

Supreme Court of India

Khaitan Apte And Co. And Anr. vs D. Rama Rao, Income-Tax ... on 24 September, 1971

Equivalent citations: 1973 92 ITR 569 SC

Author: K Hegde

Bench: A Grover, H Khanna, K Hegde

JUDGMENT K.S. Hegde, J.

1. This is an appeal by certificate from the decision of a Division Bench of the Punjab High Court.
2. M/s. Khaitan Apte & Co. were assessed to excess profits tax by the Excess Profits Tax Officer, Rajahmundry in a sum of Rs. 4,36,554-10-6 in respect of the accounting periods ending March, 1943, 1944, 1945 and 1946. The said firm appealed against the said order of the Excess Profits Tax Officer, Rajahmundry. In appeal, the order of the Excess Profits Tax Officer was reversed. The appellate authority came to the conclusion that the firm was not liable to pay any excess profits tax. This order of the appellate authority was confirmed by the Income-tax Appellate Tribunal. After the assessment order was made, the two partners of M/s. Khaitan Apte & Co., namely, V.S. Apte and Karundia died. During the pendency of the appeal before the appellate authority, the Excess Profits Tax Officer took proceedings for recovery of the tax assessed. L.V. Apte, son of V.S. Apte, deposited on behalf of the firm the tax assessed. After the reversal of the order of the Excess Profits Tax Officer, L.V. Apte applied for refund of the tax paid. The refund asked for was not given for a considerable time. Meanwhile, the Income-tax Officer of Bombay, who had a claim against Karundia in a sum of about rupees 19 lakhs as arrears of tax, issued a notice under Section 46(5A) of the Indian Income-tax Act, 1922-to the Excess Profits Tax Officer, Rajahmundry, requiring him to remit to him half the sum of the amount liable to be refunded on the ground that the same is the asset of the deceased, Karundia. It appears that the officer remitted a sum¹ of Rs. 4,36,554-10-0, out of the amount collected by him as excess profits tax, to the Income-tax Officer at Bombay. When L.V. Apte applied to the Central Board of Revenue for refund of the tax paid, the Board asked him to produce a succession certificate. Aggrieved by the attitude taken by the Central Board of Revenue, the appellants moved the High Court of Punjab under article 226 of the Constitution seeking a direction to the respondents to refund the amount in question. The writ petition came up before Harbans Singh J. The claim made in the writ petition was resisted by the respondents on various grounds. The learned single judge rejected all the grounds urged . on behalf of the respondents, allowed the writ petition and issued the direction prayed for.
3. As against the order of the learned single judge, the respondents went up in appeal to a Division Bench of the High Court. Before the Division Bench, the learned Counsel for the department agreed to refund 50% of the tax collected as being the share of V.S. Apte but in respect of the other half he contended that the appellants herein were not entitled to claim the same as it had been paid over to the Income-tax Officer, Bombay, towards the arrears of tax due from Karundia. Various pleas were taken on behalf of the department in resisting the claim of the appellants. But the learned judges of the Division Bench allowed the appeal on one single ground, namely, that the writ petition was not maintainable in view of the fact that the Income-tax Officer of Bombay had not been made a party. Other grounds urged on behalf of the department were not considered by the Division Bench.

4. In our opinion, the learned judges of the Division Bench erred in holding that the writ petition was not maintainable on the ground that the Income-tax Officer of Bombay had not been made a party. The Income-tax Officer of Bombay stood in the position of a garnishes. The Excess Profits Tax Officer, Rajahmundry, made over certain sums to the Income-tax Officer of Bombay on the assumption that the amount in question was the asset of Karundia. The amount in question is a part of the assets of the dissolved firm. Karundia's share in the assets of that firm, we are informed, has not yet been determined. Hence, it is not possible to fix any portion of the amount to be refunded as the assets of Karundia. The payment made by the Income-tax Officer, Rajahmundry, to the Income-tax Officer, Bombay, can only be considered as an interdepartmental arrangement. It cannot amount to legal discharge. If the appellants are entitled to the refund of the amount claimed, the Income-tax Officer, Rajahmundry, will be liable to refund the same. His payment to the Income-tax Officer, Bombay, will be considered as unauthorised payment and that fact will not afford him a valid defence. The Income-tax Officer, Bombay, is not a necessary party to the petition. At best, he may be a proper party.

5. In view of our above conclusion, this appeal has to be allowed; but as the Division Bench has not decided the other pleas taken by the department, this case has to go back to the High Court for deciding those questions. At that stage it is open to the respondents to move the High Court for impleading the Income-tax Officer, Bombay, as a party and it is for the High Court to decide whether such a prayer should be allowed.

6. For the reasons mentioned above, we allow this appeal and set aside the order of the Division Bench and remit the case to the High Court for deciding the questions that remain to be decided.

7. In the circumstances of the case, we direct the parties to bear their own costs in this Court.