
(1974) 11 MAD CK 0033

In the Madras High Court

Case No : Writ Appeal No. 26 of 1972 against Writ Petition No. 929 of 1967

M. Abdul Khalick and Co.

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 19-11-1974

Acts Referred:

Income Tax Act, 1922 — Section 24B, 46(5A)

Citation : (1975) 101 ITR 43

Hon'ble Judges : V. Sethuraman, J; V. Ramaswami, J

Bench : Division Bench

Advocate : Azeez Basha, for the Appellant; V. Balasubrahmanyam and J. Jayaraman, for the Respondent

Judgement

Ramaswami, J.—This appeal is against the judgment of a learned single judge in M. Abdul Khalick and Co. Vs. Income Tax Officer (I-C) and Another, . The petitioner is a firm of partnership. Originally, it consisted of five partners, of whom one was Sadullah Badsha. Sadullah Badsha (hereinafter called "the deceased") died on July 22, 1952. Thereafter, there was a reconstitution of the firm by a deed dated August 2, 1952, under which the widow of the deceased became a partner and his two minor daughters were admitted to the benefits of the partnership. The deceased was in arrears of Income Tax in respect of assessment years 1950-51 to 1952-53 to an extent of Rs. 69,335.94. Coming to know that the deceased at the time of his death had to his credit a sum of Rs. 29,328-11-2 in the partnership firm, recovery proceedings were initiated against the legal representatives in respect of that money. By a letter dated November 29, 1955, the Income Tax Officer informed the petitioner that the deceased was in arrears of Income Tax to the extent of Rs. 69,335.94, that his legal representatives who, later on, have either become partners or been admitted to the partnership, are liable to pay tax due by the deceased to the extent to which they have inherited the asset of the deceased and that, therefore, the petitioner shall not pay any amount to the legal heirs. In this notice, the Income Tax Officer has also shown the amounts standing to the credit of the three legal

representatives of the deceased in the accounts of the petitioner-firm as on March 31, 1955, which was much more than the sum of Rs. 29,328-11-2 which they had inherited from the deceased. Along with this letter, he also enclosed a notice u/s 46(5A) of the Indian Income Tax Act, 1922, forbearing the petitioner-firm from paying the amounts to the legal representatives of the deceased till the claim of the department relating to Income Tax arrears of the deceased was satisfied. But, in spite of this notice u/s 46(5A) and the letter dated November 29, 1955, the petitioner permitted the widow and the two daughters of the deceased to withdraw the entire amount standing to their credit including the capital.

2. Thereupon, the Income Tax Officer issued a notice on March 9, 1967, to the petitioner calling upon him to pay the sum of Rs. 29,328-11-2 as he had permitted the legal representatives of the deceased to withdraw that amount in contravention of the notice u/s 46(5A). The writ petition was filed for the issue of a writ of prohibition directing the Income Tax Officer and the Collector, to whom the certificate of recovery had been issued, to forbear from taking any recovery proceedings against the petitioner in pursuance of the notice dated March 9, 1967, issued by the Income Tax Officer.

3. It was contended by the petitioner before the learned single judge that the amount standing to the credit of the deceased was converted into share capital of his legal representatives when the firm was reconstituted on August 2, 1952, and that, therefore, the revenue could not recover the arrears. It was also contended that, since the heirs of the deceased were partners, they are entitled to withdraw the amount and that, therefore, the petitioner could not be held to have contravened the notice issued by the Income Tax Officer u/s 46(5A). The learned judge was of the view that it was not open to the petitioner by an arrangement with the legal representatives to convert or transform the character and nature of ownership in respect of the asset of the deceased to any other form and that by converting the amounts standing to the credit of the deceased as that of the capital of the legal representatives in the reconstituted partnership firm, the revenue could not have been prevented from pursuing against the assets of the deceased. In that view and since the petitioner permitted withdrawal of the money by the legal representatives subsequent to the notice u/s 46(5A), the learned judge held that the petitioner was liable. Accordingly, the writ petition was dismissed.

4. In this appeal, the learned counsel for the appellant raised the same contention as he did before the learned judge. According to him, on the reconstitution of the firm on August 2, 1952, the sums standing to the credit of the deceased became capital of his legal representatives and since there was no amount standing to the credit of the deceased-assessee in the reconstituted firm, the garnishee order did not take effect. It is true that the learned judge considered the reconstitution of the firm, and treating the amounts standing to the credit of the deceased as capital of the legal representatives in the

reconstituted firm as amounting to a conversion of the deceased's asset into that of the asset of the legal representatives. We are of the view, it is immaterial even if there is any such conversion. There cannot be any dispute that on the day when the deceased died whatever property he died possessed of was inherited by the legal representatives. u/s 24B of the Indian Income Tax Act, 1922, the legal representatives are liable to pay out of the estate of the deceased inherited by them the tax assessed and payable by the deceased to the extent of the value of the estate inherited. If the legal representative, after he had inherited the assets of the deceased, had converted the asset into a different form, certainly the department will be entitled to proceed against the substituted asset in the same way as it could have had against the original asset of the deceased. Therefore, the legal representatives would be liable to the extent they have inherited the property of the deceased even after the same is converted into their capital in the reconstituted firm. The petitioner was informed of the tax arrears of the deceased and the property of the deceased coming into the possession of the legal representatives. The petitioner also knows that the amount which was standing to the credit of the legal representatives as capital in the reconstituted firm was the amount that was standing to the credit of the deceased in the firm prior to his death. The petitioner was, therefore, liable to hold the entire amount due to the legal representatives for the satisfaction of the tax arrears of the deceased.

5. As already noticed, it is not the case of the petitioner that he had allowed the legal representatives to withdraw the amount prior to the notice u/s 46(5A). If he had paid the amount in spite of the notice u/s 46(5A), he had done so at his own risk and he is now liable to pay the amount to the department. We do not, therefore, find any reason to interfere with the order of the learned judge in this appeal.

6. It is made clear that the petitioner is liable only to the extent of Rs. 20,239.78 as it has been found by the learned judge that on the date of death, the deceased did not die possessed of Rs. 29,238-11-2, but after some adjustment only a sum of Rs. 20,239.78 was due by the firm to the deceased. In the result, the writ appeal fails and it is dismissed with costs. Counsel fee Rs. 250.