

Shiva Shakti Saran Raghbir Saran vs Commissioner Of Income-Tax on 3 May, 1950

Equivalent citations: AIR1950ALL620, AIR 1950 ALLAHABAD 620

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Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. There was a joint family of a father and two sons, Sahu Nand Lal Saran, Shiva Shakti Saran and Raghbir Saran. This joint family was carrying on money-lending business. There was a partition on 10th March 1930, and the father and the two sons separated. After the separation, the father carried on the separate money-lending business and the two sons entered into a partnership, and the partnership also, under the name and style of Messrs. Shiva Shakti Saran Raghbir Saran of Moradabad carried on money-lending business. Sahu Nand Lal Saran was assessed to Income tax out of the income made by him from the money-lending business and from his other properties, and the partnership firm of Messrs. Shiva Shakti Saran Raghbir Saran of Moradabad was separately assessed to Income-tax as an unregistered partnership.

2. Sahu Nand Lal Saran had during the previous year 1937-38 made some income by his money-lending business and a notice was issued to him by the Income-tax Officer under Section 22 (2), Income tax Act. While the assessment proceedings were still pending, on 29th February 1938, Sahu Nand Lal Saran died. Under his will dated 15th May 1936, this money-lending business was inherited by his two sons, Shiva Shakti Saran and Raghbir Saran. Shiva Shakti Saran and Raghbir Saran, who were carrying on their money-lending business in partnership, continued to carry on the money-lending business which they had inherited from Sahu Nand Lal Saran, and it was found by the Commissioner of Income-tax that both these businesses were carried on together and treated as branches of the same business. The Income-tax Officer passed the assessment order on 22nd February 1939, and in that he added a sum of Rs. 5438/-, which was the profit made out of the business carried on by Sahu Nand Lal Saran in the previous year 1937-38 before his death, to the profits made by the partnership which was Rs. 16,902/-.

3. An appeal was filed to the Appellate Assistant Commissioner and the point raised before him was that the income from the business left by Sahu Nand Lal Saran should be assessed in the hands of Shiva Shakti Saran and Raghbir Saran half and half and it should not be treated as the profits made by the firm, Messrs. Shiva Shakti Saran Raghbir Saran of Moradabad. This affected the rate at which income-tax was to be charged as the rate at which income-tax was payable on the total sum of

Rs. 22,340/- consisting of Rs. 16,902/- and Rs. 5438/- was higher than the rate at which income-tax was payable on half of Rs. 5,438/- in the hands of each brother. The Assistant Commissioner was of the opinion that the two brothers might have claimed to be separately assessed if they had divided the business that they had inherited or if the two businesses had been carried on in different partnerships. This decision was affirmed by the Appellate Commissioner by an order dated 6th July 1940.

4. There was thereafter an application made to the Commissioner to refer a case to this Court, but the Commissioner rejected that application on the ground that no question of law arose for decision which could be referred under the provisions of Section 66, Income-tax Act. Thereafter an application was filed in this Court on 13th November 1940, under Section 66 (3), Income-tax Act, and on 6th December 1944, a Bench of this Court directed the Commissioner to state the case and refer the same to this Court in accordance with the provisions of unamended Section 66 (3), Income-tax Act. On receipt of that order the Commissioner of Income-tax has referred to us the following question:

"Whether in the facts and circumstances of the case, the profit of Rs. 5438/- which had accrued to the late Sahu Nand Lal Saran can be assessed as the income of the unregistered firm of Shiva Shakti Saran Raghubir Saran under Section 26 (2) of the Act,"

5. On the finding arrived at by the Commissioner that the business of money-lending carried on by Sahu Nand Lal Saran was now being carried on by the unregistered firm of Shiva Shakti Saran Raghubir Saran, the question arises whether the firm, Shiva Shakti Saran Raghubir Saran, can be deemed to be the successors of the business carried on by Sahu Nand Lal Saran.

6. It has been pointed out by learned counsel and to our minds rightly that when Sahu Nand Lal Saran died then his two sons got the business under the will not as partners but as co-owners to whom the business was bequeathed, but on getting it they carried on the business in the same capacity in which they were carrying on the partnership business of the firm Shiva Shakti Saran Raghubir Saran. Strictly speaking, therefore, notionally there were two successions. On the death of Sahu Nand Lal Saran the business came, under the bequest, to his two sons Shiva Shakti Saran and Raghubir Saran, and having got it they decided to carry on the business, which was of the same type as the partnership business, in the same manner in which they were carrying on the partnership business.

7. Section 26 (2) of the unamended Income-tax Act is as follows :

"Where at the time of making an assessment under Section 23, it is found that the person carrying on any business, profession or vocation has been succeeded in such capacity by another person the assessment shall be made on such person succeeding, as if he had been carrying on the business, profession or vocation throughout the previous year and as if he had received the whole of the profits for that year."

As we have already said the Income-tax Officer, made the assessment on 22nd February 1939. At that time he found that Sahu Nand Lal Saran, who was carrying on the business, had been succeeded by the firm Shiva Shakti Saran Raghubir Saran, who were at the time carrying on the business though there had intervened one more step when on the death of Sahu Nand Lal Saran the two brothers had got the business as legatees under the will of their father. The question is whether "has been succeeded in such capacity by another person" can refer to more than one step or it must be a single step by which the person who is carrying on the business, in this case, the partnership of Shiva Shakti Saran Raghubir Saran, has succeeded to the business. As we have already said the person carrying on the business was Sahu Nand Lal Saran and the person, who had ultimately succeeded to the business at the time when the Income-tax Officer was making the assessment under Section 23, was the partnership firm. The words has been succeeded are governed by the words in such capacity' which must mean the capacity in which the person succeeded was carrying on the business.

8. The question whether the Income-tax Officer could apply the provisions of Section 26 (2) only to cases where the succession was by a single step or the said provisions were applicable when there was more than one step, may be said to be covered by the decision of Rowlett J., in *Michael Faraday v. Carter*, 1927-11 Tax Cas. 565. In that case A and B, who were partners in a firm, dissolved the partnership as from 1st April 1922. A continued to carry on the business at the old address from 22nd November 1922. On 15th December 1922, A took C into the partnership as from 1st April 1922. The Commissioners found that the partnership between A and B was not dissolved until 22nd November 1922, and that there had been no discontinuance of the business, but that A had succeeded to the business of A and B and A and C succeeded to the business carried on by A after the dissolution of the partnership between A and B. In effect the Commissioners held that there was double succession by which the business had come to A and C. Rowlett J., held that there was evidence upon which the Commissioners could come to that conclusion. It was never doubted that in a case of double succession the person, who had ultimately carried on the business, could be held liable for the profits made during the previous year.

9. Though the point has not been directly referred to us, but it has been suggested by learned counsel that Section 24B, is applicable and not Section 26 (2). In the case of *Maharajadhiraj of Darbhanga v. Commissioner of Income-tax, B. and O.*, 1934-2 I. T. B. 345 : (A.I.R. (21) 1934 P. C. 200), the Maharaja of Darbhanga was assessed to income-tax and after the notice under Section 22 (2) had been served on him the Maharaja died, He was carrying on a number of businesses to which his son succeeded. The question was whether Section 26 (2), Income-tax Act was applicable, Their Lordships of the Judicial Committee came to the conclusion that the new Maharaja must be deemed to have succeeded to the businesses of his father and Section. 26 (2), Income-tax Act was applicable. It is true that at that time the Income tax Act had not been amended and Section 24B had not been introduced, but Section 24B does not appear to have replaced Section 26 (2). It was enacted to fill in the lacuna which was pointed out by the Bombay High Court, in *Commissioner for Income-tax v. Ellis C, Reid*, 55 Bom. 312 : (A. I. R. (18) 1931 Bom. 333), that if a person died before making the return of his income his estate could not be made liable for the payment of the Income-tax which he would have been liable to pay if he had been alive. Section 24B, now provides that in case a person dies his legal representatives are liable to pay out of the estate of the deceased the money that he

would have had to pay as income-tax if he had not died. As the question has not been referred to us we need not discuss this matter further. We may, however, mention that in Commissioner of Income tax, Madras v. Ramaswamy Iyengar, 1943-11 I. T. R. 610 : (A. I. R. (31) 1944 Mad. 155), the learned Judges of the Madras High Court held that Section 24B, was inserted in order to supplement Section 26 (2), and not to override the provisions of Section 26 (2). They were of the opinion that Section 24B, left Section 26 (2), untouched and Section 26 (2) must be applied in a case of succession to a business by death as well and the tax levied on the successor as if he had carried on the business throughout the previous year.

10. Our answer to the question referred to us, therefore, is that the profit of Rs. 5,438/-, which had accrued to the late Sahu Nand Lal Saran, could be assessed as the income of the unregistered firm of Shiva Shakti Saran Raghubir Saran under Section 26 (2) of the Act. The assessee must pay the costs of this reference which we assess at Rs. 200/-.