Union Of India vs Bibhuti Bhusan Sen, And Ors. on 8 May, 1963

Equivalent citations: [1964]51ITR88(SC)

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Bench: A.K. Sarkar, B.P. Sinha, K.C. Das Gupta, K.N. Wanchoo, S.K. Das

JUDGMENT

S.K. Das, J.

1. These appeals are from an order of the High Court of Calcutta dated April 3, 1953, by which the said High Court rejected an application made on behalf of the appellant herein to grant leave to attach and sell through the Certificate Officer, Alipore, the properties and assets of Messrs. Sen Brothers and Co. in the hands of a receiver appointed by the High Court, for the recovery of arrears of income-tax due from the aforesaid firm. The facts lie within a narrow compass and are stated below.

2. There was a partition suit going on between certain Sens and one of the properties included in the suit was the firm called Messrs. Sen Brothers and Co. A preliminary decree having been passed in that suit by a court at Alipore, there was an appeal to the High Court of Calcutta and in that appeal an order was made for the appointment of receivers in respect of the firm. From the year 1945 to the year 1953 the receivers were two of the Sens themselves, namely, Balai Lal Sen and Bibhuti Bhusan Sen. Assessments of income-tax were made on them as receivers with respect to the income of the firm for the years 1945- 46, 1949-50, 1950-51, 1951-52 and 1952-53, but of those assessments that for the year 1949-50 was subsequently cancelled. The income-tax department having been unable to realise the tax from the receivers, started certificate proceedings in respect of their dues under each one of remaining four assessments but while the certificate proceedings were pending, the two Sens ceased to hold the office of receiver. They were succeeded by Sisir Kumar Basu and Kanai Lal Sen. on February 5, 1954, but on December 23 following, Sisir Kumar Basu came to be the ole receiver. Thereupon, on February 6, 1955, the union of India, represented by the Commissioner of Income-tax, West Bengal, made an application to the High Court by which they asked for two, reliefs, namely, (a) leave to attach and sell through, the Certificate Officer, Alipore, the property and assets of Sen. Brothers and Co. in the hands of Sisir Kumar Basu, the receiver and to realize the arrears of income-tax due from Sen. Brothers and Co and from the said receiver, out of the sale proceeds and (b) leave to serve notice under;sectipn!46(5A) of the Income-tax Act on the said receiver, that is Sish ;Kumar Basu and to. Take further proceedings as provided in the section. A, rule was issued, on that application by P.N, Mookherjee and Renupada Mukherjee J.J. in terms of the prayers. Thereafter, while the rule was pending, Sisir Kumar Basil resigned and M. K. Sen. came to be appointed receiver An application was then made for the substitution of M. K. Sen. which was

allowed and the rule came up for hearing as a rule against the receiver so substituted.

3. The rule was heard be S. C. Lahiri and S. K. Sen JJ. They discharged the rule on the main ground that there was no provision in the Indian Income-tax Act, 1922, or the Bengal Public Demands Recovery Act for substituting in place of the receiver who was assessed for the income obtained by him on behalf of the owners of the firm, another receiver who has not been so assessed, and that in the absence of an assessment on the firm, it would not be right to hold that the assets in the hands of a subsequent receiver (namely, M. K. Sen), who was not an assessee and who was not before the Certificate Officer at all, could be proceeded against with the permission of the court. It may be stated here that the form of the application made by the present appellant to the High Court was such that the question of the right of the appellant to proceed against the successor to the assessee receivers was directly raised and reliance was placed on sub-section (2) of section 41 of the Indian Income-tax Act and section 43 of the Bengal Public Demands Recovery Act. The learned judges dealt with those provisions and came to the con collusion that they did not justify leave being granted to the appellant proceed against the assets of Messrs. Sen. Brothers arid Co. in the hands of a receiver who was riot assessed and who could not be substituted in place of the assessee receiver.

4. The appellant has not now pressed before us prayer (b) referred to earlier in this judgment. Indeed, at the time of asking for a certificate from the High Court, it was stated on behalf of the appellant that no notice under section 46 (5A) could issue against the receiver who was then in possession. The only point on which a certificate was asked for and was granted was the proper interpretation of sub-section (2) of section 41 of the Indian Income- tax Act. That sub-section reads as follows :

> "Nothing contained in sub-section (1) shall prevent either the direct assessment of the person on whose behalf income, profits or gains therein referred to are receivable, or the recovery from such person of the tax payable in respect of such income, profits or gains."

5. The learned Chief Justice, who sitting with Lahiri J. gave the certificate, said :

> "It is contended that while the first part authorises direct assessment of the owners of the property which is in the hands of a receiver and inferentially authorises recovery from them of the tax imposed by such assessment the second part is concerned with recovery alone and does not obviously make an assessment of the owners a condition precedent to recovery. In other words, it was contended that although the assessment might have been made on the former receivers, the tax due under those assessments could be recovered from the owners of Sen Brothers and Co. on whose behalf the income assessed had been received and further, since the assets of the firm were now in the hands of not the owners but a receiver, recovery could be made from him. This contention was negatived by the learned judges of this court. They held that although the two parts of sub-section (2) of section 41 were separated by the conjunction 'or', still the second part only meant that there could be recovery of tax payable from the proprietors direct, only if there had been a direct assessment of them in spite of there

> being a receiver for their estate. The principal contention of the Union of India which they want to take before the Supreme Court is that this view of the second part of the section 41 (2) is wrong."

6. The point raised is not free from difficulty, and in view of the provisions of section 65 of the Income-tax Act, the question might well arise whether any proceedings for recovery of tax lay against the successor to the assessee receivers, in the absence of any assessment on the owners of the firm.

7. Fortunately for us, these appeals can now be disposed of on the short ground that Bibhuti Bhusan Sen has now been appointed receiver in place of M. K. Sen, discharged by the order or the High Court dated March 28, 1958. Bibhuti Bhusan Sen as one of the receivers was an assessee on whom assessment was made with respect to the income of the firm for the years 1945-46, 1950-51, 1951-52 and 1952-53. These are the assessments in respect of which the appellant now wishes to take proceedings for recovery of tax. As Bibhuti Bhusan Sen was an assessee on whom the assessments had been made, no question of any substitution of a receiver subsequently appointed arises now and it is unnecessary to consider the effect of sub-section (2) of section 41 of the Indian Income-tax Act. We accordingly allow the appeals and grant permission to the appellant to proceed against Bibhuti Bhusan Sen as receiver of the assets of the firm, Messrs. Sen Brothers and Co. There will be no order as to costs in this court.