In Re: Begg Sutherland and Co.

Court: Allahabad High Court

Date of Decision: Feb. 16, 1925

Citation: AIR 1925 All 535

Hon'ble Judges: Walsh, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Walsh, J.
This is a reference, or a case stated, u/s 66 of the Indian Income Tax Act of 1922 by the Commissioner of Income tax for the

opinion of the High Court. The facts are very clearly stated in the case and are as follows:

The business of the well known firm of Begg Sutherland and Co., Cawnpore, was carried on by a firm which consisted of certain individual

partners under the title of Messrs. Begg Sutherland and Coup to the 30th of April, 1922. On that date that firm, as a commercial or legal person,

ceased to exist, and was succeeded by a private limited company which was known by the same name with the addition of the word ""limited."" The

agreement is not exhibited, but the point taken at one time on behalf of the Company by one of its representatives before the Commissioner, that

the Company, was not the successor of the firm within the meaning of Section 26 of the Income Tax Act has not been argued by Mr. J.M. Banerji

on behalf of the Company, and therefore it must be taken to be admitted that it is no doubt because it could not be reasonably contested. In a

Company of this prosperity making profits at a rate which involved them in liability for super tax, some slight complications necessarily arose by

reason of the conversion, for this reason. u/s 2, Sub-section 14 a firm may take advantage of a provision therein contained for registering itself, and

where it does so, by operation of Section 55, the firm, being from that moment a registered firm is not liable for super-tax. In other words where a

registered firm exists, it is not liable for super-tax on the whole of its profits made as such firm, but the individual partners are liable for such super-

tax as individuals. On the other hand if the firm is an unregistered firm, than it is directly chargeable with super-tax if it makes profits at a rate

sufficient to create liability for super-tax, and in that event the partners are not chargeable for super tax if their firm has already paid it. The date of

the conversion of the firm into a company, and the date of their annual accounting did not correspond with the dates adopted as the terminal of the

financial year by the Income Tax authorities. There was therefore a broken period to be dealt with and a broken continuity to be dealt after the

date of the conversion, and for reasons best known to themselves, by mutual consent, the Income Tax authorities and the new Company dealt with

the profits in respect of which Income Tax was payable from 1921 to 1922 and from 1922 to 1923 in one year of assessment, namely 1923-

1924, There was no attempt to shirk any liability, or to dispute the facts as they were. In the result the profits which the firm had in fact made

during the last year of its existence were assessed at the maximum rate for Income Tax. In addition the individual partners were, in accordance with

the law, which we have just described, assessed to super-tax on their shares of the profits, the firm as a registered one, being exempt from super-

tax. In addition, for the first eleven months of the existence of the Company which brought the assessment up to the 31st of March, 1923, thereby

making the company''s accounting year coterminous with the financial year of the Income Tax authorities, the new Company was assessed in

Income Tax and also charged supertax at the rate payable by a company. It is not contended on the part of the Income Tax authorities that in the

ordinary use of language, unless there is some special provision in the Income Tax Act by which they are caught, the new Company and the old

firm had not discharged in every way their legal liability, or what might be supposed to be their legal liability up to 31st March, 1923. But the case

raises the further question whether the Company is to be assessed in respect of the last year of existence of the firm, not merely on what was

undoubtedly payable in law by the Company on the profits which the firm had made and on which it would have been assessed if it had continued

to exist as a firm, but whether it is not also liable to be treated as a super-tax paying person because although its predecessor was not a super-tax

paying person, it itself is by the express language of the Act, and must be treated as what it is, even in respect of profits made anterior to its

existence. We can only say that the proposition is sufficiently startling to cause surprise and to lead one to look for language absolutely

unambiguous and positive in its terms to create a special liability of that sort, which it would be unlikely that any legislature would intend to impose

if it really understood what it was doing. The only argument submitted to us by the Government Advocate on behalf of the Income Tax authorities,

is suggested by Section 26. But it certainly cannot be said that Section 26 contains any express provision upon the point, and the answer to the

argument on behalf of the Income Tax Commissioner really is that the conversion of the firm into the Company does not in any way affect the

profits made by the firm before the conversion, or the legal liability to Income Tax which already existed before the conversion. All that the

conversion effects is to cause the Company to step into the shoes of the defunct firm as assessee for the period of assessment, but it goes without

saying, and is recognised throughout the scheme contained in the Act, that the liability to assessment is not conclusive as to the chargeability in

respect of the period for which such assessment is made. To make the matter clear-if it is desirable further to do so-it is only necessary to point out

that Section 26 provides that where any change in the ownership of business is made, the assessment shall be made on the person at the time of

making the assessment. Bui; the assessment has to relate to periodical profits made as defined in the Act, and Section 3 provides that Income Tax

shall be charged for any year in respect of all profits of the previous year of every firm. What therefore was to be assessed amongst other things

upon the new Company after the conversion in pursuance of the arrangements coma to, to which we have already referred, were the profits, and

the Income tax payable thereon as provided by law of the year previous to the conversion. These profits admittedly did not include a super-tax,

and there is nothing in the Act which would justify the Income Tax authorities in imposing on a successor during the first year of assessment after

the conversion a liability in respect of its predecessor which its predecessor would not have been liable to pay if it had continued in existence

without any conversion.

2. Our answer therefore to the first question is that the profits for the period 1st May, 1921 to 30th April, 1922, are to be assessed as profits of a

firm but the Company is to be called upon to pay the amount which we understand they have done.

3. To the second question to avoid ambiguity we would say that there is nothing in the Income Tax Act of 1922 which makes a new Company

liable to pay supertax in respect of a year for which its predecessor was not liable for supertax.

4. We think that this is a case which required careful handling and that the maximum fees should be payable on either side. We, therefore, direct

the Government to pay Rs. 200 the costs of the other side, and we certify that that is a reasonable amount for the Government Advocate.