
(1973) 03 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 1024 of 1970

Joseph Joseph

APPELLANT

Vs

Agricultural Income Tax Officer

RESPONDENT

Date of Decision : 05-03-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 6
Kerala Agricultural Income Tax Act, 1950 — Section 24(3)

Citation : (1973) 92 ITR 114

Hon'ble Judges : M.U. Isaac, J

Bench : Single Bench

Advocate : S.K. Nagendran, N. Krishna Pillai and N.N. Divakaran Pillai, for the Appellant; Government Pleader, for the Respondent

Judgement

Isaac, J.—This writ petition has been filed by a legal representative of one Shri Kurien Ouseph to quash three orders of assessments, exhibits P-1, P-2 and P-3, all dated September 15, 1969, made by the respondent, the Agricultural Income Tax Officer, Palai, under the Agricultural Income Tax Act, 1950, for the years 1966-67, 1967-68 and 1968-69. In all the assessments, the name of the assessee is described as "Legal heirs of Late Shri Kurian Ouseph". The impugned orders of assessment were passed without notice to any of the legal representatives of the deceased; and the contention before me is that such an order of assessment is bad under law. It is also contended that the said orders are bad, for the reason that they do not state the names of the legal representatives as the assessee.

2. The facts of the case are not in dispute. Assessments were first made, against the deceased, Kurian Ouseph, u/s 18(4) of the Act, Those assessments were set aside by the respondent on applications made by the deceased u/s 19 of the Act. After that, a pre-assessment notice was issued by the respondent to the deceased on January 8, 1969, in respect of the assessment for the year 1968-69 calling for his objections, if any, and posting the case for hearing on January 17,

1969. The deceased applied for time, which was granted up to January 31, 1969, But, he did not file any objection. Pre-assessment notices were again issued in respect of the assessments for all the three years to the deceased on June 5, 1969, calling for his objections, if any, and posting the case to June 13, 1969. The deceased again applied for time; and time was granted up to June 20, 1969. The deceased made further applications for adjournment on the above date, which were rejected by the respondent; and the cases stood reserved for passing the assessment orders. Before the orders were made, the respondent received intimation that the deceased died on September 2, 1969. However, the respondent proceeded to make the assessments; and he passed the impugned orders in the manner stated above on September 15, 1969. The respondent made an enquiry through the revenue department as to who were the legal representatives of the deceased. The revenue reported the names of three persons as the sole legal representatives. The petitioner was one of them. Accordingly, the respondent issued copies of the assessment orders together with notices of demand on all the said three persons. Thereupon, the petitioner has filed this writ petition to quash the said assessments on the grounds already stated.

3. The question whether the legal representative of the deceased assessee, against whom proceedings for assessment were pending, is entitled to get any notice before the assessment order is passed is admittedly governed by Sub-section (3) of Section 24 of the Act, with reads:

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

(3) Where a person dies without having furnished a return which he has been required to furnish u/s 17, or having furnished a return which the Agricultural Income Tax Officer has reason to believe to be incorrect or incomplete, such officer may make an assessment of the total agricultural income of such person and determine the agricultural Income Tax payable by him on the basis of such assessment, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might u/s 17 or Section 18 have required from the deceased person."

4. Counsel for the petitioner submits that on a true construction of the above provision, the legal representative of the deceased is entitled for a notice to produce any accounts, documents or other evidence to prove the correctness of the returns submitted by the deceased, and that any assessment made without issuance of such a notice is bad under law. The submission is not wholly right under the above provision. The Income Tax Officer is bound to issue only such notices "which would have to be served on the deceased person had he survived". If the assessment proceedings had been completed before the assessee died all that would remain is to pass the order of assessment; and there is no question of issuing any notice to his legal representative before the

assessment is* made. The order of assessment and the notice of demand have to be served on the legal representative. The tax becomes payable only on the notice of demand being served on the assessee or his legal representative, as the case may be. In the case before me, the proceedings for assessment had come to a close on June 20, 1969, and thereafter there was no question of issuing any notice to any person before the assessment orders were passed. The fact that the assessee died in the meanwhile cannot affect the validity of the assessment orders. The contention that the said orders are bad under law, since notices were not issued to the legal representatives before the orders were passed, has, therefore, to be rejected.

5. I have support for the above view in a Division Bench decision of the Mysore High Court in Abdul Rahman v. Commissioner of Income Tax ILR [1961] Mys 181. The facts of that case were almost similar to the one before me except for one difference, viz., the impugned, assessment in the Mysore case was made without notice of the fact that the assessee had died, while in the instant case, the Income Tax Officer had knowledge about the death of the assessee before the impugned orders were passed. But I do not think that this will make any difference on the application of Section 24(3) of the Kerala Act, which corresponds to Section 23(2) of the Mysore Act. The Mysore High Court held that, if the entire investigation of the assessment proceedings has come to a conclusion during the lifetime of the , deceased, it was plainly unnecessary for the Income Tax Officer to issue notice to the legal representative of the assessee and start the proceedings afresh. The Mysore High Court also held that the principle underlying Rule 6 of Order XXII of the CPC would apply to such a case. Rule 6 reads :

"Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place."

6. The Supreme Court has held in Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property, that the principle of the above rule would apply to proceedings under the Evacuee Property Ordinance. I do not find any reason to hold that the general principle contained in the above statutory provision would not apply to an assessment proceeding. The attack against the validity of the impugned orders on the ground that they were passed without notice to the legal representatives cannot succeed for the above reason also.

7. Counsel for the petitioner has relied on a Single Bench decision of the Calcutta High Court in SAHASRANGSHU KANTA ACHARYA Vs. COLLECTOR OF MALDA AND OTHERS., in support of his contention that an order of assessment which does not specify the name of the legal representative is bad under law. The impugned assessments in that case related to the years 1952-53, 1953-54 and 1954-55 ;

and they were in respect of the income of a person who died on or about June 5, 1952. Proceedings for the assessments seem to have been initiated long after the death of the person ; and the name of the assessee was stated in the orders of assessment as "successor-in-interest to the late Maharaj Kumar Sitangshu Kanta Acharya Bahadur", Notices of demand were also issued in the same style. It was successfully contended in that case that the assessments as well as the notices of demand in so far as they did not specify the name of any person as assessee who is the person liable to the tax assessed were bad under law. I do not think that the above decision can have application to the facts of the present case. That was a case where assessment proceedings were commenced after the death of the person whose income was assessed without issuing any notice to any specified person as legal representative. It is true that in the instant case also the name of the assessee was shown as "legal heirs of late Shri Kurien Ouseph", and their names were not specified. But, in this case, the assessment proceedings were completed during the lifetime of the assessee; and the orders of assessments and the notices of demand were issued to all those persons who, according to the respondent, are the legal representatives of the deceased. If the assessing authority is entitled to make an assessment without issuing any notice to the legal representative of the deceased, in view of the fact that the proceedings had come to a conclusion during his lifetime, I do not think that the order would be defective on account of the fact that the name of the legal representative was not specified therein.

8. Lastly, it was contended that there are really seven legal representatives for the deceased, and that the orders of assessments are bad under law, since they have been served only on three of them. The assessee is admittedly one of the legal representatives; and he has been duly served with the copies of the orders of assessments as well as notices of demand. No person, who claims to be a legal representative and who was not been served with copies of the orders of assessments and demand notices has come before me to question the validity of the assessments. According to the respondent, there are only three legal representatives for the deceased; and all of them have been duly served with the assessment orders and demand notices. It is not, therefore, open to one of those persons to come forward and say that there are also other legal representatives, and that proceedings are bad in view of the fact that notices were not issued to such alleged legal representatives. If any such person claims to be a legal representative, the respondent may serve him also with copies of the assessment orders and the demand notices. But that is no concern of the petitioner.

9. For the reasons stated above, none of the contentions raised by the petitioner can succeed. This original petition is accordingly dismissed. There will be no order as to costs.