(1995) 03 GAU CK 0016

In the Gauhati High Court

Case No : Income-tax Reference No''s. 5 and 15 of 1990

Md. Abdul Mazid APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 30-03-1995

Acts Referred:
Income Tax Act, 1961 — Section 143(2)

Citation : (1995) 03 GAU CK 0016

Hon'ble Judges : M. Sharma, J;J. Sangma, J

Bench : Division Bench

Advocate : S.N. Medhi and U. Baruah, for the Appellant; D.K. Talukdar and B.J. Talukdar, for the Respondent

Judgement

J. Sangma, J.—In compliance with the request made by this court in Civil Rule No. 7(M) of 1977, the Appellate Tribunal referred this question u/s 256(2) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the order of assessment passed without impleading all the legal representatives was valid in law ?"

2. In short the facts can be stated thus. A. Wahid of Dibrugarh was an assessee to Income Tax. He had a share of income from Barik Bros., from house property and commission from sale of fish. He filed returns : (1) on March 30, 1968, for the assessment year 1967-68 showing an income of Rs. 21,528 ; (2) on May 30, 1969, for 1968-69 showing an income of Rs. 39,976 ; and (3) on March 28, 1970, for 1969-70 showing an income of Rs. 21,979. Before the Income Tax Officer completed the assessment, he (A. Wahid) died on May 17, 1971, leaving behind wife, Sahera Sultana, and sons and daughters,

3. The Income Tax Officer did not accept the returns submitted by A. Wahid and issued notice to only the wife, and not to the other legal heirs of the deceased and thereafter assessed the income u/s 144 of the Act : (1) Rs. 1,01,190 for

1967-68 ; (2) at Rs. 1,48,270 for 1968-69 and (3) Rs, 1,14,530 for 1969-70.

4. An appeal preferred by the assessee before the Appellate Assistant Commissioner was dismissed.

5. Mr. S.N. Medhi, learned counsel for the petitioner, argued that the assessment order was not valid in law inasmuch as it was done without serving a notice u/s 143(2) of the Act on all the legal heirs of A. Wahid, the deceased assessee. In support of his contention, he cited a decision of this court in Jai Prakash Singh (Legal Representative of Estate of Late B. N. Singh) Vs. Commissioner of Income Tax, Assam, In that case, this court held that if an assessee dies after filing the return which the Income Tax Officer does not accept the assessment must be made by the Income Tax Officer after serving notice u/s 143(2) of the Act on all the legal heirs of the deceased assessee''s estate and making them party to the reassessment proceeding. Mr. Medhi agrees that the Income Tax Officer may now start the assessment by complying with this requirement of law.

6. Mr. D.K. Talukdar, counsel for the Revenue, however, contends that in the instant case the widow of the deceased assessee did not say that there were other legal representatives and thereby she gave the impression to the Income Tax Officer that she had substantially represented the estate and the others were not interested in the matter. He submits that the point raised by Mr. Medhi is a mere technicality and cannot be sustained because it would impede the process of assessment. He submits that the present is a case where this court ought to give an answer in favour of the Revenue. He relied on a decision of the Madras High Court in E. Alfred Vs. First Additional Income Tax Officer, Salem, There it was held (headnote) :

"(i) that (a) if the Income Tax Officer bona fide believed and acted on that belief that A was the only legal representative, (b) if A did not bring to the notice of the Income Tax Officer that there were other legal representatives who should be brought on the record and the assessment completed in their presence as well, (c) if A represented the estate of E in the assessment proceedings, and (d) if there were no fraud or collusion, then, it could well be said that the entire body of legal representatives including A would be bound by the assessment made by the Income Tax Officer; but the first three factors (a), (b) and (c) were absent in this case ;

(ii) that as A had brought to the notice of the Income Tax Officer the fact of the existence of other legal representatives, and of the suit pending in the court for administration and partition, the Income Tax Officer could not be said to have acted in good faith in serving the notice on A alone and completing the assessment proceedings against him ; good faith necessitated due enquiry and it was the duty of the Income Tax Officer to make enquiries to verify- whether A was really in possession of the entire estate of E ; it was not enough to show that the other legal representatives disclaimed possession of any of the assets, for, that they disclaimed liability was not proof that they agreed that A should represent them ; enough material having been placed before the Income Tax Officer to necessitate an enquiry, and the Income Tax Officer not having undertaken such an enquiry, the Income Tax Officer could not be said to have acted in good faith ;

(iii) that A could impeach the validity of the assessment completed without notice to the other legal representatives ; and

(iv) that the assessment u/s 34 was vitiated by the failure of the Income Tax Officer to issue notices to the other legal representatives."

7. We do not think that this decision would help the Revenue because in the instant case, the record does not show that the Income Tax Officer made enquiries as to the existence of the other legal heirs. We find that this court''s decision in Jai Prakash Singh (Legal Representative of Estate of Late B. N. Singh) Vs. Commissioner of Income Tax, Assam, applies.

8. In the result, we answer the question in the negative and in favour of the assessee. The Income Tax Officer will now start the assessment according to law. No costs.

