

(1961) 06 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 157 of 1958

B. Shah Mahmood

APPELLANT

Vs

Assistant Commissioner, Ramanagaram and Another

RESPONDENT

Date of Decision : 16-06-1961

Acts Referred:

Income Tax Act, 1961 — Section 23 (3), 29, 46 (2)

Citation : (1963) 47 ITR 55

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : E.S. Venkataramiah, for the Appellant; D.M. Chandrasekher, for the Respondent

Judgement

Somnath Iyer, J.—This writ petition is directed against proceedings commenced under the provisions of section 46(2) of the Indian Income Tax Act, 1922, for the recovery from the petitioner of a sum of money stated to be due by way of Income Tax from the estate of one Bademiya who was assessed to Income Tax for the assessment year 1951-52.

2. The assessment proceedings commenced during the lifetime of Bademiya, who, however, died before the assessment order was made u/s 23(3) of the Indian Income Tax Act, 1922, on March 29, 1956. Bademiya, it is not disputed, was doing his business under the name and style of Nizamia Oil Mills and he was assessed as an individual.

3. Bademiya left behind him two sons and a daughter. The assessment order made in respect of his income was appealed against by only one of his two sons who was able to obtain some little relief from the Appellate Assistant Commissioner and a little more from the Income Tax Tribunal.

4. On March 29, 1956, on the very date on which the assessment order was made by the Income Tax Officer, a notice of demand was served on that son, Abdul Rahaman, who has preferred this appeal. It undisputed that neither the

other son, Shah Mahmood, who is the petitioner before us nor the daughter, Fathamabi, was served with any such notice of demand under the provisions of section 29 of the Act.

5. On July 9, 1956, the Income Tax Officer forwarded, under the provisions of section 46(2) of the Act, to the concerned Deputy Commissioner, a certificate specifying the amount of arrears due from the petitioner and it is in pursuance of this certificate that the impugned recovery proceedings were started treating the amount due by the petitioner as an arrear of land revenue. It appears that during those recovery proceedings the petitioner's share in the properties of his father was attached and that those properties were brought to sale. It was at that stage that this writ petition had been presented to this court.

6. Two contentions have been urged before us. The first of them is that the certificate which may be forwarded by the Income Tax Officer under the provisions of section 46(2) of the Act can be so forwarded only in respect of arrears of Income Tax due from an assessed and that the petitioner was not such an assessed. The second contention urged is that, since no notice of demand was served upon the petitioner u/s 29 of the Act, the tax determined to be payable in the assessment proceedings did not become an arrear of Income Tax due from the petitioner.

7. The first contention was sought to be supported on the basis of the contrast between the language of section 29 and that of section 45 and 46 of the Act. It was also urged that the Act throughout recognises a distinction between an assessed and a person who is liable to pay a tax under the Act although he is not an assessed.

8. It was urged that the assessed in the present case was the deceased, Bademiya, and that the heirs of Bademiya were not assessed but belong to that other category of persons who though not assessed were statutorily made liable to pay the tax due from an assessed.

9. Now the liability of the petitioner in this case to pay tax which was payable by Bademiya in respect of his income is what is created by section 24B(1) of the Act which reads :

"24B. Tax of deceased person payable by representative. - (1) 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."

10. This was a case in which the second part of this sub-section applied since Bademiya was not assessed during his lifetime.

11. The question that next arises is whether the petitioner, who is a legal representative of Bademiya and who is, therefore, liable to pay the tax which would have been payable by Bademiya under the Act if he had not died, is an

assessed.

12. The question whether he is such assessed arises by reason of the fact that a certificate u/s 46(2) of the Act can be forwarded to the Collector by the Income Tax Officer only if two conditions exist. The first of them is that the person from whom the amounts may be recovered in pursuance of the certificate should be an assessed. The second is that there should be an amount of arrears due by him. The endeavour made on behalf of the petitioner to disclaim the status of an assessed is clearly for the purpose of taking him out of the provisions of section 46(2) of the Act.

13. An "assessed" is defined by section 2(2) of the Act and that sub-section reads :

"2. Definitions. - In this Act, unless there is anything repugnant in the subject or context -...

(2) "assessed" means 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 this 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."

14. This definition is what it is after its amendment by the Income Tax (Amendment) Act, 1953, which came into force on April 1, 1952. Before it was so amended, the definition read as follows :

"2. (2) "assessed" means a person by whom Income Tax is payable."

15. It is not necessary for us, in my opinion, to consider whether the amended definition is of any relevance in the present case, since we can decide the question arising in this case on the basis of the definition as it stood before its amendment. According to the definition of the "assessed" as it stood before the amendment, a person was an "assessed" if Income Tax was payable by him.

16. It was argued that this definition is what we should look into for deciding whether the petitioner is an "assessed" since that definition was the ruling definition during the relevant assessment year.

17. An "assessed", according to this definition, it was contended, means a person the amount of whose income is computed under the provisions of the Act.

18. Support for this proposition was sought to be derived from the decision of their Lordships of the Privy Council in Seth Badridas Daga v. Commissioner of Income Tax.

19. It does not appear to me that the petitioner can sustain the contention that no person whose income is not computed can be an assessed for the purposes of the Act.

20. What was argued before us was that the expression "assessed" occurring in the Act connotes only those persons whose incomes are computed under the Act

and the tax is determined on the basis of such computation. Since the petitioner was not the person whose income was computed in the present case, it was urged that he was not an assessed since what was computed was the income of his father and not his own.

21. I find no basis for this submission in the pronouncement of their Lordships of the Privy Council in *Seth Badridas Daga v. Commissioner of Income Tax*. All that their Lordships pointed out was that an assessed primarily means a person the amount of whose income is computed and that according to them is the meaning to be given to the word "assessed" in section 23 of the Act. But it is clear from what their Lordships stated in their judgment that that definition which they gave was not an exhaustive definition. It seems to me that every person by whom Income Tax is payable is an assessed, and, that is what the definition provides.

22. It was contended that the word "payable" occurring in the definition is synonymous with the word "due" and that therefore no person is an assessed unless Income Tax is due from him.

23. Bademiya, according to the argument, was a person from whom Income Tax due and, although it was so due from him because it was his income in respect of which the assessment was made, the petitioner and the other legal representatives of Bademiya, it was pointed out, were statutorily made liable to pay the tax due from Bademiya because of their being in possession of the estate of Bademiya and not because of the fact that Income Tax due from them. Bademiya, according to the argument, would have been the person who would have continued to be liable to pay the tax if he had not died, and the fact that u/s 24B(1) his heirs became liable to pay the tax out of his estate did not, it was urged, make them assessed.

24. I cannot assent to the argument addressed before us that the word "payable" is synonymous with the word "due" in the definition contained in section 2(2) of the Act. The word "payable", in my opinion, according to its ordinary meaning, refers to that which is to be paid. "Payable", in the definition means "to be paid" and that is the ordinary dictionary meaning of the word "payable". So, every person by whom Income Tax is to be paid would be an assessed within the meaning of the definition. After the death of Bademiya the petitioner is the person by whom Income Tax is to be paid, although the tax is to be so paid from the estate of Bademiya.

25. It may be as urged on behalf of the petitioner by Mr. Venkataramiah and also by Mr. Sreenivasan who was allowed to intervene in this writ petition that that liability is a limited liability, the measure of which does not exceed the value of the estate inherited. It is, however, clear that the tax payable by Bademiya who died during the pendency of the assessment proceedings was payable by his heirs after Bademiya died. So the heirs of Bademiya were persons by whom Income Tax was payable and, therefore, they came plainly within the definition contained in section 2(2) of the Act.

26. But it was pointed out that the Act itself recognises the distinction between a person whose income was computed and a person who was liable to pay tax payable in respect of the income of another.

27. It is true that there are several provisions in the Act making persons other than those whose income is computed liable to pay tax in respect of the income of another. There are at least six sections in the Act which impose such liability and they are sections 18(7), 24B, 25A, 26(2), 44 and 44D.

28. It was argued that persons who were made liable to pay tax in respect of the income of others were not themselves the assessed, but were either persons who were deemed to be assessed or who were liable to be proceeded against as if they were assessed.

29. It was also pointed out that section 29 of the Act which provides for the issue of notice of demand recognises the possibility of a demand notice being served upon a person who was not an assessed since that section provides that the notice of demand shall be served in the cases referred to in it not only upon an assessed but also upon other persons liable to pay the tax, penalty or interest referred to therein.

30. The argument advanced, therefore, was that only those persons whose incomes are computed are persons who are assessed under the Act, and that all the others on whom a liability is imposed to pay the tax in respect of the income of another are either deemed to be the assessed or are other persons liable to pay the tax, penalty or interest within the meaning of that expression occurring in section 29 of the Act.

31. So it was contended that the petitioner who was not an assessed but only another person who was liable to pay the tax due from Bademiya could not be proceeded against u/s 46(2) of the Act of the recovery from him of the arrears of the tax due from Bademiya since what could be recovered under the provisions of that sub-section are only arrears due from an assessed.

32. I am not able to accede to the argument that a person on whom a statutory liability is imposed under the provisions of the Act to pay the tax in respect of another person's income is not an assessed within the meaning of that expression occurring in section 46(2) of the Act. Every person who is liable to pay the tax, whether the tax is payable in respect of his own income or whether it is payable in respect of another man's income, is an assessed for the purposes of the Act.

33. It is true that section 18(7) of the Act, under the provisions of which an employer who neglects to deduct Income Tax at the source is made liable to pay such tax which was payable by the employee, also provides that such employer has to be deemed to be an assessed. It is also true that u/s 24B(2) under the provisions of which an assessment may be made in cases where the person whose income is computed dies before the publication of the notice u/s 22 or

before he furnishes his return, the executor, administrator or other legal representative of the deceased could be assessed in respect of the income of the deceased as if such executor, administrator or other legal representatives were the assessed.

34. But it is pointed out that in an assessment made u/s 23(3), by the adoption of the procedure prescribed by section 24B(3) in the case where a person dies having furnished an incomplete or incorrect return, it is not expressly provided that the assessment may be made as if the executor, administrator or legal representatives were the assessed.

35. The omission of a provision to that effect in section 24B(3) is made the foundation of the argument that where an assessment is made by the adoption of the procedure prescribed by that sub-section after a executor, administrator or legal representative does not become an assessed even by a fiction of law unlike the case for which provision is made by section 24B(2).

36. Neither the fact that section 18(7) so contains an express provision that an employer who does not deduct the tax payable by his employees at the source has to be deemed to be an assessed nor the fact that a legal representative, executor or administrator in whose case the procedure prescribed by section 24B(2) may be adopted could be proceeded against as if he were the assessed, nor the fact that there is no similar provision in respect of the other persons referred to in sections 24B(3), 25A, 26(2), 44 and 44D, does not, to my mind, justify the conclusion that those persons who are referred to in these other sections are not assessed under the Act and could not be regarded as such.

37. It should be remembered that the definition contained in section 2(2) of the Act is not an exhaustive definition. The opening words of that section are "unless there is anything repugnant in the subject or context", and these words make it clear that if there is anything repugnant in the subject or context, the expressions defined in section 2 may be susceptible of a meaning other than what is given to them in section 2.

38. Now, when we examine the scheme of the Act, the persons by whom tax is payable fall into at least two categories. The first category consists of persons whose income is computed. The second consists of various classes of persons such as employers who have neglected to deduct the tax payable by their employees at the source and who are governed by section 18(7), executors, administrators and legal representatives of a person whose income is computed and who are governed by section 24B, members of a disrupted Hindu joint family to whom the provisions of section 25A are applicable, persons on whom a business has developed such as those specified in section 26(2), quondam partners of a dissolved firm who are governed by the provisions of section 24 and a resident who is liable to pay the tax of a non-resident under the provisions of section 44D.

39. In my opinion, all these clauses of persons, whether they are within the one

category or the other, have to be regarded as assessed for the purposes of the Act.

40. It may be that by way of abundant caution or for the purposes of emphasizing the necessity of issuing notices of demand not only to persons whose income is computed but also to those who are made liable by the Act to pay the tax due in respect of the income of another, that section 29 of the Act provides for the service of a notice of demand not only upon an assessed but also upon the other person liable to pay the tax, penalty or interest. It does not, to my mind, appear permissible for us to think that the provisions of section 29 insisting upon the service of a demand notice upon the other persons who are liable to pay the tax, penalty or interest, can form the basis of a conclusion that the only person who is an assessed for the purposes of the Act is he whose income is itself computed and not one who is liable to pay the tax in respect of the income of another.

41. Section 45 of the Act which empowers an Income Tax Officer to treat a person who has presented an appeal as not being in default, unlike section 29 of the Act, refers only to an assessed and not to "the other person liable to pay" tax, penalty or interest.

42. If we should accept the argument that the expression "assessed" occurring in section 45 only means the person whose income was computed during the assessment proceedings it would lead to the result that if that assessed whose income was computed died during the tendency of the assessment proceedings or immediately thereafter before the expire of the period of limitation within which an appeal could be filed, and his legal representative, executor or administrator presents an appeal, it would not be open to the Income Tax Officer to treat that executor, administrator or heir as a person who is not in default. Such persons referred to in sections 18(7), 26(2), 44 and 44D, for, those persons, according to the argument, would not be the assessed. A construction leading to such incongruous consequences should not, in my opinion, be accepted.

43. Likewise, the remedy by way of an appeal u/s 30 to an Appellate Assistant Commissioner from an order of assessment would be unavailable to a large class of persons.

44. Under the provisions of that section, the person who can appeal is an assessed and no other. If the narrow construction sought to be placed on the expression "assessed" is accepted, only those persons whose income is computed could appeal and no others.

45. It may be, as urged by Mr. Sreenivasan, an employer who neglected to deduct the tax payable by his employee may, nevertheless, file an appeal because he is to be deemed an assessed.

46. But he had to admit that an executor, administrator or legal representative

who is liable to pay the tax due by the deceased assessed and against whom assessment proceedings were made under the provisions of section 23(3) read with section 24B(3) could not appeal u/s 30, because none of them, according to him, is an assessed. An assessment made in that way by the adoption of the procedure prescribed in section 24B(3) would, according to him, become final and is not appealable.

47. It seems to me that the position would be the same even in regard to the assessment made by the procedure prescribed by section 24B(2). Although Mr. Sreenivasan contended to the contrary and urged that since an executor, administrator or legal representative could be proceeded against as if he was himself the assessed as provided by section 24B(2), it is clear that the fact the assessment proceedings could be commenced or continued as if the administrator, executor or legal representative himself were the assessed, does not transform the executor, administrator or legal representative into an assessed. The words "as if" occurring in section 24B(2), as pointed out in this court in *Manjayya Krishna Shanbag v. Venkatappa* do not convert those persons into assessed.

48. Whatever doubt there might be about the unavailability of an appeal in the case of persons referred to in section 24B(2), it is clear that that doubt cannot exist in the case of those referred to in section 24B(3).

49. A similar difficulty would arise in respect of orders made u/s 25A of the Act. If an Income Tax Officer is requested to make a record that a joint family property has been partitioned among the members in definite portions and, if the refuses to make an order to that effect, it would not be open to a member of that joint family who claims to be a divided member in that way to appeal against the order made by the Income Tax Officer since he would not be an assessed within the meaning of that expression occurring in section 30. The same difficulty would be encountered by a member of a disrupted Hindu joint family in respect of whom a disproportionate apportionment is made u/s 25A(2).

50. Mr. Sreenivasan had to admit that if his interpretation of the word "assessed" is accepted, the quondam partners of a discontinued or dissolved firm but who are liable u/s 44 to pay the tax payable by that firm would also have no right of appeal u/s 30 in a case where the dissolved or discontinued firm has already been assessed, although they feel aggrieved by such assessment.

51. That persons falling within these categories would be deprived of their right of appeal conferred by section 30 in spite of their being made statutorily liable to pay the tax due in respect of the income of that an assessed for the purposes of the Act is not necessarily one whose income is computed but that a person who is made by the Act liable to pay the tax payable by another is also such assessed.

52. It should be remembered that the Income Tax Act in some parts of it contains the word "assessed". In some other parts it provides that a person should be deemed to be an assessed. In another place it permits certain classes

of persons to be proceeded against as if they were assessed and finally in section 29 it refers not only to an assessed but also to another person liable to pay tax, penalty or interest. These are the expressions occurring in the Act until we reach section 45.

53. But in section 45 and 46 the only expression which occurs is "assessed". These two sections occur in Chapter VI of the Act providing for recovery of tax and penalties. Section 45, as already pointed out, empowers the Income Tax Officer to treat an assessed as not being in default if he has presented an appeal. Section 46(1) empowers the imposition of a penalty on an assessed in default. Sub-section (2) of that section provides for the dispatch of the certificate by the Income Tax Officer to the Collator so that the Collator might proceed to recover the amounts specified in it as if it were an arrear of land revenue.

54. It is not right, in my opinion, to think that when the word "assessed" was used in section 45 and 46 the legislative intent was to exclude from the operation of those two sections persons whose own income was not computed but who were, nevertheless made statutorily liable to pay the tax due in respect of the income of some one else.

55. It is only if we can come to the conclusion that the expression "assessed" occurring in sections 45 and 46 does not take within its ambit those other persons who are by the Act made liable to pay the tax payable by someone else in the first instance in respect of his own income, that we can accede to the contention urged on behalf of the petitioner before us that the petitioner is not an assessed within the meaning of that expression occurring in section 46(2) of the Act.

56. I am unwilling to think that the legislative intent was that Chapter VI should have no application to those other persons, but that its operation should be confined only to the primary assessed, if they may be so called, whose income was computed under the provisions of the Act.

57. Any construction to the contrary would be permissible only on the hypothesis that the only persons to whom Chapter VI should be applicable and that those other persons who are liable to pay the tax initially payable by someone else should be proceeded against in the ordinary way by the institution of a suit for the recovery of the tax which they are statutorily made liable to pay.

58. Even if the definition contained in section 2(2) of the Act could, for any reason, be interpreted as not taking within its ambit persons other than those whose income has been computed under the Act - and I am unable to subscribe to the view that any such narrow construction can be placed on it - it is clear that having regard to the subject matter of section 46(2) of Act, and context in which the expression "assessed" occurs in that sub-section, any such narrow interpretation of the expression "assessed" would be plainly repugnant both to such subject-matter and context. It is difficult to accept the proposition that the framers of the Act, having made elaborate provision for the computation of the

income of an "assessed" for the determination of the tax payable thereon, and having enacted statutory provisions imposing the liability of the person whose income is computed, to pay the tax, on the other persons referred to in the various parts of the Act, would have excluded from the provisions of section 46(2), every one other than the person whose income was computed.

59. My conclusion that the petitioner who is the legal representative of Bademiya and who was, therefore under the provisions of the section 24B(1) of the Act liable to pay the tax, which Bademiya was liable to pay in respect of his income, is an assessed within the meaning of that expression occurring in section 46(2) of the Act, rests upon what I consider to be the scheme and purpose of the Act.

60. But, Mr. Venkataramiah, the learned advocate for the petitioner has drawn our attention to some cases in which it has been held that the legal representative of a deceased assessed is not himself the assessed for the purposes of the Act.

61. The first case on which Mr. Venkataramiah relied is that decided by their Lordships of the High Court of Madras in *E. Alfred v. Additional Income Tax Officer*. In that case, a penalty was imposed on a legal representative of a deceased assessed in respect of whose income an assessment order had been after the death of the assessed. On his legal representative committing default in the payment of the tax determined, a penalty was imposed on him under the provisions of section 46(1) of the Act.

62. Now, u/s 46(1) of the Act, a person on whom a penalty can be imposed is the "assessed in default".

63. The question which had, therefore, to be decided by their Lordships was whether the legal representative was an "assessed in default" and their Lordships held that he was not.

64. If I may say so with respect, I find it difficult to subscribe to this view. In the first place what was assumed by their Lordships was that section 24B(1) was applicable only to cases where an assessment order had been made during the lifetime of the assessed. That portion of this sub-section by which it was provided that such legal representative was also liable to pay if he had been alive, does not appear to have been noticed. It was also thought that since the liability of a legal representative to pay the tax due from the deceased assessed was only a liability limited to the value of the estate inherited by him, he could not be regarded for the purposes of the Act as an assessed.

65. I do not find it possible to the proposition that the fact that the liability is a restricted liability is a sufficient ground for thinking that the legal representative is himself an assessed. I do not likewise notice anything significant in the fact that section 24B(2) created a fiction on the basis of which a legal representative could be regarded as an assessed. It is not possible, in my opinion, to agree with the view that that fiction created by section 24B(2) made the legal

representative only an assessed for the purpose of the assessment and that there after ceased to be one at the stage of collection.

66. In *Abdul Kassim v. First Additional Income Tax Officer*, after the death of the deceased assessed, notices u/s 22(2) of the Act were served on his legal representatives and, on their committing default in the payment of the tax, a certificate was dispatched by the Income Tax Officer to the Collector u/s 46(2) of the Act. Their Lordships expressed the view that although it could be said that the legal representative was in the arrears, it could not, however, be said that he was an assessed in arrears and this conclusion was based on the earlier pronouncement in *Alfred v. Additional Income Tax Officer*.

67. During the course of the argument, a decision of their Lordships of the High Court of Andhra Pradesh in *Rajah Manyam Meenakshamma v. Commissioner of Income Tax* was noticed by their Lordships in which it was decided that a legal representative of an assessed was himself an assessed. To that case, I shall advert a little later, but it would be enough to point out that their Lordships of the High Court of Madras were of the view that the decision of their Lordships of the Andhra Pradesh High Court had no real bearing on the question before them.

68. The ground on which the Andhra Pradesh High Court decision was distinguished does not appear to me, if I may say so with respect, to be acceptable.

69. In *Commissioner of Income Tax v. Abdul Rahiman Sait*, an assessed died after furnishing his return. A penalty was imposed on his legal representative who committed default in the payment of the tax. It was held that the legal representative was not an assessed in default and the basis of that decision was the view taken by their Lordships of the High Court of Madras. *Ansari J.* gave an additional reason in support of that conclusion which was to the effect that a legal representative whose duty is only to administer the estate inherited by him cannot become a defaulter and, therefore, could not become an assessed in default.

70. With this view, I find it difficult to agree.

71. The only other case on which Mr. Venkataramiah depended was a decision of their Lordships of the High Court of Allahabad in *Moti Lal Purshottam Das v. Income Tax Officer, Kanpur*.

72. That was a case in which there was an assessment of the income of a firm after its dissolution. A notice of demand was thereafter served on its partners, by which they were intimated that proceedings u/s 46 would be commenced against them if they neglected to pay the tax. This notice was quashed on the ground that it was not preceded by a notice of demand served u/s 29 of the Act.

73. There is no discussion in this case of the question whether the partners on whom notices were served could be regarded as assessed within the meaning of section 46 and this decision can, therefore, be of no assistance to the petitioner.

74. Their Lordships of the High Court of Andhra Pradesh have at least on two occasions taken a contrary view in *Raja Manyam Meenakshamma v. Commissioner of Income Tax*. An assessed died during pendency of an appeal before the Income Tax Appellate Tribunal and his legal representative claimed to have the right to continue the appeal u/s 33 of the Act. His competence to continue the appeal in that way was questioned on the ground that, since he was only a legal representative of the deceased assessed and was not himself an assessed, the appeal abated with the death of the assessed and could not therefore be continued by the legal representative.

75. This contention was overruled and, in doing so, this is what their Lordships observed :

"assessed" is defined under the Act to mean 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 this Act has been taken for assessment of his income or of the loss sustained by him or of the amount of refund due to him. Section 24B provides 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. A combined reading of these provisions indicates that a legal representative, who is liable to pay tax from and out of the estate of a deceased person, would be an assessed as defined in the Act."

76. Although the definition of an "assessed" to which their Lordships referred was the amended definition, it does not appear to me that a different conclusion would have been reached by their Lordships if they had rested it on the old definition.

77. In *Sheik Abdul Sattar v. District Collector, Masulipatam* an assessment was made under the provisions of section 23(3) by the adoption of the procedure provided by section 24B(2) of the Act. The legal representative, who thus became liable to pay the tax payable by the assessed having neglected to pay the tax, a certificate was issued by the Income Tax Officer u/s 46(2) of the Act. The legal representative applied for a mandamus restraining the respondents from recovering the tax. The ground on which the mandamus was prayed for was that the legal representative was not an assessed in arrears.

78. Seshachalapati J. overruled the contention following the earlier decision of the Andhra Pradesh High Court to which I have referred. The learned judge, in the course of the decision, also referred to another decision of their Lordships of the High Court of Andhra Pradesh in *Maddula Appa Rao v. Income Tax Officer, Eluru*, as supporting his view that the legal representative of a deceased assessed was also an assessed. But, it will be seen that the question as to whether a legal representative of a deceased assessed was also an assessed was not discussed or decided in *Maddula Appa Rao v. Income Tax Officer, Eluru*.

79. It will thus be seen that the view taken by their Lordships of the High Court of Andhra Pradesh is also the view which I have taken in this case and for the reasons for which I have reached the conclusion that a legal representative of an assessed is also an "assessed" within the meaning of that expression occurring in section 46(2) of the Act - and may view rests on the general scheme of the Act as also the definition of the expression "assessed" occurring in section 2(2) of the Act - I must respectfully dissent from the decisions of the High Court of Madras and Kerala to the contrary. In my opinion, the contention of the petitioner that he is not an assessed and that therefore the Income Tax Officer could not have sent a certificate to the Deputy Commissioner u/s 46(2) of the Act has to fail and must be overruled.

80. What remains to be considered is the argument addressed that, although the petitioner might be regarded as an assessed, he was not an assessed in arrears.

81. It is clear that if this contention has to be upheld, the certificate which the Income Tax Officer in this case sent to the Deputy Commissioner was beyond his competence.

82. What has been urged before us is that no assessed becomes an assessed in arrears unless a notice of demand is served on him u/s 29 of the Act, although there is a computation of the income and the determination of the tax payable in respect of such income. It is urged that the tax becomes due from the assessed only when he is served with a notice of demand u/s 29.

83. This contention, in my opinion, is irrefutable and has to be upheld. Section 29 of the Act reads :

"29. Notice of demand. - When any tax, penalty or interest is due in consequence of any order passed under of in pursuance of this Act, the Income Tax Officer shall serve upon the assessed or other person liable to pay such tax, penalty or interest a notice of demand in the prescribed form specifying the sum so payable."

84. u/s 30, an assessed may appeal against the assessment made against him and sub-section (2) of this section directs that the appeal shall be presented within thirty days of the receipt of the notice of demand relating to the assessment.

85. The service of the notice of demand u/s 29, it will thus be seen, is an important step to be taken by the Income Tax Officer after he makes an assessment, so as to enable an assessed who wishes to appeal against order of assessment to appeal against it u/s 30. The requirements of section 29, in my opinion, is an imperative requirement and it cannot be said that unless a notice of demand is served as required by that section, in the form prescribed for that purpose, calling upon him to pay the amount of the tax payable by him, it could ever be possible to suggest that the person by whom the tax is payable has not paid the tax and is in arrears. It is well stated law that a tax or other sum of

money payable under Act becomes due only when it is demanded and it is only after such demand is made that it is impressed with the character of a debt which the revenue might recover by the employment of the machinery provided by Chapter VI of the Act.

86. That was the view taken by their Lordships of the Privy Council in *Doorga Prosad v. Secretary of State* and, in that case, this is what their Lordships said :

"In their Lordships" opinion, although Income Tax may be popularly described as due for a certain year, it is not in law so due. It is calculated and assessed by reference to the income of the assessed for a given year, but it is due when demand is made u/s 29 and section 45. It then becomes a debt due to the Crown, but not any particular period."

87. This court in *Govindaswamy v. Income Tax Officer, Special Survey Circle, Bangalore* took the same view and pointed out that although by virtue of section 44, the quondam partner of an unregistered firm was liable to pay the tax assessed on the firm before its discontinuance, he could not be said to be an "assessed in default" if no notice of demand u/s 29 was served on him. The court was obviously of the view that, unless an assessed is in default, he could not be an assessed in arrears and it is clear that we are bound by this pronouncement.

88. It is thus clear that, although the petitioner is an assessed for the purpose of section 46(2) of the Act, there was no amount of arrears due from him, there having been an omission on the part of the Income Tax Officer to serve upon him a notice u/s 29 of the Act. That being so, it was not permissible for the Income Tax Officer to forward to the Collector a certificate under the provisions of that sub-section. Nor was it lawful for the revenue authorities to recover from the petitioner the amount specified in that certificate, as if it were an arrear of land revenue.

89. Although the petitioner has to fail in his contention that he is not an assessed, the writ petition has to succeed on the other ground, that no amount of arrears was due from him.

90. We should, therefore, quash the certificate forwarded by respondent No. 2 u/s 46(2) of the Act and also the proceedings taken by respondent No. 1 on the basis of such certificate for the recovery of the amount specified in it. It is so ordered.

91. It will, of course, be open to respondent No. 2 to now serve a notice of demand u/s 29 on the petitioner and it would be equally open to the petitioner to raise all such contentions which might be available to him thereafter.

92. In the course of the argument, the petitioner offered to give an undertaking that he would not alienate the properties of Bademiya, which have been attached, until the Income Tax department took appropriate steps for the recovery of the tax payable for the year 1951-52 and a written undertaking to that effect has been produced before us. That undertaking is accepted and will be

treated as part of the record of these proceedings.

93. There should, in my opinion, be no order as to costs in this writ petition and it is ordered accordingly.

94. Petition allowed.