
(1991) 10 BOM CK 0002
In the Bombay High Court
Case No : Writ Petition No. 2 of 1983

Chaturbhuj and another

APPELLANT

Vs

Recovery Officer and another

RESPONDENT

Date of Decision : 28-10-1991

Acts Referred:

Income Tax Act, 1961 — Section 147, 148

Citation : (1993) 199 ITR 739 : (1992) 2 MhLj 1484

Hon'ble Judges : H.D. Patel, J;G.D. Patil, J

Bench : Division Bench

Advocate : S.V. Manohar, for the Appellant; A. Shelat, for the Respondent

Judgement

H.D. Patel, J.—Respondent No. 1, the Tax Recovery Officer, Nagpur, by order of attachment dated October 20, 1982, attached Plot No. 212 and the house standing thereon bearing Corporation house Nos. 208 and 208-A in Ward No. 23, Lakadganj, Nagpur, owned by the petitioner. The attachment was stated to have been made in pursuance of some recovery said to be outstanding against the late Shri Rajabhai Premji, the father of petitioner No. 1. On an enquiry being made by the petitioners about the details of the recovery, it was learnt that the Income Tax Officer, "B" Ward, Bhuj (State of Gujarat), has sent revenue recovery certificates to the Tax Recovery Officer, Jamnagar, and he, in turn, forwarded the same to respondent No. 1, the Tax Recovery Officer, Nagpur. The recovery pertained to Income Tax dues including interest amounting to Rs. 1,11,428 for the assessment year 1969-70, Rs. 3,824 for the assessment year 1970-71 and wealth-tax dues of Rs. 12,141 for the assessment year 1969-70, all arising out of respective assessments made on the assessee, the late Rajabhai Premji, the father of petitioner No. 1, by the Income Tax Officer, "B" Ward, Bhuj. A copy of the order for the assessment year 1969-70 is filed on record. The assessee is described as the late Shri Rajabhai Premji (decd.), by legal representative, Purshottam Rajabhai.

2. By an amendment, the petitioners further contend that by two more orders of

attachment, both dated October 10, 1985, respondent No. 1 the Tax Recovery Officer, Nagpur, attached N. I. T. Plot No. 224-A and Plot No. 224-B situated at Lakadganj, Nagpur. Even this attachment is stated to be for recovery of the dues mentioned above against the late Shri Rajabhai Premji. All these orders of attachment are challenged in this petition.

3. Before we embark upon the grounds of challenge, it will be useful to narrate some facts essential to the questions involved. When Rajabhai Premji died on February 10, 1969, he left behind his widow, Rajibai, and three sons, namely, Govardhan, Purshottam and Chaturbhuj. Ramesh and Pradip are the sons of Chaturbhuj. After the death of Rajabhai Premji, an estate duty return was filed by Purshottam and Chaturbhuj, petitioner No. 1. The said return was accompanied by a will executed by the deceased Rajabhai Premji. In the course of hearing, Smt. Rajibai filed affidavits in the support of the return. Various other papers also were filed. By an order dated February 1, 1972, the total value of the estate was determined at Rs. 1,49,853 as against the return filed for Rs. 1,04,953.

4. On the basis of the affidavits filed by Smt. Rajibai, in which she stated that her deceased husband and left Rs. 94,253 in cash, the Income Tax Officer felt that the income chargeable to tax had escaped the assessment made in respect of the deceased for the year 1969-70. Accordingly, a notice u/s 148 of the Income Tax Act was issued to Purshottam, the son of the deceased. No other legal heir was noticed though it is incumbent upon the Income Tax Officer to do so. In response to the notice, a "Nil" return was filed by Purshottam. The Income Tax Officer, Bhuj, assessed the income of the deceased at Rs. 1,44,850 and raised a demand for Rs. 1,19,000. It seems that petitioner No. 1 challenged this order of assessment in appeal and raised various contentions including non-issuance of notice to the other legal heirs. The Appellate Assistant Commissioner, Jamnagar, rejected the contention so raised, but drastically reduced the income determined by the Income Tax Officer, Bhuj. The Department went in appeal and the Tribunal at Ahmedabad, reversed the order of the appellate authority and confirmed the order passed by the Income Tax Officer, Bhuj. The recovery proceedings hence came to be commenced. On behalf of the petitioners, it was contended and emphatically so that the Income Tax Officer, Bhuj, should have served notices on all the legal representatives before resorting to assess the escaped income of the deceased, Rajabhai Premji. It was further contended that the Department well knew the legal representatives since the Department had decided the estate duty case of the deceased Rajabhai, the return for which was filed by petitioner No. 1 along with Purshottam. Not only that, the basis for assessment of the alleged escaped income as assessed could not be recovered by attaching the property of the petitioners and selling them.

5. The respondents have not filed their return. However, we do find an application filed by the second respondent on record. It is registered as Civil Application No. 3243 of 1985. In that application, it was prayed that the petition

should be dismissed. The ground for making the prayer was that the assessment had become final and conclusive and the petitioners cannot now escape the liability. It seems that the civil application was not even pressed though filed in September, 1985. We also find that the said civil application is also not sworn to by the officer concerned. In these circumstances, it is difficult to take cognizance of the averment made in the said civil application.

6. This does not mean that the respondents are precluded from urging legal points arising in the case. It was submitted on behalf of the respondents that the notice u/s 148 served on Purshottam as legal representatives and was sufficient to sustain the assessment against the estate of the deceased Rajabhai. Alternatively, it was submitted that his court should direct the Income Tax Officer to issue notices to all the legal representatives and then assess the escaped income liable for tax afresh.

7. It would be appropriate at this juncture to scrutinise the law laid down on the point. We will first refer to the decision of the Supreme Court in *First Additional Income Tax Officer, Kozhikode Vs. Susheela Sadanandan and Another*, . Subha Rao J., speaking for the court, observed (at page 172) :

"The result is that if a person dies executing a will appointing more than one executor or dies intestate leaving behind him more than one heir, the Income Tax Officer shall proceed to assess the total income of the deceased against all the executors or the legal representatives, as the case may be."

8. The observation of the Supreme Court would have ordinarily obviated on our part the examination of the question on principle but we find in the latter part of the judgment some exceptions carved out which will have to be considered depending upon the facts in each case. Briefly narrated, those exceptions are as under :

(1) There may be cases where, though there are several legal representatives, one may represent the whole interest of the deceased and in such a case when there is complete representation of the interest of the deceased before the Income Tax Officer, the assessment made would bind the estate of the deceased.

(2) There can be cases where, though one legal representative is served, he appears in the proceedings with the consent, express or implied, of the other legal representatives. In such cases also, the assessment would bind the estate.

(3) There can be a category of cases where the Income Tax Officer bona fide and diligently believes one or more persons to be the only legal representatives of the deceased and initiates proceedings by serving notices on them and subsequently it is found that besides those served, there were other legal representatives also of the deceased. There is no reason, in such cases, why the general rule as evolved in the field of civil law and well-enunciated in the case of *Daya Ram and Others Vs. Shyam Sundari*, , 1954, should not be applied.

All the aforesaid principles are followed also in *Chootharmal Wadhuram (Decd.)*

(by legal representatives) Vs. Commissioner of Income Tax, .

9. Now turning to the facts in this petition, it can never be inferred that Purshottam projected himself as a legal representative representing also the cause of the petitioners before the Income Tax Officer, Bhuj, for the simple reason that petitioner No. 1 did take part in the estate duty proceedings and was one of the signatories to the return filed therein. This fact was well known to the Department and more so because the proceedings in regard to the escaped assessment were commenced on the basis of an affidavit filed by Rajibai in the estate duty proceedings. The case of the petitioners does not fall in any of the exceptions carved out to the general rule laid down in the case of First Additional Income Tax Officer, Kozhikode Vs. Susheela Sadanandan and Another, . We cannot hence accept that the notice issued to Purshottam, the son of deceased Rajabhai Premji, is sufficient to provide complete representation of the interest of the deceased and the assessment and in such circumstances can bind the estate of the deceased. The submission made on behalf of the respondents that there was complete representation to the estate of the deceased must fail.

10. By relying upon the decisions in Commissioner of Income Tax, Delhi-III Vs. Roshan Lal and another, and Commissioner of Income Tax, Gujarat-I Vs. Sumantbhai C. Munshaw (Decd), , it was alternatively contended that his court should revive the proceedings in regard to escaped assessment by directing the concerned Income Tax Officer to issue notices to the remaining legal representatives and reassess the escaped income once again. We do not think that the aforesaid decisions relied upon lay down the proposition as urged before us. Even the facts are totally different. The reliance placed on these cases is apparently misconceived. We also cannot accept the contentions for the simple reason that reassessment of escaped income cannot be made, when one order of assessment is in existence against the legal representative, Purshottam. It may be relevant to observe here that what is challenged in the petition is the binding effect of the assessment order on the other legal heirs and its consequent effect. By issuing the direction, two assessment orders for the same year in respect of the same deceased person would be in force. Such a situation cannot be allowed to arise more so when the bar of limitation would also come in the way of the respondents.

11. In the result, the petition is allowed. The impugned orders of attachment are hereby quashed and set aside. It is further declared that the orders of assessment made on the deceased Rajabhai through legal representative, Purshottam Rajabhai, cannot bind the petitioners or the property in their possession. The rule is, accordingly, made absolute. There shall, however, be no order as to costs.