(1976) 05 CAL CK 0013

In the Calcutta High Court

Case No : Income-tax Reference No. 406 of 1973

Kamalesh Kumar Mehta APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 13-05-1976

Acts Referred:
Income Tax Act, 1961 — Section 147, 159, 159(3)

Citation : (1977) 106 ITR 855

Hon'ble Judges : S.C. Deb, J;Dipak Kumar Sen, J

Bench : Division Bench

Advocate : M.M. Saha, for the Appellant;B.L. Pal and A. Sengupta, for the Respondent

Judgement

Deb, J.—The following question u/s 256(1) uf the Income Tax Act, 1961, is involved in this reference :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessment after the death of H. R. Mehta and without issuing notices to his legal representatives was not liable to be annulled ?"

2. Shri H. R. Mehta was the assessee. The facts stated by the Tribunal may briefly be stated as follows : After receiving the notices u/s 148 of the Income Tax Act, 1961, for the assessment years 1959-60 to 1961-62, Shri Mehta filed returns and revised returns for these assessment years. The assessments were completed u/s 144 of the Act but they were reopened on June 20, 1968, u/s 146 of the Act and thereafter Shri Mehta died on 23rd July, 1968, and his death was not brought to the notice of the Income Tax Officer by Mr. M. C. Poddar, a chartered accountant, who was appearing for him before the Income Tax Officer. The assessments were thus completed on January 30, 1969, by the Income Tax Officer without knowing that in the meantime Shri Mehta had died.

3. Shri Kamalesh Kumar Mehta, one of the legal representatives of the deceased assessee, filed appeals before the Appellate Assistant Commissioner and he was

represented by the same Mr. Poddar. The Appellate Assistant Commissioner accepted the contention of Mr. Poddar that after the death of the assessee a notice of hearing should have been given to the legal representatives and the assessments should have been completed in their hands u/s 159 of the Act. Since the Income Tax Officer was not informed about the death of the assessee, the Appellate Assistant Commissioner set aside those assessments and directed the Income Tax Officer to reframe the assessments after getting the names of the legal representatives and after issuing notices to them.

4. Before the Income Tax Officer could carry out those directions, the said legal representative filed appeals before the Tribunal and it was contended on his behalf by Mr. Poddar that the assessments were invalid and should have been annulled by the Appellate Assistant Commissioner. It was also argued that the Appellate Assistant Commissioner should have disposed of the appeals on merits. The Tribunal rejected these contentions and dismissed those appeals. Hence, the above question is now before us at the instance of the said legal representative.

5. Mr. M. M. Saha, the learned counsel for the legal representative, has contended before us that the assessments should have been annulled by the Tribunal, but we reject his contention.

6. Assessment or reassessment or recomputation of income of a person who has died during the pendency of those proceedings are kept alive by Clauses (a) and (b) of Sub-section (2) of Section 159 of the Act. Those proceedings may be continued against the legal representative from the stage at which they stood on the death of the assessee. The proceedings were pending on the death of Mr. Mehta. Therefore, those proceedings should have been continued against the legal representative from the stage at which they stood at the time of death of the assessee. Being wholly unaware of the death of the assessee, the Income Tax Officer was unable to comply with the above provisions of law and, therefore, those assessments were rightly set aside by the Appellate Assistant Commissioner inasmuch as they were not in accordance with the relevant provisions of the Act.

7. Section 159 of the Act does not provide for annulment of any assessment, reassessment or recomputation u/s 147 of the Act. On the other hand, it expressly provides for continuance of the assessment, reassessment and recomputation from the stage at which they stood on the date of the death of the assessee against his legal representative who in terms of Sub-section (3) of Section 159 of the Act is deemed to be an assessee and he is liable to pay the tax which the deceased assessee would have been liable to pay if he was alive, as stated in Section 159(1) of the Act.

8. Therefore, the Tribunal was right in sustaining the order of the Appellate Assistant Commissioner and we return our answer in the affirmative and in favour of the revenue. There will be no order as to costs.

Dipak Kumah Sen, J.

9. I agree.

