

**COMMISSIONER OF INCOME TAX, MADHYA PRADESH, A
NAGPUR**

**v.
HUKAMCHAND MOHANLAL**

September 17, 1971

[K. S. HEGDE AND A. N. GROVER, JJ.]

Income Tax Act, 1961, s. 41(1)— Assessee successor in business to her deceased husband—Amount received by assessee by way of remission of sales tax paid by husband—If liable to tax in the hands of the assessee under s. 41(1).

The assessee who was successor-in-business to her deceased husband was sought to be taxed under s. 41(1) of the Income-tax Act, 1961, in respect of certain amount received by her by way of remission from the sales tax recovered from her husband. On the question whether the amount was assessable under s. 41(1) of the Act.

HELD : Section 41(1) does not apply, because, the assessee who is sought to be taxed is not the assessee contemplated by the section. ¶ If the husband of the assessee had been alive and had received the amount which had been remitted during his life time he would certainly have been liable to pay tax under the provisions of s. 41(1). But the husband having died the Revenue could not take any advantage of its provisions. The Act does not contain any provision making a successor-in-business or the legal representative of an assessee to whom an allowance has already been granted liable to tax under s. 41(1) in respect of the amount remitted and received by the successor or the legal representative. [788 C-D, 789 A-B]

C.I.T., Bombay City v. Amarchand N. Shroff, 40 I.T.R. 59 and *C.I.T. Bombay v. James Anderson*, 51 I.T.R. 345, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2421 of 1968.

Appeal from the judgment and order dated January 31, 1967 of the Madhya Pradesh High Court in Misc. Civil Case No. 88 of 1966.

R. N. Sachthey and B. D. Sharma, for the appellant.

Rameshwar Nath and Swaranjit Sondhi, for the respondent.

The Judgment of the Court was delivered by

Grover, J. This is an appeal by certificate from a judgment of the Madhya Pradesh High Court in an Income tax Reference. The Reference related to the assessment made on the assessee for the year 1962-63 for which the accounting period was the year ending March 31, 1962. The assessee carried on business as sole selling agent of M/s. Mohanlal Hargovindas, Jabalpur. The assessee succeeded to this business on the death of her husband on or about February 17, 1960. It would appear that M/s. Mohanlal Hargovindas had recovered a certain amount towards sales-tax from the assessee's husband relating to the period January 26.

- A 1950 to March 31, 1951. In an appeal filed by the said firm, however, the Assistant Commissioner of Sales Tax remitted the sum of Rs. 24,341/- so recovered by the firm by an order dated November 31, 1960. Consequently M/s. Mohanlal Hargovindas refunded that amount to the assessee by means of a draft dated October 31, 1961. This draft was received by the assessee on
- B November 9, 1961 which fell in the accounting period. The Income tax Officer sought to tax this amount under the provisions of s. 41(1) of the Income tax Act 1961, hereinafter called the 'Act'. He did not accede to the contention of the assessee that the income, if at all, was the income of the assessee's deceased husband and not her income. The Appellate Assistant Commissioner
- C dismissed the appeal filed by the assessee. The Tribunal acceded to the contention of the assessee that since the allowance or deduction in question had been obtained by a different assessee, namely, her husband she was not liable to pay tax on that amount under s. 41(1) of the Act. The Tribunal was moved by the Commissioner of Income tax for stating a case and referring the following question to the High Court :
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"Whether the sum of Rs. 24,341 was liable to tax under s. 41(1) of the Income tax Act, 1961 ?"

The High Court answered the question in favour of the assessee.

Section 41(1) is in the following terms :—

- E "41(1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee, and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or ex-
- F penditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit accruing to him, shall be deemed to be profits and gains of business or profession and accordingly chargeable to income tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that
- G year or not".

- H As pointed out by the High Court under the general law if a trading liability has been allowed as a business expenditure and if this liability is remitted in any subsequent year the amount remitted cannot be taxed as income of the year of the remission nor can the account for the year in which the liability was allowed be reopened or adjusted. Section 41(1) was enacted to supersede this principle but this section can apply only to the assessee. In

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the present case if the husband of the assessee had been alive and
had received the amount which had been remitted during his life-
time he would certainly have been liable to pay tax under the
provisions of s. 41(1). But Kanhaiyalal having died and his
widow being the assessee she cannot possibly be brought within
the section. Section 2(7) of the Act defines the word "assessee".
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The definition is very general and assessee is stated to mean a
person by whom income tax or super tax or any other sum of
money is payable under the Act and includes every person as
mentioned in clauses (a), (b) and (c). The assessee, in the pre-
sent case, does not fall within any of those clauses. There is no
specific provision in the Act under which it can be said that the
assessee is a person by whom income tax is payable on the amount
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of Rs. 24,341/- which came to her by way of remission on account
of what had transpired in the lifetime of her husband. The Act
does not contain any provision making a successor in business or
the legal representative of an assessee to whom an allowance has
already been granted liable to tax under s. 41(1) in respect of
the amount remitted and received by the successor or the legal
representative. The only provision which relates to the liability
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of the legal representative is s. 159 of the Act. Sub-section (1)
thereof provides that 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 deceased. The corresponding provision in
the Income tax Act 1922 was s. 24B. In *Commissioner of In-*
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come tax Bombay v. Amarchand N. Shroff⁽¹⁾ it was laid down by
this Court that s. 24B did not authorise the levy of tax on receipts
by the legal representative of a deceased person in the year of
assessment succeeding the year of account being the previous year
in which such person died. The assessee had ordinarily to be a
living person and could not be a dead person. By s. 24B the
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legal personality of the deceased assessee was extended for the
duration of the entire previous year in the course of which he
died. The income received by him before his death and that
received by his legal representative after his death but in that pre-
vious year became assessable to income tax in the relevant assess-
ment year. Any income received in the year subsequent to the
previous year or the accounting year could not be called income
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received by the deceased person. Thus the provisions of s. 24B
did not extend to tax liability of the estate of a deceased person
beyond the previous or the accounting year in which that person
died. To the same effect is the decision in *Commissioner of*
Income tax, Bombay v. James Anderson⁽²⁾. Indeed the learned
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counsel for the Revenue did not and could not rely on the provi-
sions of s. 159 of the Act in the present case nor was any reliance

- A placed on any other section in the Act apart from s. 41(1). The question referred is also based on that very section. That section, in our opinion cannot possibly apply to the present case because the assessee who is now sought to be taxed is not the assessee contemplated by that section. The assessee within s. 41(1), namely, Kanhaiyalal having died the Revenue could not take any advantage of its provisions. The High Court rightly observed that the question whether the amount of Rs. 24,341/- was liable to tax as the personal income of the assessee did not arise in the present case in which the sole point to be decided was whether that amount was assessable in the assessee's hands under s. 41(1) of the Act.
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We, therefore, entirely concur in the view of the High Court and agree with the answer returned by it. In the result the appeal fails and it is dismissed with costs.

K.B.N.

Appeal dismissed.