(1992) 10 DEL CK 0037

In the Delhi High Court

Case No : Civil Writ Appeal No. 849 of 1972

Vijay Sarin APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 21-10-1992

Acts Referred:
Income Tax Act, 1961 — Section 139(2)

Citation : (1993) 113 CTR 161 : (1993) 50 DLT 232 : (1993) 202 ITR 249 : (1993) RLR 288 : (1993) 71 TAXMAN 342

Hon'ble Judges : G.C. Mittal, C.J;Sat Pal, J

Bench : Division Bench

Advocate : Anoop Sharma, B. Gupta and R.N. Verma, for the Appellant;

Judgement

Gokal Chand Mital, C.J.

(1) In April, 1963, concerned Income Tax Officer issued notice to Mr. BasheshαrNath., assessed, u/s 139(2) of the Income Tax Act, 1961 in respect of the assessment year 1963-64. On 20/10/1963 Basheshar Nath submitted his return of income in response to the said notice. While the proceedings were still pending, in December 1965 Basheshar Nath died leaving behind his widow and three sons .The matter was being conducted by M/s. A.S. Bhatia & Co., the Chartered Accountants concerned. The Income Tax Officer gave an intimation to him about Basheshar Naths''s case, in reply to which the Income Tax Officer was informed that the assessed had died/on 10thDecember, 1965 and the/family was in the mourning and some time should be granted .Despite information, the Income Tax Officer continued the proceedings and issued notice u/s 143(2) in the name of Basheshar Nath,which was served on Mr. Shinghari, Advocate. The assessment was completed on 22/03/1968 determining the total income at Rs. 3,99,8191-.

(2) Some of the legal representatives of Basheshar Nath filed an appeal before the Appellate Assistant Commissioner and challenged the assessment as being null and void, being against a dead man. The Appellate Assistant Commissioner

came to the conclusion that in spite of the death of the assessed, the proceedings could be continued against the legal representatives and ,Therefore, were not invalid or nullity but held that it was necessary to issue notice to the legal representatives and accordingly, vide order dated 31/01/1970 set aside the assessment and directed the Income Tax Officer to make fresh assessment in accordance with law, after making the legal representatives party to the proceedings from the stage they were when Basheshar Nath, died.

(3) The legal representatives who had gone up in appeal before the Appellate Assistant Commissioner filed further appeal before the Income.tax Appellate Tribunal, Delhi Bench A and the appeal was dismissed on 2 9/03/1972 upholding the order of the Appellate Assistant Commissioner.

(4) The legal representatives sought reference of the law point involved in this case for opinion of this Court and the matter was referred to this Court and was registered as Income Tax Reference No. 15 of 1974. It appears that those legal representatives, who sought reference, did not pursue the reference and ultimately by order dated . 5/02/1981. the reference was returned unanswered.

(5) While reference was being sought, one of the four legal representatives, namely. Vijay Sarin, filed this writ petition to challenge the order of assessment and the orders passed by the Appellate Assistant Commissioner and the Tribunal on identical grounds, namely, that the order of the Income Tax Officer was nullity and the proceedings could not be continued against the legal representatives of Basheshar Nath from the stage they were when he died. The writ petition is opposed by the income tax Department.

(6) On a consideration of the matter, we are of the view that in view of the provisions of Section 159(2), relating to liabilities in such cases of the legal representatives. Section 251 .relating to the powers of the Appellate Assistant Commissioner, including the power to refer back to the assessing authority for making a fresh assessment in accordance with law and the decision of the Supreme Court in Estate of Late Rangalal Jajodia v.Commissioner of Income Tax, Madras, 79 Itr 505, there is no scope for interference in the exercise of the extra-ordinary writ jurisdiction of this Court .

(7) Apart from the fact that some other legal representatives failed in scuttling the proceedings by issuing fresh notice to the legal representatives from the stage when Basheshar Nath, assessed, died, up to the Tribunal and then in not pursuing the reference made to this Court in view of Section 159(2) of the Act. the Income Tax Officer was justified in continuing the proceedings against the legal representatives of the deceased. Section 159(2)(a) clearly provides that any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of death of the deceased The Income Tax Officer committed an error of procedure in not issuing notice to the legal representatives regarding further proceedings to be

continued and. Therefore, the Appellate Assistant Commissioner and the Tribunal were right in coming to the conclusion that there is a procedural defect and not absence of jurisdiction and were right in remanding the matter to the Income Tax Officer for proceeding afresh from the stage at which it stood on the date of death of the deceased by issuing notice to the legal representatives.

(8) It was also urged before us that the Appellate Assistant Commissioner after setting aside the order of the Income Tax Officer had no power to remand the matter to him for continuing the proceedings from the date of death of the assessed and in making a fresh order. This argument is also against the wording of Section 251 of the Act. Section 251(1)(a) clearly provides that the Commissioner (Appeal) shall have the power to set aside an assessment and refer the case hack to the assessing officer for making afresh assessment in accordance with the directions given by him. Accordingly this contention is also repelled.

(9) The following observations, made in Rangalal Jajodia''s case(supra) are of great help for deciding this case :

What happened in the present assessment proceedings was that the proceedings were commenced during the lifetime of Rangalal Jajodia by reason of the returns being filed by and notices under Secs. 22(3), 23(2) of the Act having been served on Rangalal Jajodia during his lifetime. The assessment order contains intrinsic evidence to that effect as also of repeated intimation having been given to Shankarlal Jajodia after the death of Rangalal Jajodia. No reply having been received from Shankarlal Jajodia, the assessment was Completed u/s 24-B of the Act through the legal heirs and representatives including Aruna Devi. The Appellant Assistant Commissioner on an appeal preferred by Shankarlal Jajodia set aside the assessment because no notice was given to Aruna Devi though the assessment proceeding was against her as a legal representative .The lack of a notice does not amount to there venue authority having had no jurisdiction to assess, but that the assessment was defective by reason of notice not having been given to her. An assessment proceeding does not cease to be a proceeding under the Act merely by reason of want of notice. It will be a proceeding liable to be challenged and corrected. Similarly, if there is a mistake as to name or there is a misdescription of the name ,the proceedings will be liable to be challenged and corrected by giving notice to the assessed subject to such just exceptions as an assessed can take under law. The direction given by the Appellate Assistant Commissioner was to make fresh assessment on Aruna Devi in accordance with the provisions of the Act."

(10) A reading of the aforesaid quotation clearly shows that/lack of notice to the legal representatives does not amount to revenue authority having no jurisdiction but the assessment was defective by reason of want of notice. It was also observed that an assessment proceeding does not cease to be a proceeding under the Act merely by Person of want of notice. Accordingly ,we find not the least ground to interfere in the writ jurisdiction and the writ petition is dismissed

with costs. Counsel''s fee Rs. 5,000.00.