

(1965) 01 CAL CK 0018
In the Calcutta High Court
Case No : Income Tax Ref. No. 14 of 1961

Commissioner of Income Tax

APPELLANT

Vs

Sudhir Kumar Laha and Another

RESPONDENT

Date of Decision : 21-01-1965

Acts Referred:

Income Tax Act, 1922 — Section 34(1), 41

Citation : AIR 1965 Cal 476

Hon'ble Judges : S.A. Masud, J;G.K. Mitter, J

Bench : Division Bench

Advocate : S. Mukherjee and B. Gupta, for the Appellant; A.C. Roy, P.C. Mukherjee and B.K. Datta, for the Respondent

Judgement

Mitter, J.—This is a reference u/s 66(1) of the Act the question referred being—

"Whether on the facts and circumstances of the case the assessment u/s 34(1) (a) was correctly set aside ?"

2. The facts are as follows : One Joggeswar Laha by his will dated December 22, 1920 appointed his wife Nrityakali Dassi, his nephew Anath Krishna Laha and one Radha Kanto Paul as executrix, executors and trustees of his will. He bequeathed his business solely to his said nephew and devised and dedicated rights in his properties both movable and immovable and all the rest and residue of his estate including the outstandings of his business to various religious and charitable trusts. He further directed thereby that his executrix, executors and trustees should stand possessed of all his properties both movable and immovable upon trust to collect all his assets and spend Rs. 5,000/- for the purpose of his Adyashradha ceremony and the sum of Rs. 2500/- for the similar ceremony of his wife and erect three temples on premises Nos. 11/2 and 11/3, Baburam Ghose Lane at a cost of not less than Rs. 25,000/-. The said executrix, executors and trustees were to consecrate and establish according to Hindu rights and ceremonies Sree Kali Thakurani and two Siva Lingas in the said three temples at a cost of Rs. 5,000/- out of the trust fund in their hands. He also appointed his

wife and his nephew Anath Krishna Laha and the survivor of them to be the Shebaites for the purposes of all religious ceremonies and charitable acts mentioned in his will. The executrix, executors and trustees were to realise all rents and profits of his properties and to pay repair charges of the same out of the trust funds and perform or cause to be performed the daily periodical worship of the three thakurs to be established and consecrated. The will contains a list of ceremonies and charitable acts to be performed by the trustees, as also the expenses to be incurred in connection therewith. He further directed that after the death of the two Shebaites already mentioned Sudhir Kumar Laha and Manindra Kumar Laha, sons of his nephew Beney Krishto Laha and the survivor of them were to be the shebaites and after their death the nearest male members of his family should be the Shebaites. The executrix, executors and trustees were to be at liberty to sell a certain property in the district of 24 Parganas and after meeting all the payments mentioned they were to invest the sale proceeds either in the purchase of profitable immovable properties or in Government or other approved securities. There was a further direction that the executrix, executors and trustees should invest the surplus income in any manner that might appear to them good and proper and devote the income thereof for the purpose of other religious and charitable acts as they would think fit.

3. Probate of the will was taken out on March 19, 1921. The Tribunal found that the administration of the estate was complete at or about the time relevant to the assessment year 1947-48. In response to a notice u/s 34(1) (a) Anath Krishna Laha filed a return as executor for the assessment year 1949-50 showing an income of Rs. 1610/-. He claimed that the income from the estate should be taxed individually in the hands of the deities only and should not be treated as income taxable in the hands of the trustees. The assessment was made u/s 23(3) read with Section 34(1)(a) and Section 41 of the Income Tax Act on Anath Krishna Laha as trustee. The assessee's appeal to the Appellate Assistant Commissioner was not successful. After going into the question elaborately the Appellate Assistant Commissioner held that directions under the will having been carried out the assessee was holding the properties as trustee. In his appeal to the Tribunal the assessee contended that notice u/s 34(1) (a) having been issued to the executrix, executors and trustees was not in proper form as the notice had to specify the particular character which assessee held at the relevant time. The reasoning of the Tribunal was as follows:

"The proceedings u/s 34 and Section 41 were penal in nature and the Income-tax Officer should make up his mind in what character he proposed to assess the assessee and call him to file a return u/s 34(1) (a). It was not enough for the Income Tax Officer to describe the assessee as an executor, trustee etc. The mere fact of the assessee filing a return did not preclude him from objecting to such notice. The notice was therefore invalid and all proceedings taken thereunder should be set aside."

It appears to us that the order of the Tribunal cannot be supported. Section 34(1)

(a) gives the Income Tax Officer power to issue a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 22 where he has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income u/s 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to Income Tax have escaped assessment for that year, or have been under-assessed or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed. Anath Krishna Laha undoubtedly played the dual role of executor and trustee for many years after the death of Joggeswar Laha and the probate of his will. When exactly a person ceases to be an executor and becomes a trustee is a question not always easy to solve. If the Income Tax Officer had any doubt in his mind as to whether Anath Krishna Laha was functioning as an executor or as a trustee, there was nothing in law to prevent him from serving two notices on Anath Krishna Laha describing him in one as executor and in the other as trustee. It could then hardly be open to Anath Krishna Laha to contend that both the notices were bad. I see no valid reason for objecting to the validity of the notice merely because in one document he has been described as an executor trustee. On the completion of the administration of an estate a person ceases to hold property as executor but does not shed his character as trustee. It was for the assessee to assert whether he was functioning as executor or as trustee. If the Income Tax Officer had any doubt on this score, he was within his right to serve a notice on the assessee in his dual capacity. Such a notice is neither illegal nor improper. It does not in any way prejudice the assessee from stating the true character in which he held the property. If he could have shown that he was neither an executor nor a trustee he probably could not have been assessed on the strength of the notice served. Our attention was drawn by the learned advocate for the assessee to Section 3 of the Act under which income tax is charged for any year in respect of the total income of the previous year of every individual, Hindu undivided family, company and legal authority and of every firm and other association of persons or the partners of the firm or the members of the association individually. From this an inference was sought to be drawn that it must be specified in the notice whether the assessee was an individual or Hindu undivided family or a company etc. In my opinion, this has got nothing to do with the validity of the notice u/s 22 or Section 34 where a person is described as an executor to the estate or as a trustee under a will. In his return the assessee has merely to give the particulars of the Income of the estate and other details which the form requires him to furnish. If he is a trustee all that can happen is that the rate applicable may be a higher one u/s 41 of the Act. So "far" as the form of the return is concerned it is the same in the case of an executor as in the case of a trustee.

4. In the case of Gopal Das Parshottamdas Commissioner of Income Tax, CP and UP 1940 9 ITR 130 : (AIR 1940 AH 537) the assessee was given a notice in which four capacities were indicated one above the other without any one of

these capacities having been scored out. The contention of the assessee that he did not know exactly as to which capacity of his was under investigation rendering the notice invalid was not accepted by the Allahabad High Court. The Court observed that-

"If the assessee was in doubt he might well have asked for elucidation from the Income Tax Authorities, or, when he was submitting his return, he should have made clear the capacity in which he was furnishing his return."

The notice was held not to be bad on that score.

5. To the same effect is the judgment of the same High Court in RADHEY LAL BALMUKAND IN RE., .

6. In our view the tribunal fell into error in concluding that it was for the Income Tax Officer to make up his mind in what status the notice was to issue. In many cases that might in effect be prejudging the issue without hearing the assessee.

7. The answer to the question posed must be in the negative and against the assessee who will pay the costs of this reference.