(1986) 07 KAR CK 0005

In the Karnataka High Court

Case No : ITRC No''s. 12 to 14 of 1982

K. Ashok Kumar and Others APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 30-07-1986

Acts Referred:
Income Tax Act, 1961 — Section 139 (2), 144 B

Citation : (1986) 29 TAXMAN 173

Hon'ble Judges : K. Jagannatha Shetty, Acting C.J.;N.D. Venkatesh, J

Bench : Division Bench

Advocate : S.P. Bhat, for the Appellant; K. Srinivasan and H. Raghavendra Rao, for the Respondent

Judgement

Jagannatha Shetty, Actg. C.J.

1. These are references u/s 256(1) of the Income Tax Act, 1961, All these references pertain to the same assessee and the assessment year is 1973-74.

2. The Tribunal has referred the following three questions :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the assessment should be done de novo from the stage of Section 144B proceedings after issuing notices to all the legal representatives ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal ought to have held that the assessment was null and void and, consequently, it ought to have annulled the entire assessment ?

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the assessee after having participated in all the proceedings and after receipt of the draft assessment order could raise objection regarding validity of service of notice and of the assessment orders ?"

3. One Muddusuvarna was the original assessee. For the assessment year 1973-74 he was served with a notice u/s 139(2) of the Income Tax Act, 1961, but he did not file the return. He died on January 9. 1975, leaving behind him his wife and children including the eldest son, Ashok Kumar. After his death, the Income Tax Officer again issued a notice to Ashok Kumar u/s 139(2), Ashok Kumar filed a return on March 6, 1976, and continued to participate in the assessment proceedings. The Income Tax Officer sent a draft assessment order to Ashok Kumar as required u/s 144B. At that stage, Ashok Kumar pointed out in his letter dated March 4, 1977, that there are also other legal representatives and the estate of Muddusuvarna was, therefore, not properly represented since they were not notified. The Income Tax Officer, however, did not issue notices to the other legal representatives. The proceedings continued and the Inspecting Assistant Commissioner made an order u/s 144B whereby the assessment was completed on August 30, 1977. At that stage, the Income Tax Officer intimated all the legal representatives about the income assessed, etc. The assessment was made on Ashok Kumar as the legal representative of the estate of Muddusuvarna.

4. Against the assessment order, Ashok Kumar preferred an appeal to the Commissioner of Income Tax (Appeals). One of the contentions raised in the appeal was that the estate of Muddusuvarna was not properly represented and all his legal representatives ought to have been notified. The Commissioner rejected that contention, although he gave some relief on the merits of the matter.

5. Thereupon, the assessee preferred an appeal before the Tribunal. It was contended before the Tribunal that the assessment order was invalid since all the legal representatives of Muddusuvarna were not notified. On behalf of the Revenue, it was contended that Ashok Kumar, having participated in the proceedings as a legal representative of Muddusuvarna, he could not raise the contention regarding the validity of the assessment. It was urged that if any such contention could be raised, it could be only by the other legal representatives of Muddusuvarna and not by Ashok Kumar himself.

6. The Tribunal rejected the contention urged for the Revenue. It held that Ashok Kumar could raise the objection of procedural irregularities as to the want of notice to all the legal representatives of the late Muddusuvarna. It also held that the invalidity has occurred from the stage of Section 144B proceedings when Ashok Kumar raised the said objection before the Income Tax Officer. Consequently, the Tribunal set aside the assessment order and directed the Income Tax Officer to proceed with the assessment de novo from the stage of Section 144B proceedings after issuing notices to all the legal representatives. However, it did not agree with the contention of Ashok Kumar that the entire assessment proceedings should be annulled.

7. The first question is, whether the Tribunal was right in law in holding that the assessment should be done de novo from the stage of 144B proceedings after

issuing notices to all the legal representatives.

8. Mr. S. P. Bhat, counsel for the assessee, submitted that the initiation of assessment proceedings was bad since the estate of late Muddusuvarna was not fully represented before the Income Tax Officer and the Income Tax Officer issued a notice u/s 139(2) only to Ashok Kumar and he ought to have issued such notices to all the legal representatives.

9. Ordinarily, we would have accepted this contention. If a person dies, it is necessary for the Income Tax Officer to issue notices to all the legal representatives before initiation of proceedings because the estate of the deceased cannot properly be represented by only one of the legal representatives. All legal representatives must be notified. But, in the instant case, that contention is not relevant. Notice u/s 139(2) was served on Muddusuvarna when he was alive. He did not file the return. Under the law, there was a valid initiation of the proceedings. There is no requirement under the law to issue another notice u/s 139(2) to the legal representatives. However, having come to know that Muddusuvarna died leaving behind him more than one legal representative, the Income Tax Officer issued a notice again to Ashok Kumar. That was not a legal requirement under the statute. The fact that the Income Tax Officer had issued a notice u/s 139(2) to Ashok Kumar will not make it obligatory to issue similar notices to the other legal representatives to make the proceedings valid. The Tribunal, in our opinion, was justified in stating that the proceedings should be de novo held from the stage of Section 144B, since it was brought to the notice of the Income Tax Officer that there are other legal representatives and their contentions also should be considered before making a reference to the Inspecting Assistant Commissioner.

10. In this connection, reference may be made to the decision of the Supreme Court in GUDUTHUR BROS. Vs. Income Tax OFFICER, SPECIAL CIRCLE, BANGALORE., and, in particular, to the passage at p. 301. It reads thus :

"In our opinion, the notice issued to the appellants to show cause why penalty should not be imposed on them did not cease to be operative, because the Appellate Assistant Commissioner pointed out an illegality which vitiated the proceeding after it was lawfully initiated. That notice having remained still to be disposed of, the proceedings now started can be described as during the course of the assessment proceedings, because the action will relate back to the time when the first notice was issued.

In our opinion, the Income Tax Officer is well within his jurisdiction to continue the proceedings from the stage at which the illegality has occurred and to assess the appellants to a penalty, if any, which the circumstances of the case may require."

11. However, we make it clear that notices shall be issued to all the legal representatives of Muddusuvarna and their objections will have to be considered by the Income Tax Officer before transmitting the papers with the draft order to

the Inspecting Assistant Commissioner u/s 144B.

12. In the circumstances, we answer the first question in the affirmative and against the assessee.

13. In the light of the conclusion that we have reached on the first question, the answer to the second question shall be in the negative and in favour of the Revenue and we answer it accordingly.

14. So far as the third question is concerned, we are of the opinion that the Tribunal was justified in stating that participation in the proceedings by Ashok Kumar will not preclude him from raising the question that the other legal representatives must also be notified. There is no estoppel so far as Ashok Kumar is concerned. He was only pleading that the estate of Muddusuvarna was not properly represented by him and there are other legal representatives who should also be notified. The Tribunal was justified in accepting that contention and directing notice to the other legal representatives as well.

15. We, therefore, answer the third question in the affirmative and against the Revenue.