

In Re: Neem Chand Daga

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Court : Kolkata

Decided On : Jan-13-1931

Reported in : AIR1931Cal686

Appellant : In Re: Neem Chand Daga

Judgement :

Rankin, C.J.

1. The assessee is one Neemchand Daga who has a share of 3 annas 7 pies in the firm of Dulichand Thanmal which is a registered firm within Section 2 (14), Income-tax Act.

2. For the year of assessment 1927-28 the firm was assessed at a certain figure but in order to obviate the necessity of refunds being made under Section 48 (2) of the Act tax was charged against the individual partners directly upon their shares in the firm's profits. This is a considerate and convenient course and the partners did not object to it. Early in 1929, the income-tax authorities having discovered that certain profits of the firm had escaped assessment for the year 1927-28,'a notice was issued to each partner under Section 34 of the Act within the time limited by that section. For reasons which are explained in the case stated by the Income-tax Commissioner although a similar notice was issued upon the registered firm, the income-tax authorities are not now in a position to rely upon this notice.

3. Hence arises the question which has been stated for the opinion of the Court:

When part of the profits of a registered firm have escaped assessment, can assessment be made under Section 34 and tax levied upon a partner of the firm in respect of his share of such part, when proceedings under the said section against the firm itself in respect of the said part have failed for lack of jurisdiction and fresh proceedings are time barred ?

4. In my opinion the answer is in the affirmative. The Indian practice is to] impose income-tax by the Finance Act of each year at certain graduated rates upon individuals and at the maximum rate upon registered firms. Super-tax is not imposed upon registered firms but is imposed under certain conditions upon the individual partner in respect of his total income which includes his share of the firm's profits. The firm and the individual are each required to render a return of total income [Section 22 (2)], and may each be required to produce accounts or documents [Section 22 (4)]. In some cases these returns have to be made to different income-tax officers and in different places of assessment. The object of the act in treating the firm in addition to the individual partners, as itself a subject liable to assessment is not to differentiate in respect of the ultimate liability to tax, between the partners in a firm and the sole owner of a business or other assessee. The method of double assessment is employed in the case of firms as a device in the nature of taxation at the source as distinguished from the method of deduction of tax at the source which is employed to collect tax upon salaries and interest on securities. 'The object of the double assessment to tax in the case of partners and their firm is not to get it often but to get it early and to make sure of getting it the simple and effective expedient of taking the profits where they are found' as Viscount Gave said in another class of case *Williams v. Singer* 7 T.C. 410 and at the earliest stage at which they can be found. Hence the provisions of Section 48 (2) as to refund of tax overpaid and of Section 14 (2) (b) which bears directly on the present case and says that tax shall not be payable by an assessee in respect of such an amount of the profits and gains of any firm which has been assessed to income-tax as is proportionate to his share in the firm at the time of such assessment. To collect the tax effectively without unnecessary inconvenience to the subject without inconsistency in result and without unnecessary implication of work on the part of the income-tax authorities, it is obvious that the profits of the registered firm should be ascertained as a whole

before assessment is made upon the individual partners. But I can find nothing in the Act to say that the firm is to be assessed first, still less that the assessment on the firm is to operate as a sort of estoppel in favour of the individual partners. In Clause (b), Section 14 (2) the word is 'have' not 'has.'

5. The language of this clause may be compared with that of Clause (a) of the same subsection and that of the proviso to Section 55. It seems to me to be free of any suggestion that the individual is never to be liable to pay on any portion of the profits of the firm. This clause applies to firms which are not registered as well as to those which are registered. While both firms and individuals are liable to the tax by the plain wording of the Finance Act, the clause exempts the individual from payment in respect of certain profits as soon as those profits are in the hands of the firm assessed, but it does not exempt him at all in respect of profits which have not been assessed. To be taxed at the source is a liability rather than a right and in any case a partner whose firm had not been declared certain profits can hardly be heard to complain that the profits have not been assessed upon the firm, or to require that an order of assessment should first be made upon the firm in order that he might get the benefit of Clause (b), Section 14 (2).

6. That clause confers a benefit upon the individual partner but only in respect of tax upon certain profits. As tax is chargeable upon the whole of the firm's profits and as the whole of a partner's share in the firm's profits is included in his total income regardless of any stipulation between the partners restricting the amount of profits which any partner may withdraw from the firm or of the amount actually drawn by him, it may be just conceivable that to assess a partner directly upon his share of escaped profits results in some way to his disadvantage. I have no real belief in the existence of such cases, but if they do exist they merely mean that it may be worth a partner's while to see that the firm declares the whole of its profits. When the firm is registered under the Income-tax Act and Rules what rights under the Act accrue from registration and to whom? Do they include a right on the part of the individual partner to require that all the firm's profits shall be assessed upon the firm and that whether they be declared or concealed,? It is only upon this footing that he can claim a right that no part of the firm's profits shall be assessed as his taxable income, and it seems to me to be a very curious implication to

make in this Act. Where a firm is registered, the firm, not the individual partners, become assessable to income-tax at the maximum rate. The firm and not the partners escapes supertax. But the partners as individuals get certain rights while the registration stands and the income-tax authorities cannot dispute the amount of the individual's share as shown in the document which they have accepted for registration.

7. The tax paid by the firm is treated as paid on his account in respect of his share and he gets the right to a refund upon this footing: Section 48 (2). He has secured to him by Section 24 the right to set off his share of the firm's losses against other items of his individual income. Again upon the footing that double assessment is only machinery for collection: in effect by the registration of a firm the partners secure that they can-not in respect of supertax be exposed to double assessment at all and that in respect of income-tax they can only be exposed to it on certain definite terms. But it is another thing altogether to treat the Act as giving to the subject a right So double assessment, if assessment is to be made at all.

8. Whether a notice under Section 34 was served upon the firm or not, a notice under that section would have to be served on the partner who is now before us to prevent him escaping payment of supertax and to collect income-tax on his individual income at the higher rate appropriate to his true income. He is clearly a person liable to pay tax on income of his own which has escaped assessment. What answer has he to the Finance Act of 1927 which imposed these taxes upon him In my opinion he has none.

9. The question referred to us should be answered in the affirmative and the assessee must pay the costs of the reference.

C.C. Chose, J.

10. I agree.

Buckland, J.

11. I agree.

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