the present appeals the finding was that the assessment was made on Aruna Devi but no notice was given to her. The necessary direction was therefore given that notice should be given to her. Aruna Devi was heard and the assessment was made. She was not merely intimately connected with the assessment. She was in fact an assessee.
- B Therefore, the Second proviso to section 34(3) applied.

We are therefore of opinion that the second proviso to section 34(3) of the Act applies to the present appeals because first the proceedings against Rangalal Jajodia commenced on filing of returns before the income-tax authorities; secondly, the assessment proceedings continued after the death of Rangalal Jajodia against the legal representatives Shankarlal Jajodia and Aruna Devi; thirdly, the assessment proceedings on being set aside and not cancelled pursuant to the appeal filed by Shankarlal Jajodia on the ground that notice was not given to Aruna Devi were continued, and, fourthly, the setting aside of the assessment was only on the ground that notice was not given to Aruna Devi and therefore the finding and direction was vital to the assessment proceedings. The High Court was in error in holding that the assessment proceedings were barred by limitation.

The other question is as to the applicability of section 24B of the Act. Counsel on behalf of Aruna Devi repeated the contentions advanced in the High Court that section 24B does not cover the entire field of procedure to be followed in assessing the income of the deceased person. The High Court held that section 24B of the Act applied but Aruna Devi should have been given opportunities to object to the assessment by repeating the entire procedure of section 24B of the Act as during the life time of the deceased. Counsel for the Revenue did not impeach the conclusion of the High Court that in relation to Aruna Devi the provisions of section 24B of the Act were to be followed *de novo*. We are of opinion that the High Court correctly held that section 24B of the Act applies to the present case. The third sub-section of section 24B deals with a case of a person dying after having furnished a return. Further, in the present case the Income-tax Officer had reason to believe the return to be incorrect or incomplete, and he called upon Rangalal to furnish evidence. The Act further confers power on the Revenue officer to make the assessment and determine the tax payable by the deceased on the basis of the assessment and for that purpose to issue appropriate notice which would have had to be served upon the deceased had he survived and in that behalf to require from the executor; administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 require from the deceased

person. These provision adequately answer the contention of the appellant Aruna Devi. A

For these reasons we hold that the High Court was in error in holding that the second proviso to section 34(3) of the Act did not save the assessments and therefore we set aside the judgment of the High Court and allow the appeals of the Revenue in C.A. Nos. 2336-2339 of 1966. B

As for appeals C.A. Nos. 2332-2335 of 1966 we uphold the conclusion of the High Court and dismiss the appeals. Each party will bear and pay its own costs in all these appeals.

G.C. C.A. Nos. 2336-2339 of 1966 allowed. C

C.A. Nos. 2332-2335 of 1966 dismissed.