

(1960) 02 AP CK 0020
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1245 of 1958

SHEIK ABDUL SATTAR

APPELLANT

Vs

DISTRICT COLLECTOR, MASULIPATAM, AND ANOTHER.

RESPONDENT

Date of Decision : 09-02-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) 40 ITR 27

Hon'ble Judges : Seshachelapati, J;Seshachelapathi, J

Bench : Division Bench

Judgement

SESHACHELAPATI J. - This is a petition under article 226 of the Constitution for issuing a writ of mandamus, directing the respondents Nos. 1 and 2 to forebear from the certificate proceedings in pursuance of an assessment order made by the second respondent dated July 31, 1957.

The petitioner is the widow of one late Sheik Abdul Sattar, who died on November 16, 1949, leaving behind him. in addition to the petitioner (his widow), three sons and two daughters. For the accounting year 1949-50 an assessment was made in the year 1950-51 on the income of the deceased Abdul Sattar Saheb. The petitioner contended before the Income Tax Officer that after the death of Sattar Saheb, by a deed of partnership dated November 21, 1949, a partnership firm was constituted and that the firm ought to have been registered u/s 26A of the Indian Income Tax Act. The Income Tax Officer rejected the claim for registration and made an assessment against the petitioner and other on the footing of association of persons. On appeal, the Appellate Assistant Commissioner also took the same view. But, when the matter went up in the appeal before the Income Tax Appellate Tribunal, it was held that the formation of the partnership was true and that the period of liability for assessment should be split up into periods (1) From April 1, 1949, to November 16, 1949, on Abdul Sattar as an individual and (2) on the registered firm from November 16, 1949, to March 31, 1950. Pursuant to the direction of the Income Tax Appellate

Tribunal, the Income Tax Officer passed an order of assessment under 23(3) read with section 33 of the Income Tax Act on his (the deceaseds) legal representative, the present petitioner, on July 31, 1957, determining a tax of Rs. 8,491.63 nP. and a notice of demand u/s 29 was also issued. The petitioner did not pay the amount of tax and so a certificate u/s 46(2) of the Income Tax Act was issued by the second respondent on November 7, 1957. The assessee would appear to be in arrears of tax for the year 1951-52, and a penalty was also imposed on her and with respect thereto certificates u/s 46(2) were issued on March 30, 1956, and April 18, 1954. Under the certificates issued by the second respondents, the first respondent has attached the properties of the petitioner.

The principle contentions advanced in support of this petition are three-fold : first that the Income Tax Officer failed to give notice to all the legal representatives of the late Sattar Saheb as required by the terms of section 24B(2) of the Act, and that the failure to do so would vitiate the proceedings; secondly, that even assuming that the assessment order made on July 31, 1957, is valid, the Income Tax authorities cannot treat a legal representative as an assessee for the purpose of issuing a certificate u/s 46(2); thirdly, that the properties now under attachment and sought to be brought to sale are in fact the separate properties of the petitioner and, therefore, not liable to be impounded and sold for the discharge of the tax liability of her deceased husband.

As to the first contention, it is not in dispute that notices were not taken out to other legal representative, Section 24B(2) of the Act is in these terms :

"Where a person dies before the publication of the notice referred to in sub-section (1) of section 22, or before he is served with a notice under sub-section (2) of section 22 or section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving 34, as the case may be, comply therewith, and the Income Tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee."

In this case, there is no question that the notice was duly served on the petitioner. The other legal representatives of Abdul Sattar Saheb, viz., his sons and daughters, are stated to be minors living under her protection. The contention of the Department is that they did bone fide believe that there were no other legal representatives of Abdul Sattar, except the petitioner. On the contrary, it is asserted in the affidavit of the petitioner that the Income Tax authorities did not know that the late Abdul Sattar Saheb had left other legal representatives, by reasons of the filing of the partnership deed for the purposes of registration u/s 26A of the Act for the year 1950-51. Whether the Income Tax authorities knew that there were other legal representatives besides the petitioner or not, seems to me immaterial. The objection of the petitioner on the score of the absence of the notice to the other legal representatives must be rejected on two grounds. First, at no time in the prior proceedings either before the Income Tax Officer, or the Appellate Assistant Commissioner or the Income

Tax Appellate Tribunal has the petitioner raised this objection. She cannot now be allowed to raise this objection at this belated stage. Secondly, the notice having been given to the petitioner who was guardian of the other legal representatives, there has been a substantial compliance with the requirements of the section.

I, therefore, hold that there is no substance in the first contention.

The second contention is that though under the terms of section 24B (2) an assessment could be made on the total income of the deceased person against the legal representative of the deceased, still no certificate u/s 46(2) can be granted against such legal representative. In support of this contention, the learned counsel for the petitioner placed strong reliance on the judgment of the Madras High Court in *T. M. K. Abdul Kassim Vs. First Additional Income Tax Officer, Karaikudi, and Another*, where the learned judges held that the legal fiction created u/s 24B(2) of the Indian Income Tax Act of treating a legal representative as the assessee is only for the limited purpose of the assessment and does not extend to the recovery or collection of tax, and that neither section 29 nor section 46(2), either in express terms or by necessary intendment, imposes an additional burden on the legal representative than is imposed by section 24B(2). It was held in that case that the issue of a notice u/s 46(2) postulates an arrear of tax payable by an assessee and that the legal representative is not an assessee either within the meaning of section 45 or section 46(2) of the Act. In that judgment, the learned judges referred to and extended the scope of the principle enunciated by them in their earlier decision in *E. Alfred Vs. Additional Income Tax Officer, Circle I, Salem, and Another*. I am relieved of the need for a detailed consideration of this question with reference to the view expressed by the learned judges of the Madras High Court, because in two decisions of this court a contrary view has been taken. In *Rajah Manyam Meenakshamma Vs. Commissioner of Income Tax*, Bench of this court consisting of Chief Justice Subba Rao and Viswanatha Sastri, J., had to consider the scope of section 24B. One of the questions that fell to be decided by the learned judges was, whether a legal representative against whom an assessment had been made u/s 24B had a right of appeal u/s 33 of the Act. The assessment in that case was with respect to the assessment year 1947-48, before the definition of the word "assessee" was amended by the Indian Income Tax (Amendment) Act, 1953. Even so, Subba Rao, C.J. held that a combined reading of the provisions, viz., section 2(2) section 24B and section 33, indicates that a legal representative, who is liable to pay tax from and out of the estate of the deceased person would be an assessee as defined in the Act. In *Maddula Appa Rao and Others Vs. Income Tax Officer, Eluru and Another*, My lord the Chief Justice and Ansari, J., held that a penalty levied u/s 28 is recoverable as an arrear of tax. Such arrear of tax falls u/s 24B and the legal representatives of the deceased assessee are therefore liable to pay the penalty imposed on the assessee, as indicated in section 24B. Though this relates to the collection of a penalty, in principle there is no distinction between the collection of a tax and a penalty levied u/s 28. The assessment and the levy of penalty in the case the

learned judges had to deal with was with respect to the years 1943-44, 1944-45 respectively and the assessment was actually made on 30th March, 1946.

Both these cases are with respect to the assessments that were made prior to the Indian Income Tax (Amendment) Act, 1953. and, therefore, there is no substance in the contention of the learned counsel that the amended definition cannot be used for the purpose of determining whether a legal representative would fall within the definition of "assessee". In this case, after the disposal of the appeal by the Income Tax Appellate Tribunal, the assessment order was actually made on July 31, 1957, and the demand notice u/s 29 was also duly issued, I am therefore of opinion that this case to which the amended definition could be invoked, as was done in the case of *Rajah Manyam Meenakshamma Vs. Commissioner of Income Tax*, There is, therefore, no substance in this connection.

The last contention urged by Mr. Ranganadhachary is that the properties under attachment are the personal and separate properties of the petitioner. Even during the lifetime of Abdul Sattar, the question of the ownership of the house now under attachment came up and, after enquiry, the Income Tax Officer rejected the claim put forward by Abdul Sattar himself that the house belonged to the petitioner. But, in any case, I do not propose to express any opinion on the merits of this contention. If the petitioner is aggrieved by the proceedings taken by the Collector u/s 46(2) of the Act, she can take appropriate steps before the Collector to file a claim petition and, if necessary, to file a suit to establish her right. In *C. DHANALAKSHMI AMMAL Vs. Income Tax OFFICER, MADRAS.*, Rajamannar, C.J., and Panchapakesha Iyer, J. have held that under the additional powers given to the Collector u/s 46(2) of the Act, the Collector can exercise the powers, which, under the Code of Civil Procedure, a civil court has for the purposes of recovery of an amount due under a decree. It is open to an ostensible owner of an attached property to file a claim petition and, thereafter, file a suit, if aggrieved. The title of the petitioner to the attached properties is not a matter which I can decided in this petition.

The petition fails and is dismissed with costs. Advocates fee Rs. 50.

Petition dismissed.