(1951) 03 PAT CK 0010

In the Patna High Court

Case No : Misc. Judcl. Case No. 127 of 1950

Lakshmi Narayan APPELLANT

Vs

Comr. of Income Tax RESPONDENT

Date of Decision : 01-03-1951

Acts Referred:

Excess Profits Tax Act, 1940 — Section 20
Income Tax Act, 1961 — Section 25A(1), 66(1)

Citation : AIR 1951 Patna 564 : (1951) 20 ITR 62

Hon'ble Judges : Sarjoo Prasad, J;Ramaswami, J

Bench : Division Bench

Advocate : B.N. Jain and Tarkeshwar Pd, for the Appellant; S.N. Dutta, for the Respondent

Judgement

1. This reference is made by the Income Tax Appellate Tribunal at the instance of the assessee u/s 66(1), Income tax Act.

2. The assessee was the karta of a Hindu undivided family up to 25-10-1940. Up to the year 1939-40 assessment was made on the assessee as karta. It is not disputed that u/s 25A, Sub-Section (1), the Income Tax officer made an order that there was partition of the undivided family on 25-10-1940. It is also not disputed that the family had 8 annas share in the firm called Jittanram Nirmalram of Gaya. The Income Tax Officer while making the assessment for the period 11-11-1939 to 30-10-1940 apportioned the profits of the firm into four parts, 8 annas being allotted to the outside patnr. & the other 8 annas allotted to the assessee & other two members of the family, viz, Vishnu Prasad Bhadani & Bhagwandas Bhadani. An appeal was preferred to the Appellate Asst. Comr. & also to the Income Tax appellate Tribunal who by its order dated 29-4-1944 set aside the assessment & remanded the case for proper determination of the date of partition after having such further evidence as it may be adduced. The firm of Jittanram Nirmalram had also been assessed to excess profits tax. A petn. u/s 20, Excess Profits Tax Act, was filed by the firm before the Comr. of Income Tax.

On 15-9-1944 the Comr. made an order, the effect of which was to reduce the assessment of the excess profits tax & to make a consequent increase in the assessment of Income Tax for the period in question. The Income Tax Officer issued notice u/s 34 against the firm & against the patnrs. with respect to the alleged escape of the Income Tax. The assessee filed return showing 1/6th share of income from the firm Jittanram Nirmalram but even so the Income tax Officer assessed him for 8 annas share of the entire profits as being representative of the Hindu undivided family which had then become defunct. The assessee preferred appeals to the Appellate Asst. Comr. & to the Income Tax appellate Tribunal, who overd. the objection that the assessment was not proper or valid.

3. At the instance of the assessee the appellate Tribunal has propounded the following question for the determination of the H. C. :

"Whether an assessment u/s 34, read with Section 25A(2) of a defunct Hindu undivided family could be completed on one of the members of the family & the whole of the tax demanded from him without completing the assessment of the other members & making any demand from them."

4. In our opinion the second part of the question, viz. :

"Whether the whole of the tax could be demanded from the assessee without completing the assessment of the other members & making any demand from them."

does not arise out of the order of the appellate Tribunal & we do not propose, therefore, to answer this part of the question under reference. On behalf of the assessee Mr. Jain attempted to show that this second part of the question also was argued before the appellate Tribunal; but on reference to the appln. made before the Tribunal u/s 66(1) it does not appear that any such question was mooted before the Tribunal & the submission of Mr. Jain cannot be entertained.

5. As regards the first part of the question it appears to us that upon the plain meaning of Section 25A of the Act the assessment is not complete unless each member of the joint family had been assessed for the share of the tax on the income according to the portion of the joint family property allotted to him. The material portion of Section 25A(2) states :

"Where such an order has been passed . . . the Income Tax Officer shall make an assessment of the total income received by or on behalf of the joint family as such, as if no partition had taken place, & each member or group of members shall, in addition to any Income Tax for which he or it may be separately liable ... be liable for a share of the tax on the income so assessed according to the portion of the joint family property allotted to him or it; & the Income tax Officer shall make assessments accordingly on the various members & groups of members in accordance with the provisions of Section 23."

In the present case it is manifest upon the undisputed facts that the assessment proceedings have not been completed according to the manner indicated in

Section 25A of the Act. It was the duty of the Income Tax Officer to make total assessment in the first place & then proceed to divide it pro rata between the family members according to the portion of the joint family property allotted to each. Thereafter the Income Tax Officer ought to have proceeded to make assessment on the various members of the family in accordance with the provisions of Section 23 of the Act. Though the assessment proceeding in this case is not complete the irregularity, if any, cannot avail the assesses Lakshminarain Bhadani for it will now be open to the Income Tax Officer to make a separate assessment of the various family members for the share of the tax of the income according to the portion of the joint family property allotted to each & thereafter each of the family member including the assessee will be jointly & severally liable for the tax assessed on the total income.

6. While, therefore, we consider that the first part of the question referred to us should be answered in the negative, it is manifest the assessee has substantially failed &, in our opinion, he must pay half the cost of the reference, which, in the circumstances of the case, we assess at Rs. 125.