

(20) We are further of the view that the proper forum to seek the remedy is a civil court of competent jurisdiction. To this extent, the view taken in Sohan Singh Bawa's case (supra) that the date of birth is a valuable right is correct but the proper forum to decide the same will be the civil court. The same could not be decided either departmentally or in writ jurisdiction.

(21) Consequently, the petition fails and is dismissed with no order as to costs.

S.C.K.

Before G. C. Mital and S. S. Sodhi, JJ.

SWARAN KANTA,—Applicant.

versus

THE COMMISSIONER OF INCOME TAX, AMRITSAR,—Respondent.

Income Tax Reference No. 177 of 1980.

November 16, 1988.

Income Tax Act (XLIII of 1961)—Ss. 292(B), 159—Death of assessee during the pendency of assessment proceedings—Widow impleaded as legal representative and notice issued—Assessment finalised in her presence—Name of deceased assessee written in heading of order—Such error whether invalidates the Assessment order.

Held, that there is clearly a clerical error or omission in the heading of the order. Section 159 of the Income Tax Act, 1961 relates to liability of the legal representatives of the deceased assessee. According to section 159(2)(a) of the Act, any proceedings taken against the deceased before his death shall be deemed to have been taken against the legal representatives and may be continued against the legal representatives from the stage at which it stood on the death of the deceased and for completing the proceedings by virtue of section 159(2)(c) of the Act, the provisions thereof were applied accordingly. Sub-section (3) of section 159 of the Act further provides that the legal representatives of the deceased, shall for the purpose of this Act, be deemed to be an assessee. (Para 5).

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Held, further that section 292(B) of the Act *inter alia* provides that assessment made in pursuance of any of the provisions of the Act shall not be invalid nor deemed to be invalid merely by reason of any mistake, defect or omission in the assessment if the assessment is in substance and effect in conformity with or according to the intent and purpose of the Act. As already noticed, the entire proceedings were conducted after death of the original assessee in accordance with law. After death the legal representative is also deemed to be assessee. Therefore, the title of the order, which was not happily worded would not make the assessment order invalid as was sought to be declared by the Appellate Assistant Commissioner. (Para 4).

Reference under section 256(1) of the Income Tax Act, 1961 (Assessment year 1975-76 arising out of its order in I.T.A. No. 733 (ASR) 1978-79, dated 19th January, 1986, to the Hon'ble High Court of Punjab and Haryana for its opinion:—

“Whether, in the circumstances and facts of the case, the Tribunal is correct in holding that the assessment order as passed by the I.T.O. is a valid assessment ?”

• B. S. Gupta, Sr. Advocate with Sanjay Bansal, Advocate, for the Appellants/Petitioners.

L. K. Sood, Advocate, for the respondent.

JUDGMENT

Gokal Chand Mital, J.

(1) The Income Tax Appellate Tribunal, Amritsar, has referred the following question for opinion of this Court :—

“Whether in the circumstances and facts of the case, the Tribunal is correct in holding that the assessment order as passed by the I.T.O. is a valid assessment ?”

For the assessment year 1975-76 Sain Dass Aabbi filed return of his income on 4th September, 1975, which he later on revised. However, during the pendency of the assessment proceedings, he died on 7th March, 1977. In the assessment proceedings his widow Smt. Swaran Kanta was impleaded and notice was issued to her as legal heir of the deceased. In her presence assessment was finalised on 10th March, 1976. In the assessment order which was passed, the facts of death of the original assessee and bringing on

record the legal heir, issue of notice to her and taking proceedings in her presence were noticed. However, in the heading of the order, which is generally prepared by the office people, against item No. 2, the name of the assessee was shown as Sain Dass Aabbi, instead of mentioning Sain Dass Aabbi deceased through his legal heir Smt. Swaran Kanta. Smt. Swaran Kanta his legal heir filed appeal against the assessment order and claimed that the same be declared null and void as it was made on a dead person. The Appellate Assistant Commissioner agreed with this,—vide order dated 26th August, 1978 and annuled the assessment.

(2) On Revenue's appeal to the Tribunal, the order of the Appellate Assistant Commissioner was reversed and the order of the Income Tax Officer stood restored with the following observations :

“Drawing our attention to the provisions of section 292-B which was inserted in the statute with effect from 1st October, 1975, Shri Bali argues that name of the deceased was written in the assessment order simply by virtue of a mistake which is covered by the provisions of section 292-B. His argument is that the proceedings in this case being in substance and effect in conformity with or according to the intent and purpose of this Act, the order will not become invalid simply by virtue of the mistake which is fully covered by the provisions of section 292-B. We agree with him that the proceedings are in substance and effect in conformity with or according to the intent and purpose of this Act. The intent of the Act is that when an assessee dies the case be pursued against his legal heirs. The I.T.O. followed the same course. When the assessee, Shri Sain Dass Aabbi died, he impleaded Smt. Swaran Kanta as legal heir of the deceased and gave the hearing to her through her son being her representative in the case. If the I.T.O. were to make order on the deceased then he would not have impleaded his legal heir and would not have given any hearing to her. The fact that Smt. Swaran Kanta was impleaded as legal heir and the hearing was given to her makes it clear that the I.T.O. did not intend to pass the order on the deceased but he wanted to make the assessment on the legal heir. Admittedly, Smt. Swaran Kanta is the legal representative of the deceased.”

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“The situation would have been different if the I.T.O. had not impleaded the legal heir and if he had not given any hearing to the legal heir. In that event, it could have been said that the order was passed on the deceased. Since the legal heir was impleaded and she was being heard, it could not be said that the order was passed on the deceased. The order will be deemed to have been passed on the person who was heard. In the instant case, the legal heir was being heard by the I.T.O. through her representative. The AAC has proceeded on the assumption that the order was passed on the dead person. From the facts of the case, it is clear that the order was not passed against the dead person. No doubt an order passed on a dead person is null and void but in the case in hand, order was not passed on the dead person but on the legal heir of the deceased. We agree with the departmental representative that merely by virtue of mis take the name of the deceased was written at the top of the assessment order. It is simply a clerical error which has no adverse effect on the proceedings within the meaning of section 292-B.”

(3) We are of the opinion that the Tribunal came to correct conclusion. There is clearly a clerical error or omission in the heading of the assessment order. The correct description of the assessee to be reduced in the heading against item No. 2 should have been Sain Dass Aabbi deceased through Smt. Swaran Kanta legal heir. It has to be seen whether order could be read to mean to the aforesaid effect on the peculiar facts of this case. Section 159 of the Income Tax Act, 1961 (for short ‘the Act’), relates to liability of the legal representative of the deceased assessee. According to section 159(2) (a) of the Act, any proceedings taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the death of the deceased and for completing the proceedings by virtue of section 159(2)(c) of the Act. the provisions thereof were applied accordingly. Sub-section 3 of the section 159 of the Act further provides that the legal representative of the deceased, shall for the purposes of this Act, be deemed to be an assessee’. Therefore, the deceased is an original assessee and the legal representative becomes the deemed assessee for the purposes of completion of the

proceedings and for recovery of any tax from the estate of the deceased in the hands of the legal representative. The Income Tax Officer followed the procedure correctly as provided by section 159 of the Act and complete the proceedings.

(4) Section 154 of the Act authorises the Income Tax Authority, referred to in section 116 of the Act, to rectify any mistake apparent from the record and amend the order accordingly. The slight mistake, if any, could be rectified under this provision. The law framers were not satisfied with this provisions alone and inserted Section 292-B of the Act, which came into effect from 1st October, 1975. It *inter alia* provided that assessment made in pursuance of any of the provisions of the Act shall not be invalid nor deemed to be invalid merely by reason of any mistake, defect or omission in the assessment if the assessment is in substance and effect in conformity with or according to the intent and purpose of the Act. As already noticed, the entire proceedings were conducted after death of the original assessee in accordance with law. After death the legal representative is also deemed to be assessee. Therefore, the title of the order, which was not happily worded would not make the assessment order invalid as was sought to be declared by the Appellate Assistant Commissioner." The Tribunal was fully justified in restoring the order of the assessment in exercise of its powers under section 292-B of the Act.

(5) The learned counsel for the assessee has cited some cases to support the order of the Appellate Assistant Commissioner but none of those cases is close or relevant to the facts of this case, and therefore, it would be futile to notice or discuss them.

(6) For the reasons recorded above, we answer the question in the affirmative, that is, in favour of the Revenue and against the assessee but with no order as costs.

S. C. K.

Before G. C. Mital and S. S. Sodhi, JJ.

COMMISSIONER OF INCOME TAX. AMRITSAR,—*Applicant.*

versus

M/S. JAGJIT SINGH JASPAL SINGH, AMRITSAR,—*Respondent.*

Income Tax Reference No. 79 of 1980.

November 22, 1988.

Income Tax Act (XLIII of 1961)—Ss. 256(1), 185, Form 11, 11-A—Income Tax Rules, 1962—Rl. 22—Partnership firm—Addition of