

(1978) 03 CAL CK 0012

In the Calcutta High Court

Case No : Income-tax Reference No. 504 of 1975

Sajjan Kumar Saraf

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 10-03-1978

Acts Referred:

Income Tax Act, 1922 — Section 22, 22(2), 27
Income Tax Act, 1961 — Section 142(1), 143(2)

Citation : (1978) 114 ITR 155

Hon'ble Judges : Sudhindra Mohan Guha, J; Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : A.K. Roy Chowdhury, for the Appellant; Ajit Sengupta and B.K. Naha, for the Respondent

Judgement

Sabyasachi Mukharji, J.—It appears that Shri B. L. Saraf died on 9th of July, 1960, and a notice u/s 22(2) of the Indian Income Tax Act, 1922, calling upon him to file the return of income for the assessment year 1961-62 was issued on 7th July, 1961. The said notice was issued in the name of Shri B. L. Saraf who had already died on the 9th July, 1960. On 2nd of June, 1965, Sajjan Kumar Saraf, in his capacity as "the legal representative" of the deceased, filed the return of income for the assessment year 1961-62, Notices u/s 143(2) and 142(1) of the Act were issued to Sri Sajjan Kumar Saraf as the legal representative of the late Shri B. L. Saraf. For the assessment year 1959-60 also an ex parte assessment was raised against the deceased on 3rd of March, 1962. Against this ex parte order, Shri Sajjan Kumar Saraf filed a petition u/s 27 of the Indian Income Tax Act, 1922, as the legal representative of the deceased on 23rd April, 1962. We are concerned in this reference with the assessment for the assessment year 1961-62 and the same was completed on a total income of Rs. 95,495 on 21st March, 1966. At this stage, no question as to the liability of Shri Sajjan Kumar Saraf as a legal representative of the deceased was raised before the Income Tax Officer. The Appellate Assistant Commissioner did not deal with the validity of the assessment though this issue was raised before him.

2. Before the Tribunal, however, an argument was specifically taken up. It was urged that the notice u/s 22(2) of the Indian-income tax Act, 1922, was issued to a dead person and as such was bad in law and the return filed by Shri Sajjan Kumar Saraf in 1965 was also invalid as it was filed in pursuance of an invalid notice. Therefore, it was urged that the entire assessment proceeding deserved to be quashed as the very foundation of the jurisdiction of the Income Tax Officer had been vitiated on account of the invalid notice u/s 22(2) of the Indian Income Tax Act, 1922. The Accountant Member of the Tribunal accepted the assessee's view but the Judicial Member did not. The Judicial Member, however, thought that there were other legal representatives whose names could have been gathered. He, therefore, directed that the assessment should be re-done by the Income Tax Officer after giving notice to all the legal representatives. He set aside the assessment order and directed the Income Tax Officer to complete the assessment in accordance with law and after bringing on record all the legal representatives of the deceased. As there was difference of opinion the matter was referred to the third Member and he agreed with the Judicial Member and, according to the majority decision of the Tribunal, the assessment for the assessment year 1961-62 was set aside directing the Income Tax Officer to make a fresh assessment in accordance with law and after impleading all the legal representatives of the deceased.

3. In the premises u/s 256(2) of the Income Tax Act, 1961, as directed by the High Court, the following two questions have been referred to this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in holding that the assessment should be sent back to the Income Tax Officer for fresh assessment after bringing all the legal representatives on record ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in holding that the return filed by one of the legal representatives on the 2nd day of June, 1965, in terms of notice u/s 22(2) and section 142(1) subsequently issued, shall be treated as the return filed u/s 22(2) and the assessment has been framed validly ?"

4. The basic facts have been noted before us. The notice u/s 22(2) of the Indian Income Tax Act, 1922, issued to a dead person was a bad and invalid notice. So when Sajjan Kumar Saraf filed the return there cannot be any question of his filing the return in pursuance of that notice. No return can be filed pursuant to a notice which is non-existent in law ; on the other hand, the return was filed within the time required, that is to say, 4 years. The Income Tax Officer was not free to ignore the said return. If that is the position then in the return filed Shri Sajjan did not state that there were other legal representatives and heirs of the deceased. On the other hand, he filed the return indicating himself as the legal-representative of the deceased. In that view of the matter, in our opinion, it cannot be said that the return was invalid and assessment made thereon was without jurisdiction.

5. In the case of Commissioner of Income Tax, Madras Vs. S. Raman Chettiar, , the Supreme Court observed that there was no warrant in the Indian Income Tax Act for treating returns as voluntary returns and non-voluntary returns. Section 22(3) did not use the expression " voluntary return" and whatever the impelling cause or motive, if a return otherwise valid or filed by an assessee before receipt of a valid notice u/s 34, it was to be treated as a return within section 22(3) for it would fall within the language of that Sub-section, A return u/s 22(3) must be filed before the time mentioned in section 34(3) of the Indian Income Tax Act, 1922. There, what happened was, for the assessment year 1944-45, the assessee, a Hindu undivided family, had not filed any return. On April 3, 1948, the Income Tax Officer issued a notice u/s 34 of the Indian Income Tax Act, 1922, for which he had not obtained the sanction of the Commissioner of Income Tax. Pursuant to that notice, the assessee filed a return on September 4, 1948, showing an income of Rs. 4,053 which was below the taxable limit of Rs. 7,200 and the proceedings for assessments were dropped as infructuous. Later on, in proceedings relating to the assessment year 1945-46, the Appellate Tribunal held that a sum of Rs. 46,760 was assessable in 1944-45, and thereupon the Income Tax Officer issued a notice u/s 34 on February 27, 1953, in respect of the assessment year 1944-45, and passed an order on June 30, 1953, assessing the assessee to tax on an income of Rs. 51,523. The question was whether the assessment u/s 34 made on June 30, 1953, was valid. It was held by the Supreme Court that, although the notice u/s 34 issued on April 3, 1948, was invalid, the return dated September 4, 1948, submitted pursuant to that notice was a return within section 22(3). The Income Tax Officer could not ignore or disregard that return and issue a notice u/s 34 on the assumption that there had been an omission or failure on the part of the assessee to make a return on his income u/s 22. The ratio of the decision, in our opinion, would be applicable to this case. Therefore, the return filed by Sajjan Kumar Saraf could be treated as a valid return and acted upon, as had been done by the Income Tax Officer. But, in this case, as mentioned hereinbefore, originally Sajjan Kumar Saraf did not state that there were other legal representatives of the deceased and he filed the return as " the legal representative". But it transpired, as the Judicial Member of the Tribunal has noted, the Income Tax Officer could have found out by a little enquiry whether there were other legal representatives of the deceased. Therefore, the assessment should be made upon notice to such other legal, representatives. This was precisely what the Tribunal has directed the income tax Officer to do. This procedure, in our opinion, is in consonance with the views indicated by the Gujarat High Court in the case of Choochmal Wadhuram (Decd.) (by legal representatives) Vs. Commissioner of Income Tax, .

6. Counsel for tho assessee drew our attention to tho observations in the case of SHAIKH ABDUL KADAR Vs. Income Tax OFFICER, SAGAR., , The Commissioner of Income Tax, Bombay City I, Bombay Vs. Amarchand N. Shroff, by his heirs and Legal Representatives, and Commissioner of Income Tax, Mysore Vs. N.A. Mandagi, . In the view we have taken and in view of the ratio of the Supreme

Court in the case of Commissioner of Income Tax, Madras Vs. S. Raman Chettiar, , we are of the opinion that it is not necessary for us to discuss the aforesaid decisions in any detail.

7. In the premises, question No. 1 referred to us is answered in the affirmative and in favour of the revenue and question No. 2 is also answered in the affirmative and in favour of the revenue.

8. In the facts and circumstances of this case, the parties will pay and bear their own costs.

Guha, J.

9. I agree.