SUSEELA SADANANDAN Vs ADDITIONAL Income Tax OFFICER, KOZHIKODE, AND ANOTHER.

Court: High Court Of Kerala

Date of Decision: Sept. 29, 1961

Acts Referred: Constitution of India, 1950 â€" Article 226
General Clauses Act, 1897 â€" Section 13
Income Tax Act, 1961 â€" Section 22, 23, 24, 34, 46
Limitation Act, 1963 â€" Section 22
Succession Act, 1925 â€" Section 211, 311

Citation: (1963) 47 ITR 318 : (1961) 5 KLJ 1379

Judgement

In this writ petition, Mr. K. V. Suryanarayana Iyer, learned counsel for the with petitioner, challenges the orders of reassessment passed by the

first respondent u/s 34 of the Indian Income Tax Act, as well as the proceedings taken by the second respondent, under the provisions of the

Madras Revenue Recovery Act, for realising the amount as per the assessments made by the first respondent.

In order to appreciate the contentions that have been raised by Mr. Suryanarayana Iyer, learned counsel for the writ petitioner, as well as Mr. G.

Rama Iyer, learned counsel for the revenue, a few facts will have to be stated; and, so far as we could see, there does not appear to be much of a

controversy on essential facts, at any rate.

One Sri S. P. Sadanandan, who was a resident of Kozhikode, died on 10th July, 1948, leaving a registered will dated June 23, 1948. A copy of

the will has been marked in these proceedings as exhibit P-1. The petitioner is the widow of the late Sri S. P. Sadanandan. Some reference will

have to be made regarding the nature of the directions given by the testator constituting executors for administration of the estate. As mentioned

earlier, Sri S. P. Sadanandan died on 10th July, 1948. Though an assessment for the particular years in question had already been made, it

appears that the Income Tax Officer, Special Circle, Coimbatore, who is in charge of the assessment for the particular years in question, started

proceedings u/s 34 of the Indian Income Tax Act for purposes of making reassessment for the years 1945-46 to 1949-50 both inclusive. The

relevant notice that has been issued, though not actually marked before us, is evident from the files produced by the learned counsel for the

revenue. That notice is dated March 20, 1954, and addressed to ""the late S. P. Sadanandan by legal heirs, E. D. Sadanandan and others,

Kozhikode"". A return also appears to have been sent shows ""the late S. P. Sadanandan by legal heirs, E. D. Sadanandan and others"" and it has

also been signed by E. D. Sadanandan as the legal heir and the status is given as individual. There was an order of assessment passed by the

officer at Coimbatore on August 17, 1954, for these various years. The assessment order, which again has been produced before us, describes the

assessee as ""late Sri S. P. Sadanandan represented by legal heirs and representatives, Sri E. D. Sadanandan, J. G. Sadanandan and others,

Kozhikode"". In the first paragraph of the assessment order, the Income Tax Officer says : ""The assessee in this case is Sri S. P. Sadanandan who

died on July 10, 1948. After his death he is represented by his sons, namely E. D. Sadanandan and J. G. Sadanandan and the assessees wife,

Mrs. S. P. Sadanandan.

Though, no doubt, certain objections appear to have been raised regarding the proceedings taken by the officer, ultimately, as we mentioned

earlier, the assessment was made on August 17, 1954.

Against the order of assessment passed for these various years in question, Sri E. D. Sadanandan again appears to have carried the matter in

appeals before the Appellate Assistant Commissioner at Coimbatore. From the memorandum of grounds, it is seen that the first ground of attack

made against the orders of assessment was that the assessment u/s 34 on the estate of the late Sri S. P. Sadanandan, after his death, is not in

accordance with law. But nothing useful in favour of the assessees appears to have come out of the appeals, because, ultimately, the Appellate

Assistant Commissioner, by his order dated September 19, 1956, confirmed the orders of reassessment passed by the Income Tax Officer.

There were again appeals taken by the same party against the orders of the Appellate Assistant Commissioner of the Income Tax Appellate

Tribunal, Madras ""A"" Bench. No doubt, the appeals were ultimately dismissed on June 20, 1957. But, from the memorandum of grounds that

were filed before the Appellate Tribunal, it is seen that the appellant therein raised the ground that notice u/s 34 in the name of the late Sri S. P.

Sadanandan represented by legal heirs, Sri J. G. Sadanandan and others, Kozhikode, was sent on March 5, 1954, and that the above procedure

adopted by the officer is not in accordance with law. It is further stated that as per the will and testament of the late S. P. Sadanandan executed on

June 23, 1948, and registered on June 24, 1984, the legatees are his wife, two sons, three daughters and one grandson. It is further stated that

over and above these persons there were also two beneficiaries under the will and the will appoints three persons as executors, namely, Mrs.

Suseela Sadanandan, Earnest Devadas Sadanandan and Mr. Paramasivan, a chartered accountant of Kozhikode. The appellant therein further

says that the officer should have proceeded against the executors u/s 34, read with section 24B, sub-section (2), of the Indian Income Tax Act,

and it is all the more necessary because the sons of the deceased were college students at the time of his death. It is further reiterated that the

officer, not having proceeded in accordance with the express and mandatory provisions of section 34 and section 24B(2), the proceedings initiated

are entirely irregular and void and have to be set aside.

This ground is again reiterated later in the memorandum of grounds to the effect that, having failed to issue notice u/s 34 to the all the legal

representatives of the deceased as detailed in the will, the appellant submits that the proceedings initiated may be declared void in that the officer

went wrong when making the assessment, against the principles laid down in sections 23(3), 34 and 24B(2) of the Act.

We are only referring to one of the grounds of attack made against the orders of assessment because it will be clear from what we have stated

above that the question of the validity of the procedure adopted by the Income Tax Officer was seriously challenged and it was urged that the

assessments themselves are totally illegal and void.

So far as this aspect is concerned, the Appellate Tribunal in its order dated November 26, 1957, states that after the assessees death section 34

notices have been issued in the name of the eldest son on his behalf and on behalf of the other heirs. The Appellate Tribunal further states that in

none of the earlier proceedings was any objection taken along the lines that were now being taken before them on the basis of the decision in E.

Alfred v. First Additional Income Tax Officer, Salem and, finally, the Tribunal holds that the notices issued are adequate and the proceedings are

valid. It is not necessary for us to consider the various other points dealt with in the appellate order, because we should straightaway say that,

excepting the question about the legality of the assessment orders passes as such, no before us in these proceedings.

With this background, it is now desirable to go back to the steps taken by the present petitioner for having these proceedings quashed.

It will be seen that when the appeal was pending even before the Appellate Assistant Commissioner, the petitioner before us received two notices

dated 5th September, 1956, from the second respondent to these proceedings. One of the notices was u/s 27 of the Madras Revenue Recovery

Act (11 of 1864), attaching certain properties mentioned therein and claiming a sum of Rs. 13,09,352-3-0 from the petitioner. The second notice

that was received on the same date was u/s 36 of the same Act, proclaiming most of the properties for sale to be held on December 8, 1956, if the

amount demanded under the notice issued u/s 27 was not paid on or before December 7, 1956.

When these notices were received by the petitioner, the latter appears to have started to make enquiries regarding the circumstances under which

the demand is sought to be made and finally she seems to have gathered some information to the effect that proceedings by way of reassessment

u/s 34 of the Act have been taken by the Income Tax authorities. The petitioner quite naturally taking up the position, that she is not in any way

liable for payment of the amount demanded, took steps to challenge was made in O. P. No. 43 of 1956-K in this court and the main relief asked

was for quashing the two notices as well as any assessment that have been made by the Income Tax Officer concerned. But when the matter came

before a learned judge of this court, evidently the learned judge proceeded on the basis that because an appeal by Sri E. D. Sadanandan was

pending before the Appellate Tribunal, Madras, it was not necessary to go into the controversy at that stage and in this view the learned judge, by

his order dated March 27, 1957, dismissed the application giving liberty to the petitioner therein to move the court again, if so advised, at a later

stage.

Subsequently, as we mentioned earlier, the Appellate Tribunal also by its order dated November 26, 1957, dismissed the appeals filed by E. D.

Sadanandan.

In consequence, therefore, notices appear to have been served again on the petitioner by the second respondent under the provisions of the

Madras Revenue Recovery Act. The said two notices again rare notices under sections 27 and 36 of the Madras Revenue Recovery Act. Exhibit

P-2 is the notice issued u/s 27 and exhibit P-3 again the notice issued u/s 36, proclaiming the properties for sale. These two notices are under

attack in these proceedings on the ground that the assessments themselves are illegal an void and also on the ground that no proceedings for

recovery of the tax, even assuming the petitioner is liable, can be made by resorting to the provisions of the Revenue Recovery Act.

The petitioner urges that under the will of her deceased husband, three persons have appointed as executors, namely, the petitioner as the widow

of the deceased, the eldest son, E. D. Sadanandan, and Paramasivan, a registered accountant and auditor of Kozhikode. The petitioner further

urges that reading of the will itself will clearly show that the family of the deceased consists of various persons mentioned therein which include the

petitioner, her two sons, one of whom is a minor, their three daughters, two of who are minors, as well as a grandson who again is a minor, being

the son of a deceased daughter. There are also various bequests made by the testator in favour of the various persons giving rights in their favour

with regard to various properties. A reference to the will is only necessary for this purpose, namely, to find out the persons who comprise the

family of the deceased and also for another purpose, namely, the appointment made by the testator of three persons as executors of the will.

The main ground of attack made against these assessment proceedings, as such, is that when there are three executors appointed under the will by

the testator for representing the deceased it is not open to the Income Tax department to issue notice only to one of the legal representatives of the

deceased, namely, E. D. Sadanandan, and inasmuch as no notice has been issued u/s 34 to all the executors and representatives of the deceased,

the proceedings by way of reassessment, on the basis of which collections are sought to be made, are illegal and void. In this connection, the

learned counsel, K. V. Suryanarayana Iyer, placed reliance upon the wording of section 24B(2) read also along with section 34 of the Act. The

learned counsel has also drawn our attention to certain decisions bearing upon this aspect and also certain decisions of the Supreme Court to the

effect that any assessment made on the basis of an invalid notice not satisfying the conditions of the section 34 will be illegal and totally void. We

will advert to these decisions a little later.

So far as the statement of facts is concerned, as we mentioned earlier, there does not appear to be any serious controversy regarding these

matters. In fact, in the counter-affidavit filed by the first respondent in these proceedings, the execution of the will and also the fact that there are

three persons who have been appointed as executors under the said will are all admitted. But the aspect that is pressed in the counter-affidavit is

that a notice was issued u/s 34 in the names of the heirs and legal representatives of the deceased, S. P. Sadanandan, and such a notice was

arrived on the eldest son, E. D. Sadanandan, and he entered appearance and also filed a return and it is on the basis of the said return that

assessment proceedings were finally completed. It is also stated that the entire proceedings were taken bona fide and validly taken against the

estate of the deceased, which was properly represented by the said E. D. Sadanandan.

There is another point that is taken in the counter-affidavit, which is to the effect that, assuming there are three executors appointed under the will

of the testator, notice issued to one of the executors, namely, E. D. Sadanandan, should be considered to be sufficient in law, as a proper

representation of the estate of the deceased and, therefore, the proceedings taken by the department are absolutely regular and cannot be

considered to be void ab initio or illegal.

So far as the other aspect that has also been taken in the writ petition, namely, that proceedings under the Revenue Recovery Act cannot be taken

as against the petitioner, even assuming three is a liability for payment of tax, is also controverted by the department in its counter-affidavit.

So far as the will itself is concerned, we have already mentioned that the family consists of various person mentioned therein and also that

admittedly there were three executors appointed under the will by the testator.

Therefore, one of the points that arise for decision is these proceedings will be as to whether the non-issue of any notice u/s 34 of the Income Tax

Act, to the other two executors, including the petitioner, invalidates the proceedings taken by way of reassessment u/s 34 of the Act. This is a point

on which there is considerable controversy between the learned counsel for the petitioner and the learned counsel appearing for the revenue.

Before we consider the actual decision that have been placed before us, it is necessary to advert to the provisions of section 24B of the Act as well

as section 34. Section 24B is to the following effect :

24B. Tax of deceased person payable by representative. -(1) Where a person dies, his executor, administrator or other legal representative shall

be liable to pay out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge, the tax assessed as

payable by such person, or any tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 22 or before he is served with a notice under

sub-section (2) of section 22 or section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the

notice under sub-section (2) of section 22 or u/s 34, as the case may be, comply therewith, and the Income Tax Officer may proceed to assets the

total income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of section 22, or having

furnished a return which the Income Tax Officer has reason to believe to be incorrect or incomplete, the Income Tax Officer may make an

assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may, by

the issue of the appropriate notice which would have had to be served upon the deceased person had he survived, require from the executor,

administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions

of sections 22 and 23 have required from the deceased person.

So far as this point is concerned, the relevant sub-section is sub-section (2) of section 24B. It is also necessary to advert to the material provisions

in section 34, so far as they are necessary for the present purpose. Leaving out the proviso and the Explanation to sub-section (1) of section 34,

section 34(1) is to the following effect :

34. (1) If -

(a) the Income Tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income

u/s 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to

Income Tax have escaped assessment for that year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of

excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income Tax Officer has in

consequence of information in his possession reason to believe that income, profits or gains chargeable to Income Tax have escaped assessment

for any year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that

excessive loss or depreciation allowance has been computed,

he may in cases falling under clause (a) at any time and in cases falling under clause (b) at any time within four years of the end of that year, serve

on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all any of the requirements which may included

in a notice under sub-section (2) of section 22 and may proceed to asses or reassess such income, profits or gains or recompute the loss or

depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that

sub-section.

Mr. K. V. Suryanarayana Iyer, in our opinion, is perfectly well founded in his contention that provisions of section 34 have to be read along with

the provisions of section 24B(2) when action is taken in the circumstances mentioned therein. In this case, admittedly, S. P. Sadanandan was dead

even before a notice u/s 34 was issued by the Income Tax Officer concerned. Therefore, under sub-section (2) of section 24B, it is necessary that

the notice is to be served on the executor, administrator or other legal representative of the deceased person and the said sub-section also says

that the Income Tax Officer may therefore proceed to assess the total income of the deceased person as if such executor, administrator or other

legal representative were the assessee.

Sri K. V. Suryanarayana Iyer urges that though the words used ""executor, administrator other legal representative"" are in singular the actual

scheme of the section will clearly show that there is nothing there to indicate that, when there is more than one executor, administrator or legal

representative, the representation of the deceased person can be said to be complete without notice being issued to all the executors or all the

administrators or all the legal representatives of the deceased person. In this connection it is also desirable to refer to two sections of the Indian

Succession Act, namely, section 211(1), which has been relied upon by Mr. K. V. Suryanarayana Iyer, learned counsel for the revenue. Section

211(1) of the Indian Succession Act provides :

211. (1) The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property

of the deceased person vest in him as such.

Mr. Suryanarayana Iyer urged that the property of the deceased vests in this case immediately on the death of the deceased on July 10, 1948, in

all the three executors and, therefore, all the three executors must be considered to be in possession of the estate of the deceased in the eye of law.

The learned counsel also urged that the executor or administrator under the provisions of sub-section (1) of section 211 is also the legal

representative of the deceased for all purposes. Therefore, when there are more executors than one, of the executors than one, as in this case, Mr.

Suryanarayana Iyer argued that all of them must be considered to be legal representatives of the deceased for all purposes and, therefore, the issue

of notice to one of the legal representatives or one of the executors by the Income Tax department, in this case, when taking action u/s 34, is

certainly not a sufficient compliance with the provisions of the statute.

Mr. Rama Iyer, on the other hand, referred to section 311 of the Indian Succession Act and urged that inasmuch as there is nothing to indicate in

the will itself that all the executors should act jointly and not separately it is open to one of the executors to represent the estate and therefore the

action taken by the Income Tax department to issue notice to only one of the executors is perfectly property in the circumstances of this case.

Section 311 of the Indian Succession Act is to the following effect :

311. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by

any one of them who has proved the will or taken out administration.

We are not able to accept the contention of Mr. Rama Iyer that section 311 of the Indian Succession Act will in any way enable the department to

ignore the presence and existence of the other executors in this case for the purpose of issuing notice u/s 34.

That a notice to be issued u/s 34 of the Income Tax Act is not a merely formality but a matter of considerable importance is to be seen from the

decision of the Supreme Court in Narayana Chetty v. Income Tax Officer, Nellore. At page 215, Mr. Justice Gajendragadkar, speaking on behalf

of the court, observes :

The argument is that the service of the requisite notice on the assessee is a condition precedent to the validity of any reassessment made u/s 34;

and if a valid notice is not issued as required, proceedings taken by Income Tax Officer in pursuance of an invalid notice and consequent orders of

reassessment passed by him would be void and inoperative. In our opinion, this contention is well founded. The notice prescribed by section 34

cannot be regarded as a mere procedural requirement; it is only if the said notice is served on the assessee as required that the Income Tax Officer

would be justified in taking proceedings against him. If no notice is issued or if the notice issued is shown to be invalid then the validity of the

proceedings taken by the Income Tax Officer without a notice or in pursuance of an invalid notice would be illegal and void. That is the view taken

by the Bombay and Calcutta High Court in Commissioner of Income Tax v. Ramsukh Motilal and R. K. Das & Co. v. Commissioner of Income

Tax we think that that view is right.

It will be seen from the observation extracted above, that only if a proper notice, as required u/s 34 of the Act is served on the assessee, the

Income Tax Officer would be justified in taking proceedings against him and it is also clear that if no notice is issued or if the notice issued is invalid,

then the proceedings taken by the officer without a notice or in pursuance of any invalid notice, would be illegal and void. In this connection, their

Lordships have referred to two decisions, one of the Bombay High Court and the other of the Calcutta High Court and their Lordships have

expressed their approval of the principles laid down therein.

Though the proceedings are really for reassessment u/s 34, it is really reassessment for the period for which an order of original assessment has

been made already is also clear from another decision of the Supreme Court in Lakshminarain Bhadani v. Commissioner of Income Tax. In that

case it will be seen that though an assessment on a joint family represented by a karta was made for the year 1939-40 and later the family became

divided, the Income Tax Officer took action u/s 34 for a reassessment for the year 1939-40 and issued a notice again to the karta of the joint

family, notwithstanding the fact that there has been a division of the family subsequent to the assessment for 1939-40. Though this proceeding was

challenged by the assessee in that case, and though that contention found favour with the High Court, their Lordships of the Supreme Court,

overruling the objection, observe at page 430 to the effect :

It does not appear necessary, when proceedings are initiated u/s 34 read with section 22, Income Tax Act, to issue notice to every member of the

family. The position is as if the Income Tax Officer was proceeding to assess the income of the Hindu undivided family as in 1939-40. In our

opinion, therefore, that contention must be rejected.

In our view, if there has been no proper notice issued to the assessee himself, if he were alive, and if it was open to the latter to take objections

regarding the procedure adopted by the Income Tax department, it was perfectly open also to the legal representatives or executors of the

deceased to raise all the objections based upon non-compliance with the provisions of section 34.

Again, that the provisions of section 34 have to be very scrupulously complied with, is emphasised by a more recent decision of their Lordships of

the Supreme Court in Calcutta Discount Co. Ltd. v. Income Tax Officer, Calcutta. At page 375, Mr. Justice Das Gupta, delivering the judgment

on behalf of the Bench, observers :

To confer jurisdiction under this section to issue notice in represents of assessments beyond the period of four years, but within a period of eight

years, from the end of the relevant year, two conditions have therefore to be satisfied. The first is that the Income Tax Officer must have reason to

believe that income, profits or gains chargeable to Income Tax have been under-assessed. The second is that he must have also to believe that

such under-assessment has occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income u/s 22, or

(ii) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year. Both these

conditions are conditions precedent to be satisfied before the Income Tax Officer could have jurisdiction to issue a notice for the assessment or

reassessment beyond the period of four years, but within the period of eight years from the end of the year in question.

The emphasis is that the conditions to confer jurisdiction under the particular section to issue notice in expect of the reassessment for the periods

referred to therein, their Lordships state, are condition precedent to be satisfied before the Income Tax Officer can have jurisdiction to issue

notices for assessment or reassessment beyond the period mentioned therein.

We must also refer to a decision of this court one of us (Raghavan J.) was a party along with the learned Chief Justice in Commissioner of Income

Tax v. Tayaballi Mulla Jeevaji Kapasi. No doubt the provisions of section 34(1) came up for consideration under slightly different circumstances

and the learned judges and also to consider the question of waiver in that particular case.

Considering the question of notice u/s 34, at page 287, it is stated, after referring to the decision of the Bombay High Court in Commissioner of

Income Tax v. Ramsukh Motilal, that the learned judges are not prepared to accept the reasoning of the Bombay High Court. These observations

probably would not have been made by learned judges, if the decision of their Lordships of the Supreme Court in Narayana Chetty v. Income Tax

Officer, Nellore had been brought to the notice of the learned judges. In fact, as we have shown also from the extract given at page 215 of the

reports, their Lordships have expressly approved of the decision of the Bombay High Court in Commissioner of Income Tax v. Ramsukh Motilal.

We thought it better to advert to this aspect also, because there was a slight dissent expressed by this court with the Bombay view, which found

favour with the Supreme Court.

All the above decisions, in our view, clearly show that the notice to be issued u/s 34 of the Income Tax Act must be a proper notice and one in

accordance with law and, if the notice is defective in any particular respect, the proceedings taken by way of assessment would be illegal and void.

Therefore, the question is whether in this case the proceedings taken for reassessing, by issuing notice only to one of the heirs, namely, E. D.

Sadanandan, in any way invalidated because of the non-issue of the notice to the other legal heirs including all the executors of his estate.

That the department must have been well aware of the existence of the other executors is clear from the statements contained in the counter-

affidavit itself. We are not prepared to accept the statement in the counter-affidavit that the department has bona fide produced on the basis that E.

D. Sadanandan sufficiently represents the estate of the deceased. In fact, we have already referred to the fact that even the original notice u/s 34

dated March 20, 1954, clearly states that it is issued to the late S. P. Sadanandan by legal heirs, S. D. Sadanandan and others. That clearly shows

that the department was well aware of the existence of other legal heirs of the deceased. Again, the assessment order also clearly shows that the

department is well aware of the existence of other heirs. Apart from the description of the assessee given in the assessment order, we have also

referred to the statement contained in the assessment order that the assessee, namely, the late S. P. Sadanandan, died on July 10, 1948, and after

his death he is represented by his sons, E. D. Sadanandan and J. G. Sadanandan, and the widow, namely Suseela P. Sadanandan. Therefore,

when the department admittedly knows about all these matters, in our view, it was the duty of the department to issue notices not only to E. D.

Sadanandan, who actually seems to have appeared before them, but also to the other legal heirs of the deceased including the petitioner also.

The question of representation in such circumstances has come up for consideration before the Madras High Court in the decision in E. Alfred v.

First Additional Income Tax Officer, Salem. Before we advert to that decision, it is also necessary to refer to a particular observation of Mr.

Justice Venkatasubba Rao in the decision in Vedakannu Nadar v. Annadhana Chatram rendered by the learned judge sitting along with Abdur

Rahman J. At page 993 Venkatasubba Rao J. observes :

..... in the case of co-executors a suit cannot be held properly constituted unless all of them are on the record. An action having been brought by

one executor only, the co-executor was impleaded as defendant on objection being taken. It was held that the suit was time-barred u/s 22,

Limitation Act, as the co-executor was brought on the record after the period allowed by the statute : see the judgment of Sir John Wallis in

Seerangathurn v. Bava Vaithilinga Mudaliar.

These observations, with which we respectfully agree, clearly show that there cannot certainly be stated to be a proper representation of the

deceased, unless all the executors named in the will are properly brought before the proceedings, if they are to be bindings on the estate of the

deceased as such.

In E. Alfred v. First Additional Income Tax Officer, Salem Rajagopalan J. and Rajagopalan Ayyangar J. (as he then was) had to consider the

effect of the proceedings taken u/s 34 of the Indian Income Tax Act without notice to the various other legal representatives of deceased assessee.

In the case before the learned judges it is seen that one Ebenezer died intestate on 22nd November, 1945, leaving as his legal representatives a

son and eight daughters four of whom were minors. So far as the particular aspect is concerned, it will be seen that the Income Tax Officer called

upon only the son, who is only one of the legal representatives of the deceased, Ebenezer, proposing to make a reassessment for the particular

period in question u/s 34 of the Act. The son on receipt of the notice objected to proceedings being taken u/s 34 and also pointed out the

existence of the other legal representatives of the deceased. No doubt, this objection was overruled by the Income Tax Officer and when an

appeal had been taken to the Appellate Assistant Commissioner the son moved the High Court under article 226 for quashing the entire

proceedings sought to be taken by the Income Tax department. Rajagopalan J. observes at page 13 :

It cannot be doubted that the liability imposed by section 24B(2) on the legal representative of a deceased attaches itself to all the legal

representatives of the deceased on whom notices are served. It should also be clear that all such legal representatives are liable to be served with

notices u/s 24B(2).

Then the learned judge refers to section 13(2) of the General Clauses Act (Central Act 10 of 1897) to the effect that words in singular shall include

the plural also. Then the learned judge states that the question for consideration is where there is plurality of legal representatives and that fact is

known to the Income Tax Officer, does section 24B(2) enable him to choose one of the legal representatives for completing the assessment of a

deceased assessee. The learned judge, after referring to various decision of the Madras High Court, ultimately came to the conclusion that the

proceedings taken by the Income Tax department for purposes of reassessment by issue of notice only to one of the legal representatives u/s 34

cannot be sustained.

The learned judge refers to the observation of Mahajan J. (as he then was) in Tirtha Lal v. Bhusan Moyee Dasi to the effect :

Ordinarily, if there are two or more legal representatives of the deceased person, all must be impleaded to make the representation of the estate

complete, otherwise the suit or appeal abates. The expression legal representative must, when there are two or more legal representatives be read

in the plural.

The further observations of Mahajan J. are to the effect :

All legal representatives must be brought on the record and if some one refuses to join as a plaintiff, he should be joined as a defendant.

Ultimately, Rajagopalan J. winds up the discussion as follows at page 14 :

In other words, the expression legal representative means and includes one person as well as several persons according as they represent the

whole interest of the deceased person. Their Lordships of the Privy Council in Khiarajmal v. Daim... ordinarily therefore it is necessary to implead

all the legal representatives of a deceased person on the record and a few of them do not represent the whole interest of the deceased and if all are

not made parties to the suit or appeal, it results in an abatement of those proceedings.

Ultimately, the learned judge came to the conclusion that the proceedings taken u/s 34, in the circumstances of that case, cannot be sustained. No

doubt, actually no writ was issued because their Lordships were informed that a departmental appeal was pending against the assessment itself

and, therefore, after expressing their opinion that the assessment cannot be sustained, their Lordships left it there.

Mr. G. Rama Iyer has not been able to place before us any decision to the effect that under such circumstances it is open to the department to

choose one of the executors or legal representatives and proceed with the assessment u/s 34. So far as we could see, the decision of the Madras

High Court referred to above has not in any way been disapproved or dissented from in other jurisdictions. We are in respectful agreement with

the reasoning of the learned judges adopted in the decision referred to above. Therefore, it will follow the proceedings taken in this case by the

department by issuing notice only to one of the executors in question u/s 34 is invalid and it further follows, on the basis of the decision of the

Supreme Court in Narayana Chetty v. Income Tax Officer, Nellore, that the further orders of assessment based upon such an invalid notice will

result in the assessments themselves being considered illegal or void.

No doubt, Mr. Rama Iyer referred us to certain passages from William on Executors to the effect that when there are several executors it is open

to one of the executors to act. The question is, is there anything in the terms of section 24B(2) of the Income Tax Act to indicate that in such

circumstances the legislature did not intend to include all the executors, legal representatives or administrators ? We do not see any reason to put

such a restricted interpretation on the provisions contained in section 24B(2).

No doubt, Mr. Rama Iyer again referred us to the decision of this court in Iyyappan Mills (Pte.) Ltd. v. Iyyappan Mill Workers to the effect that

even if there is any slight error committed by the department this court should not interfere in proceedings under article 226 of the Constitution. We

are not prepared to agree that the decision referred to lays down any such proposition. On the other hand, the learned judges clearly say that, if

there is manifest error, interference can be made under article 226 of the Constitution.

So far as the first contention taken by Mr. Suryanarayana Iyer is concerned, namely, that proceedings u/s 34(1) not having been validity taken as

against all the executors under the will of the late S. P. Sadanandan, the assessment orders are void, has to be accepted and the assessment orders

quashed.

From this it will follow that the petitioner is entitled to have the relief asked for, namely, to the hold that the reassessment orders passed by the first

respondent u/s 34 of the Act on the late S. P. Sadanandan for the years 1945-46 to 1949-50, both inclusive, are void and of no effect. It will also

follow that the notices issued u/s 27 an 36 of the Madras Revenue Recovery Act by the second respondent for releasing the amounts stated to be

due under respondent for realising the amounts stated to be due under the orders of assessment in question will have also to be vacated. There is

also a suit of prohibition asked for restraining the respondents from taking any proceedings for recovery of the amounts and that also has to be

granted. No doubt, there is a second contention also that has been raised in these proceedings, namely, that, in any event, proceedings u/s 46(2) of

the Indian Income Tax Act cannot be taken in the circumstances as against the petitioner. The contention of Mr. Suryanarayana Iyer is that the

petitioner cannot certainly be considered to be an assessee as understood under the provisions of the Indian Income Tax Act; and the provisions of

section 46(2) relate only to an assessee and not to any other person and, therefore, the summary proceeding provided u/s 46(2) cannot be put into

operation as against the proceeding. No doubt, the learned counsel has drawn our attention to certain decisions which have, at any rate,

considered the scope of the expression ""assessee"" in section 46(1) an have held that it will not take anybody else but the assessee pure and simple.

No doubt, Mr. G. Rama Iyer, learned counsel for the revenue, urged that there are other decisions where the expression ""assessee"" has been

understood to include also a legal representative and recognising a right of appeal against the order passed under the Act. But we are not inclined

to embark upon an enquiry regarding that controversy in these proceedings because our decision on the first point completely concludes the case

as against the department and in favour of the assessee. Therefore, so far as the second contention that has been raised, namely, that the provisions

of section 46(2) of the Act cannot be invoked for recovering the amounts due from persons like the petitioner, we express no opinion whatsoever

one way or the other.

In view of our conclusions arrived at on the first point the writ petition is allowed. There will be no order as to costs.

Petition allowed.