

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal Nos. 2017 & 2018 of 2008

And

M.P.No. 1 of 2008

IN

T.C.A.No. 2017 of 2008

M.P.No. 2 of 2008

IN

T.C.A.No. 2018 of 2008

V.Srinivasan

Appellant / Respondent in both
T.C.A.Nos.

Vs.

The Commissioner of Income Tax
Madurai.

Respondent/Appellant in both
T.C.A.Nos.

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 28.04.2008 made in ITA Nos. 2079/Mds/2006 and 2080/Mds/2006.

For Appellant in

both T.C.A.Nos. : Mr.T.N.Seetharaman

For Respondent in

both T.C.A.Nos. : Mr. M.Swaminathan
Senior Standing Counsel
Assisted by V.Pushpa

COMMON JUDGMENT

(Delivered by **DR.VINEET KOTHARI, J**)

The Appellant/Assessee has filed the present Appeals for two Assessment years 1995-1996 and 1996-1997 under Section 260-A of the Act raising the following substantial questions of law. The Questions of law admitted by a Co-ordinate Bench of this Court on 04.12.2008 are quoted below for ready reference:-

"1. Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the assessment order in the name of a dead person is a curable infirmity, reversing the order of the Commissioner of Income Tax (Appeals) that such an order is null and void?;

2. Whether the Appellate Tribunal is right in law in restoring the case on the file of the assessing officer with a direction to make the assessment in the names of the legal representatives, when the time limit for passing the order was already over?."

2. The learned counsel for the Assessee argued that even though the Assessee S.Vellamuthusamy Naidu had expired on

25.01.2006 before the Assessment Orders for both the Assessment Years in question were passed by the Assessing Authority on 23.03.2006, the Assessment Orders were passed in the name of the deceased S.Vellamuthusamy Naidu and therefore such Assessment Orders were non-est and void.

3. The First Appeal filed by the son of the deceased Assessee Mr.V.Srnivasan came to be allowed by the CIT (Appeals) by order dated 31.07.2006, accepting the said submissions of the Assessee with the following observations:-

"4. I have considered the submissions of the representative. The additional grounds of appeal raised by the appellant are admitted as it is being purely a question of law. The case was discussed with the assessing officer who accepted the fact that the appellant was no longer alive. In any case, I find that the assessment orders and the demand notices were issued in the name of the deceased person. Any order issued in the name of the deceased person is null and void. The assessing officer ought to have followed provisions of Section 159 of the Income-tax Act. The impugned orders do not exist in the eyes of law as they are ab initio void and it has to

be assumed that they were not passed. Consequently, the demand notices are also cancelled. If there is still time limit available for completion of assessment, the assessing officer would be free to pass the order in the name of legal representatives after complying with the provisions of Section 159 of the Income-tax Act. However, it is seen that the time limit for completion of assessment was already over as on 31.03.2006. In any case, the impugned orders do not exist in the eyes of law and they are cancelled."

4. The Revenue's Appeal filed against the said orders of the learned Tribunal came to be allowed by the learned Tribunal with the following observations:-

"5. We find that Section 148 notice was issued on 14.02.2005. No return was filed in compliance with the said notice. The case was heard on 06.12.2005 and 3.1.2006. Shri S.Vellaimuthusamy Naidu (the assessee) died 25.01.2006. Assessment under Section 144 read with Section 147 was completed on 23.3.2006. Admittedly, the factum of demise of Shri. S.Vellaimuthusamy Naidu was not communicated to the department.

6. *Section 159(2)(a) provides that for the purpose of making an assessment or reassessment, 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 that stage. But for such continuity, the proceedings should have been initiated against the deceased before his death. Thus, where a notice under Section 147 was served on the deceased when he was alive, further proceedings for reassessment may be taken against the legal representatives. It is imperative qua the legal representative to communicate the factum of demise of the assessee to the department. De hors such communication AO cannot substitute the names of legal heirs. It is rather impossible on his part to verify from all the assesseees whether they are dead or alive. There is a well known legal dictum *lex non cogit ad impossibilia*. Law cannot expect you to do the impossible. Ordinarily, on the death of a person his legal personality ceases to exist and thereafter no order including an assessment order can be passed against such dead person. In the present case we find that the passing of the order against dead person is an infirmity in*

as much as it was passed by the AO without having the knowledge of the death of the person. This is curable infirmity. We therefore set aside the impugned order and restore the issue to the file of the AO with direction to make the assessments in the names of the legal representatives in accordance with law after providing adequate opportunity to them of being heard.

7. In the result, appeals of the Revenue stand allow for statistical purposes.”

5. Aggrieved by the same, the Assessee has come up before this Court by the present Appeals.

6. The learned counsel for the Appellant/Assessee Mr.T.N.Seetharaman submitted that the Assessment Orders in question against the dead person on the date it was passed ie., on 23.03.2006 was non-est and therefore, the learned CIT (Appeals) was justified in allowing the Appeal of the Assessee. He further submitted that the learned Tribunal had erred in reversing the said orders and in directing the Assessing Authority to pass fresh Assessment Orders in the name of the legal representative Mr.V.Srinivasan. It was also submitted that the learned Tribunal could not have extended the time limit for passing of the Assessment

Orders after so many years.

7. On the other hand, the learned counsel for the Revenue submitted that as per Section 159 of the Act, the Legal Representative of the Assessee is liable to assessment and reassessment under the provisions of the Act and any proceedings taken against the deceased Assessee before his death are deemed to have been taken against the legal representative and can continue against the legal representative from the same stage as on the date of death of the deceased. He further submitted that since the fact of death was within the special knowledge of Mr.V.Srinivasan, the legal representative of the Assessee, it ought to have been brought to the notice of the Assessing Authority before the Assessment Orders were passed on 23.03.2006 as the Assessee S.Vellamuthusamy Naidu died on 25.01.2006 well before the date of Assessment Orders. The said son Mr.V.Srinivasan had appeared before the Assessing Authority as would be clear from the Assessment Orders. Therefore, he submitted that a remand of the Tribunal to frame the Assessment afresh in the name of the legal representative was perfectly justified and there was no error in the orders passed by the learned Tribunal and the questions of law framed above deserves to be answered in favour of the Revenue.

8. Having heard the learned counsels for the parties, we are satisfied that there are no merits in the present Appeals filed by the

Assessee and the same deserves to be dismissed.

9. Section 159 of the Act quoted below saves the Assessment in such cases and the proceedings against the dead person can continue in the name of the legal representative. The provision reads as under:-

"159. Legal representatives

(1) Where a person dies, his legal representatives shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of subsection (1),-

(a) 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 the death of the deceased;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub- section (2) of section 161, section 162 and section 167 shall, so far as may be and to the extent to which they are not inconsistent with the

provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of subsection (4) and subsection (5), be limited to the extent to which the estate is capable of meeting the liability. B.- Representative assessee's General provisions."

10. Admittedly, the fact of death of the Assessee S.Vellamuthusamy Naidu who died on 25.01.2006 was not brought to the notice or record of the Assessing Authority before 23.03.2006 when the Assessment Orders were passed. The main Appeal was filed by the son Mr.V.Srinivasan himself. Therefore, the appellant has not disputed that the son Mr.V.Srinivasan was legal representative and was very much aware of the facts of the assessments against the deceased man S.Vellamuthusamy Naidu, his own father. Nothing prevented the said legal representative to bring on record the factum of death of the Assessee well before the Assessment Orders were passed. The Assessments made in the name of dead person cannot be held to be non-est merely because the procedural requirements of taking on record the legal representative are not complied with. The Assessing Authority is not expected to have knowledge of the fact of

the death of Assessee when he passed the orders and therefore, there is an obligation on the legal representative to bring such fact to the notice of the Assessing Authority.

11. We are of the opinion that when this fact was brought to the notice of the CIT (Appeals) for the first time, the said authority should have taken the said fact on record, which he has done, but he should either have passed the Assessment Orders on merits while exercising his appellate powers or should have remand the case back to the Assessing Authority for framing Assessments again in the name of the legal representative in accordance with law. Having not done that, the Revenue was justified in approaching the learned Tribunal and we do not find any error in the orders passed by the learned Tribunal remanding the matter back to the Assessing Authority for passing fresh Assessments in the name of the legal representative Mr.V.Srinivasan. It goes without stating that upon such remand, the Assessee will have every right to raise objections on the merits of assessments to be framed against the legal representative.

13. The Assessee or his authorised representative appear before the Assessing Authority in the first instance on 02.05.2019 and the Assessments may be framed within a period of six months.

Dr.VINEET KOTHARI, J.
and
C.V.KARTHIKEYAN, J.

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14. With these observations, the Appeals are dismissed and the questions raised above are answered against the Assessee and in favour of the Revenue. Consequently, connected Miscellaneous Petitions are closed. No costs.

(V.K., J.) (C.V.K.,J.)
 05.04.2019

Index : Yes/No
 Internet : Yes/No

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