(1967) 03 MAD CK 0036

In the Madras High Court

Case No : Tax Case No. 79 of 1964 (Revision No. 44)

The State of Madras APPELLANT

Vs

M. Rangarajan RESPONDENT

Date of Decision : 28-03-1967

Acts Referred:
Income Tax Act, 1961 — Section 159(3)

Citation : (1968) 81 LW 315 : (1968) 21 STC 186

Hon'ble Judges : Veeraswami, J;Ramaprasada Rao, J

Bench : Division Bench

Advocate : K. Venkataswami, for the Additional Government Pleader, for the Appellant; R.S. Venkatachari, for the Respondent

Final Decision : Allowed

Judgement

Veeraswami, J.—A short point, but one of importance, arises in this case, to wit, whether penalty u/s 12(3) of the Madras General Sales

Tax Act, 1959, can be levied on the legal representative of the deceased. The Tribunal has taken the view that it is not permissible. One

Muthukrishnan Naidu died on 30th October, 1960. He was the proprietor of a rice mill at Pullamangalam. There was a surprise inspection of his

premises on 9th December, 1960, as a result of which certain anamath books were seized, which led to a discovery of large amount of turnover

which he had failed to return. This was brought to tax. We are not concerned with this aspect. After the assessment proceedings were taken and

completed after his death, and against his son as his legal representative, in addition to the tax levied, a penalty of Rs. 1,130 also was imposed u/s

12(3) which was reduced to Rs. 610 on appeal. Before the Tribunal on appeal by the legal representative, it was contended for him that the 1959

Act did not authorise the levy of penalty. The Tribunal was of the view that levy of penalty is of a quasi-criminal nature and took into account

decisions rendered u/s 24B of the Income Tax Act, 1922. It also considered that Section 15 itself was silent as to penalty. It therefore concluded

that the penalty levied was without authority.

2. We are unable to accept the Tribunal''s view. Granting the levy of penalty is of a quasi-criminal character, which we do not decide, if the terms

of a statute authorise it, there can then be no objection apart from any constitutional question, which is not raised before us. The scheme of Section

24B of the Income Tax Act, 1922, is totally different from Section 15 of the Madras General Sales Tax Act, 1959. Section 15 directs that when a

dealer dies his legal representative shall be deemed to be a dealer for the purposes of the Act. In view of this deeming provision, one cannot

boggle with one''s imagination and notwithstanding the deeming, revert to putative state of affairs and imagine an assessment on a legal

representative as such. For purposes of the Act, a legal representative of a deceased should be taken as a dealer and it will be so for purposes of

Section 12(3). All the provisions of the Act will apply to the deemed dealer in respect of the business of the deceased dealer. Section 15 further

provides that in respect of any tax or fee assessed as payable by such dealer or any tax or fee which would have been payable by him under the

Act if he had not died, the executor, administrator or other legal representative shall be liable to the extent of the assets of the deceased in his

hands. The first part of Section 15 clearly enables the department to levy penalty on the deemed dealer, who is the legal representative of the

deceased, u/s 12(3). The second part of the section no doubt does not refer to penalty. But for purposes of collection of tax, Section 25 says that

any penalty payable under the Act shall be deemed to be tax thereunder for that purpose. Section 15 therefore provides both for levy of penalty

u/s 12(3) and also recovery thereof, the only limitation being that the recovery should be confined to the assets of the deceased in the hands of the

legal representative.

3. This construction we have placed upon Sections 15 and 25 of the Madras General Sales Tax Act, 1959, is supported by the fact that Section

159(3) of the Income Tax Act, 1961, clearly provides, unlike Section 24B of the

Income Tax Act, 1922, that the legal representative of the

deceased shall for the purposes of the Act be deemed to be an assessee. The deeming is complete and the legal representative is regarded as the

dealer for the entire range and purpose of the Act.

4. On that view, the order of the Tribunal is set aside and that of the Appellate Assistant Commissioner is restored. The petition is allowed with

costs. Counsel''s fee Rs. 100.

