

First Additional Income-Tax Officer, ... vs T.M.K. Abdul Kassim on 19 April, 1962

Equivalent citations: [1962]46ITR149(SC)

Bench: J.C. Shah, M. Hidayatullah

JUDGMENT

Hidayatullah, J.

1. One T.M. Khadir Mohideen, who owned rice mills and other wholesale business, died on August 11, 1948, after the end of the previous year for the assessment year, 1948-49. A notice under section 22(2) of the Income-tax Act was served on his two sons, and the assessment was made on a total assessable income of Rs. 63,982. The tax due was found to be Rs. 23,648-9-0 which, after deducting the tax paid under sections 18A and 23B, came to Rs. 19,903-3-0. Notices demanding the tax served on T.M. Abdul Kassim, the respondent, and on this brother, Syed Mohammad. The tax was not paid on the due date, and a penalty of Rs. 1,000 was imposed. The Income-tax Officer then issued a certificate under section 46(2) of the Act to the Collector of Ramanathapuram, who forwarded it to the Special Deputy Tahsildar for Income-tax Collection to take action under the Madras Revenue Recovery Act. A notice was then issued by the Deputy Tahsildar on July 17, 1956 requesting payment of Rs. 20,930-3-0 within one week. On August 7, 1956, T. M, K. Abdul Kassim (respondent) filed a petition under article 226 of the Constitution for a writ of prohibition against the Deputy Tahsildar, joining the First Additional Income-tax Officer, Karaikudi, as the. Other respondent.

2. The divisional bench who heard the petition, following their decision earlier given in *Alfred. v. Additional Income-tax Officer*, held that the petitioner could not be treated as an assessee, and that, therefore, sub-section (2) of section 46 was not applicable to him. The divisional bench, therefore, quashed the certificate by a writ of certiorari, and set aside the notice dated July 17, 1956, by the Tahsildar. The case was certified under article 133(1)(c) as fit for appeal, and the First Additional Income-tax Officer, Karaikudi, and the Special Deputy Tahsildar have filed the present appeal. The respondent was absent at the hearing.

3. The High Court, in the judgment under appeal, observes that the validity of the assessment or of the order imposing the penalty was not challenged at the hearing in the High Court. The respondent only questioned the certificate issued under section 46(2) of the Act and the recourse to the provisions of the Revenue Recovery Act. Section 46(2) of the Income-tax Act reads :

"The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified

therein as if it were an arrear of land revenue."

4. The High Court posed the question whether the sum demanded of the respondent on the basis of the certificate issued under section 46(2) could be said to be "arrears due from an assessee". In Alfred's case, the High Court had held that in assessments under section 24B(2) or section 24B(3), there was a limited fiction of treating a legal representative as an assessee for purposes of assessment, and the fiction came to an end when the assessment proceedings were over and the tax ascertained. Relying upon the distinction between an "assessee" and "other person" in section 29 of the Act, the High Court had held that a legal representative of an assessee could not be viewed as himself an assessee within section 46(1). In view of this decision, the High Court observed in this case :

"The logical extension of what we laid down in Alfred v. Additional Income-tax Officer compels us to answer the question in the negative."

5. In Alfred's case, the department had appealed to this court and the appeal was pending in this court when the present case was decided. Subsequently, this court reversed the decision of the Madras High court in Alfred's case : vide Additional Income-tax Officer v. Alfred. It was held that the fiction in sub-section (2) of section 24B does not come to an end when the assessment proceedings are over, but logically extends to the collection of the tax from the legal representative of the assessee. It was pointed out by this court that the distinction between an "assessee" and "other person" in section 29 does not bear upon this matter, because the legal representative is in himself the assessee and as an assessee in default, liable to penalties under section 46(1). It, therefore, follows that if the legal representative, who was proceeded against under section 24B(2), must be deemed to be an assessee for the purpose of assessment, levy and collection of tax, the provisions of sections 45, 46(1) and also 46(2) must apply to him. In our, opinion, both the certificate issued under section 46(2) and the notice of July 17, 1956, were valid, and the High Court was in error in quashing the former and setting aside the latter.

6. The appeal is thus allowed. The judgment of the High Court is set aside and the writ petition ordered to be dismissed. There shall be no order as to costs here.

7. Appeal allowed.