

(1991) 10 CAL CK 0008
In the Calcutta High Court
Case No : Civil Rule No. 4018 (W) of 1985

Raja Mookherjee and Others

APPELLANT

Vs

Wealth Tax Officer and Others

RESPONDENT

Date of Decision : 01-10-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Succession Act, 1925 — Section 332
Wealth Tax Act, 1957 — Section 19A, 19A(1)

Citation : (1994) 118 CTR 311 : (1993) 204 ITR 276

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Advocate : R.N. Dutta and Pranab Pal, for the Appellant; A.C. Moitra and Ram Chandra Prosad, for the Respondent

Judgement

Ruma Pal, J.—Sir R.N. Mukherjee was a well-known industrialist. Sir R.N. Mukherjee died having executed a will under which he appointed an executor for administration of his estate. One Rabindra Nath Mukherjee being the grandson of Sir R.N. Mukherjee was entitled to one-third share in the estate of Sir R.N. Mukherjee (deceased). However, before the estate of Sir R.N. Mukherjee (deceased) was fully administered, Rabindra Nath Mukherjee died on September 20, 1975. Rabindra Nath Mukherjee had married one Mahamaya. The four petitioners are the four children of Mahamaya and Rabindra Nath Mukherjee. The petitioners have challenged the assessment orders in respect of the years 1968-69 to 1975-76 under the Wealth-tax Act, 1957, in which the petitioners have been sought to be assessed in respect of Rabindra Nath Mukherjee's one-third share in his grandfather's estate. According to the petitioners, their father, Rabindra, till the date of his death, had not received any portion of his grandfather's estate. Therefore, the question of the petitioners being assessed to wealth-tax in respect of their great grandfather's estate for the period prior to their father's death on September 20, 1975, did not arise. In any event, it is contended that the executors had themselves intimated Mahamaya Mukherjee by

a letter dated September 24, 1979, that the administration of the estate of Sir R.N. Mukherjee (deceased) was not complete.

2. Smt. Mahamaya Mukherjee filed wealth-tax returns for the assessment years 1968-69 to 1975-76 pursuant to notices issued by the Wealth-tax Officer being respondent No. 1 herein u/s 17 of the Act. Smt. Mahamaya Mukherjee disclosed movable and immovable properties in her returns which her husband, Rabindra Nath Mukherjee, had acquired out of his personal assets. Wealth-tax was paid in respect of the assessment years in question.

3. Respondent No. 1 completed the assessments in respect of the years 1968-69 to 1975-76 describing the assessee as "Mahamaya Mukherjee and others, the legal representative of the late Sir R.N. Mukherjee". In the assessment orders, the valuation shown by Smt. Mahamaya Mukherjee in her returns was accepted but the respondents included Rabindra Mukherjee's one-third share in the estate of Sir R. N. Mukherjee.

4. Smt. Mahamaya Mukherjee preferred appeals from the assessment orders. By a composite order dated May 6, 1978, the Appellate Assistant Commissioner of Wealth-tax set aside the assessment orders. Two grounds were taken before the appellate authority. The first ground was that the respondent should have separately assessed each of the legal representatives of Rabindra Mukherjee and served separate notices of hearing on each of them. The second ground raised was that u/s 19A of the Wealth-tax Act, 1957, until the estate of Sir R. N. Mukherjee (deceased) was fully administered, the Wealth-tax Officer could not include the share of Rabindra Mukherjee in such estate as part of wealth inherited by the assessees.

5. In disposing of the two contentions, the appellate authority held as far as the first contention was concerned that respondent No. 1 should have enquired as to how many legal representatives Rabindra Nath Mukherjee had and whether Smt. Mahamaya Mukherjee was competent to represent all such legal representatives. Respondent No. 1 was accordingly directed to make an enquiry to ascertain the facts before assessing the petitioners as "Mahamaya Mukherjee and others".

6. As far as the second contention was concerned, the appellate authority held that respondent No. 1 had relied upon a certificate from the executors and trustees of the estate of Sir R.N. Mukherjee. In dealing with the contention the appellate authority held as under ;

"This certificate, therefore, does not throw any light as to whether the estate of late Sir R.N. Mukherjee was fully administered. The Wealth-tax Officer had also not discussed the claim of the assessee in the orders of assessment under appeal. In this regard also it is considered that the order of assessment had been made without enquiries. They are, therefore, set aside on this ground also. The Wealth-tax Officer should make fresh assessments after enquiring whether the estate of late Sir R.N. Mukherjee has been completely administered."

7. On March 25, 1983, respondent No. 1 passed fresh orders of assessment in respect of the assessment years in question.

8. As far as the first directive of the appellate authority was concerned, respondent No. 1 issued notices of hearing u/s 16(2) of the Act on all the legal representatives after enquiring from the Income Tax Inspector that apart from Smt. Mahamaya Mukherjee, Rabindra Nath Mukherjee had left behind him his four children (the petitioners herein) as his legal heirs and representatives. The petitioners were represented through one advocate who filed a vakalatnama in respect of Smt. Mahamaya Mukherjee and all four petitioners.

9. As far as the second directive of the appellate authority was concerned, respondent No. 1 recorded that a letter had been written to the executors and trustees of the estate of Sir R.N. Mukherjee, one D.K. Som representing the executor and trustee appeared and stated that the administration of the estate was complete, "only certain estate duty matters have to be finalised". He further stated that as far as the shares of the beneficiaries from the trust were concerned, the shares are all determined. He also stated that Sir Biren Mukherjee who was entitled to a 1/2 share from the estate of Sir R.N. Mukherjee was being regularly taxed in his personal file in Companies Circle IV, A-Ward, with regard to such 1/2 share. According to respondent No. 1, this fact was enquired into from the Income Tax authorities and confirmed. Accordingly, the Wealth-tax Officer again assessed the value of the one-third share in the trust property of the estate of late Sir R.N. Mukherjee in the hands of the petitioners and their mother. The name of the assessee was given as Mrs. Mahamaya Mukherjee and others.

10. On April 20, 1983, Mahamaya wrote to respondent No. 1 stating that the executors of the estate of Sir R. N. Mukherjee (deceased) were still holding Rs. 6,52,532 on account of Rabindra Nath Mukherjee. On September 10, 1984, respondent No. 2 intimated Mahamaya that notices in Form I. T. C. P-1 had been issued to the executor and trustee of the estate of Sir R. N. Mukherjee (deceased) for realisation of the outstanding liabilities for the assessment years in question out of the assets held on account of the beneficiaries.

11. On January 16, 1985, and January 19, 1985, notices of demand were served on all the legal representatives of Rabindra Nath Mukherjee including the petitioners. The petitioners filed four separate objections on February 1, 1985, before respondent No. 1 contending that no orders of assessment in respect of the assessment years in question nor any notices of demand u/s 30 of the Act had been served on the petitioners. Therefore, they could not be regarded as assessee in default within the meaning of Section 31(1) of the Act. It was further contended that the executors of the estate of Sir R.N. Mukherjee had not handed over the assets nor paid any income out of such assets to the legal representatives of the, deceased. Reference was made to the letter dated September 26, 1979, already noted above. It was also recorded in the said objections that on an offer made by the petitioners to respondent No. 1 to realise

any demand in respect of the share of Rabindranath Mukherjee in the estate of Sir R.N. Mukherjee held by the executors, the assets were put under attachment by respondent No. 1 by a notice dated October 4, 1977.

12. On February 12, 1985, respondent No. 2 rejected the petitioners' objections. It was stated that the assessments had been duly made and demand notices had been duly served. Thereafter it has been noted by respondent No. 2 as follows :

"Moreover, the head, viz., Mahamaya Mukherjee and others, includes Mahamaya Mukherjee and other legal representatives of late R.N. Mukherjee, hence, the notice, etc., have been duly and legally served and your contention is misconceived and not correct.

Secondly, you cannot deny your tax liability on the plea that you have not yet received due share from the estate of Sir R. N. Mukherjee.

Thus, considering the facts and circumstances of the case your petition cannot be entertained and the same is rejected."

13. By letter dated March 1, 1988, the executor and trustee of the estate of Sir R.N. Mukherjee (deceased) intimated the Assistant Controller of Estate Duty that the assets of Sir R.N. Mukherjee had not yet been distributed.

14. In this writ petition, the petitioners have challenged the assessment orders and notices issued on the basis thereof principally on two grounds:

(a) That the petitioner could not all be assessed as Mahamaya Mukherjee and others, and

(b) That the assessment of the one-third share in the estate of Sir R.N. Mukherjee (deceased) in their hands was contrary to Section 19A of the Act.

15. The respondents have raised three contentions :

(a) Mahamaya truly represented the estate of Rabindra Nath Mukherjee as the assessment returns have been filed by her in respect of the assessment years in question and all the legal representatives of Rabindra Nath Mukherjee were being represented through one lawyer.

(b) That the earlier demand notices have been served on the executors and trustees to the estate of Rabindra Nath Mukherjee in response to which the executors and trustees had denied the liability on the ground that the assessment had been made of Mahamaya Mukherjee and others as legal representatives of Rabindra Nath Mukherjee and not on the executor and trustee.

(c) The writ petition should not be entertained as the petitioners had an alternative remedy available under the Act.

16. Two separate affidavits-in-opposition have been filed by the respondents. One affidavit has been filed by respondents Nos. 1 and 3. The second affidavit has been filed on behalf of respondent No. 2.

17. In the affidavit of respondents Nos. 1 and 3, none of the facts which have been noted above have been disputed. Respondent No. 2 has, however, admitted in paragraph 5(b) of his affidavit that ;

"It appears that the executor and trustees are holding assets and properties for and on behalf of late Rabindra Nath Mukherjee."

18. The will of Sir R.N. Mukherjee is dated November 13, 1933. Clause 17 of the will provides :

"I give and bequeath all the residue of my property movable and immovable wherever situate (including any surplus or other income thereof) to my said two sons in equal shares. If either of them die before the distribution of my residuary estate leaving a child or children such child or if more than one such children between them so that the share of each male child shall be double the share of each female child, shall take the share which their father would have taken if then alive. If either of my sons shall die leaving a widow surviving but no child or children surviving such widow shall be entitled during her widowhood to a sum of rupees six thousand per annum payable by equal monthly payments provided always if such widow has an income of rupees six thousand or more from her husband's estate at the time of her husband's death then this bequest shall not be operative."

19. In my view, this application can be disposed of on the simple ground that the assessment orders cannot be sustained.

20. Firstly, Section 19A of the Act applies to cases where an assessee dies having executed a will and appointed executors. Section 19A(1) provides that the net wealth of the estate of a deceased person shall be chargeable to tax in the hands of the executor or executors. Admittedly, as noted above, the assets of the estate of Sir R.N. Mukherjee (deceased) to which Mahamaya and the petitioners are entitled are still in the hands of executors.

21. Secondly, it is not known whether the petitioners had an opportunity of cross-examining the representative of the executors who had stated, apparently orally, to respondent No. 1 that the administration was complete except for some estate duty matters. In any event assuming such statement to be correct, the Appellate Commissioner had directed respondent No. 1 to enquire and ascertain whether the estate of Sir R.N. Mukherjee was completely administered. The fact that some estate duty matters had yet to be resolved indicates that the administration was not complete. In *Commissioner of Income Tax Vs. Mrs. A. Ghosh*, , a Division Bench of this court held (at page 127) :

"It has been found as a fact by the Tribunal that as admittedly estate duty in respect of the estate remained unpaid and the estate, therefore, had not been fully administered, the extent of the residuary legatee could not be ascertained and no part of the income from the estate could be distributed to the residuary legatee."

22. Thirdly, u/s 352 of the Indian Succession Act, 1925, an executor continues as such unless he assents to the legacy in favour of the beneficiary under the will thus divesting himself of any further interest in the estate (vide Section 533 of the Indian Succession Act, 1925). There is no evidence of such assent.

23. Finally, under the will of Sir R.N. Mukherjee (deceased), Mahamaya and the petitioners have been given a residuary interest. The very word "residuary" implies "what is left". Therefore, unless the administration of the estate is complete it would not be possible to determine the residue at all.

24. As held in V.M. Raghavalu Naidu and Sons by executors, C.G. Krishnaswami Naidu and Another Vs. Commissioner of Income Tax and Excess Profits Tax,

"But there is one distinction between a specific legacy and a residuary bequest. The doctrine of relation back does not apply to the bequest of residue, as residue only comes into existence when the administration is completed."

25. In Administrator-general of West Bengal Vs. Commissioner of Income Tax, Calcutta, , the Supreme Court approved and accepted the statement of the law on the subject by Viscount Cave in R. v. Commissioners for the Special Purposes of the Income Tax Acts ; Ex parte Dr. Barnardo's Homes National Incorporated Association [1921] 7 TC 646, which reads as follows (at page 40) :

"When the personal estate of a testator has been fully administered by his executors and the net residue ascertained, the residuary legatee is entitled to have the residue as so ascertained, with any accrued income, transferred and paid to him, but until that time he has no property in any specific investment forming part of the estate or in the income from any such investment, and both corpus and income are the property of the executors and are applicable by them as a mixed fund for the purposes of administration."

26. In a recent decision of the Division Bench of the Andhra Pradesh High Court in Commissioner of Wealth-tax Vs. S.M. Bhandari, , after reviewing earlier authorities on the subject, the court held (at page 649) :

"Thus, there is a distinction between a specific legacy and a residuary legacy. The residuary legatee, i.e., Sureshchandra, acquires right, title and interest in the estate only on completion of the administration of the estate of his deceased adoptive father, Pannalal Lahoti. Section 19A(6) gives specific exclusion of specific legacy but not residuary legacy. It is an admitted fact that the administration of the estate is still going on. As a result, Sureshchandra acquires no right, title or interest in any of the specific items of the assets of the estate of the deceased."

27. See also Commissioner of Income Tax Vs. Bakshi Sampuran Singh, It is, not the respondents" case that the letters dated September 26, 1979, and March 1, 1988, are fabricated or incorrect. In that letter, Sir Biren Mukherjee, the executor and trustee of Sir R.N. Mukherjee had categorically stated that the administration of the estate was not yet complete.

28. For all these reasons, respondent No. 1 could not have assessed the share of Rabindra Nath Mukherjee in the estate of Sir R.N. Mukherjee (deceased) in the hands of Mahamaya or the petitioners. There is no question of the court not entertaining the writ petition as contended by the respondents. The court has already entertained the petition and issued a rule nisi and interim order ; affidavits have been filed and the matter heard at length. It is well established that the court would not in the circumstances be justified in rejecting the petition on the ground of alternative remedy. (See L. Hirday Narain Vs. Income Tax Officer, Bareilly, In any event, the assessments of the residuary estate of Sir R.N. Mukherjee (deceased) in the hands of Mahamaya and the petitioners before completion of the administration of the estate is without jurisdiction and the court would not be justified in dismissing the writ petition on the ground that an alternative remedy was available (See Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, . The impugned assessment orders for the assessment years 1908-69 to 1975-76 and all proceedings thereunder are accordingly liable to be set aside and are hereby quashed. The rule nisi is made absolute. There will be no order as to costs.