In the Matter of Charusila Dassi.

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Court : Kolkata

Decided On : Mar-10-1936

Reported in : [1937]5ITR1(Cal)

Appellant : In the Matter of Charusila Dassi.

Judgement :

DERBYSHIRE, C.J. - This is a Reference by the Income-tax Commissioner at the instance of the applicant Charusila Dassi, the assessee. The assessees husband Akhoy Commer Ghose died in May 23, 1909, leaving a will of which the assessee in due course obtained letters of administration from the Court, and at all material times she was the administration of her husbands estate under the terms of the will. By the will the assessee was authorized to adopt a son and she did adopt a son who is married and with his wife lives with the assessee. For the year 1930-31 an assessment was made on the estate through the present assessee as the administratrix, the total income being assessed at Rs. 1,25,792. In that assessment the assessee as administratrix claimed that a sum of about Rs. 30,000 shown as family expenses was really the amount spent by her on her own account under the provisions of the will and as such was not the income of the estate. As a matter of form this amount appeared in the accounts as items of expenditure incurred by the estate and as the particular expenditure was not an allowable deduction under any section of the Income-tax Act the Income-tax Officer did not allow any deduction on this account save an amount of Rs. 960, this being the sum to which the assessee would have been entitled under the will

of her husband if she had chosen to live apart.

The assessee appealed against this assessment to the Assistant Commissioner and the Assistant Commissioner accepted the contention of the assessee ignoring the form in which the amount appeared in the account papers of the estate. He came to the conclusion, however, that only one-third of the amount really represented the assessees drawings and consequently he gave effect to her contention to that limited extent only. The result was that because of the representation of the assessee, though it was made in her capacity as administratrix, the amount involved in the present assessment was treated as not being the income of the estate, it having been the income of a different person, namely, the widow of the testator, the present assessee, and consequently on principle of the decision in Raja Bejoy Singh Dudhuria v. Commissioner of Income-tax, Bengal the assessable income of the estate was reduced by this amount on the of September 6, 1931.

After this the Income-tax Officer on October 14, 1931 issued notice on the assessee in her individual capacity and as recipient of this maintenance allowance, saying that whereas he had reason to believe that the assessees income from maintenance allowance which had been assessed in the financial year ending March 31, 1931 had partially escaped assessment he proposed to assess the said income that had escaped assessment and accordingly required the assessee to deliver to him on or before a certain date a return of her total income from all sources which was assessable in the year ending March 31, 1931. We are told that notice took the form of saying that the assessees income from maintenance allowance had partially escaped assessment because in the original assessment a sum of Rs. 960 had been taken as the assessees income under this head, this being the sum to which the assessee would have been entitled by way of maintenance under the terms of the will if she had lived separately from the family. On receipt of the notice under Section 34 the assessee protested against the action that the Income-tax Officer proposed to take, in a letter dated the November 18, 1931. It is stated that the Income-tax Officer thereupon decided to drop the matter. In his statement of facts the Commissioner of Income-tax says : 'There is no evidence whatever in support of this allegation on the record and I find

as a fact that the Income-tax Officer gave no such promise.' Unfortunately the matter was not taken up seriously again until the July 7, 1934 when a notice wa issued calling for accounts under Section 22(4) of the Act, and ultimately a supplementary assessment was made on January 22, 1935, in which this allowance of Rs. 10,000 was added to the assessees income from house property of Rs. 44,839 and tax demanded accordingly. The assessees appeal against this supplementary assessment failed whereupon the assessee filed an application under Section 66(2) of the Act formulating questions of law which the Commissioner has set out in the Appendix. The Commissioner, however, when stating the case did not set out the questions of law as formulated by the Appendix. The Commissioner, however, when stating the case did not set out th equestion of law as formulated by the applicant. The Commissioner said this : 'I do not propose to trouble their Lordships by stating a case on question (d) of that list' that is, the applicant list of questions 'as this matter has already been set at rest, in so far as this province is concerned, by the decision of the Court in the case of Anglo Persian Oil Company and in my view the real matters at issue in this case can be covered by the following question' and that question is 'whether the amount charged upon an estate under the provisions of a will for the purpose of suitably maintaining a widow, which is actually spent for the purpose of suitably maintaining a widow, which is actually spent for the purpose by the estate and is excluded from the income of the estate and is excluded from the income of the estate at the assessment of its income can be treated as the income, profits or gains of the widow within the meaning of Section 4(1) of the Income-tax Act, when the widow is the administratrix and controls the expenditure as provided for in the will ?' That is the only question that is referred to us.

The Income-tax Commissioner in paragraph 5 of his case says : 'When the appeal of the estate or of this assessee as administratrix of the estate was before the Assistant Commissioner, she claimed that a sum of Rs. 23,000 shown as expenses in the family khata should be excluded from the income of the estate as the amount received by the widow as for maintenance allowance and she was ultimately allowed and she was ultimately allowed Rs. 10,000 by the Assistant Commissioner but when the widows own personal assessment is now before me she argues, or rather her Advocate on her behalf argues, that it is impossible that

the widows maintenance allowances should run to more than a few hundred rupees annually and apparently she is determined to make the best of both worlds. Whether the allowance of Rs. 10,000 as fixed by the Assistant Commissioner is or is not unduly high is a matter which will be examined, but as the quantum of allowance is not before their Lordships, I need not trouble them with a discussion on this point.'

Mr. Biswas has argued the applicants case at some length before us. His contention is what the assessee is receiving personally in this matter is lodging, board and maintenance personally to herself which from the nature of the thing cannot be turned into money and therefore is not income. Now I want to says this : 'The assessee contended or claimed before the Income-tax Officer and the Assistant Commissioner that Rs. 30,000 of what is undoubtedly the income of the estate had been allocated to her - the words are 'a sum of approximately Rs. 30,000 shown as family expenses was really the amount spent by her on her own account under the provisions of the will and as such was not the income of the estate'. That contention was examined by both the Income-tax Officer and the Assistant Commissioner in principle but not as to the amount. The result was that the Assistant Commissioner accepted the applicants contention as to a sum of Rs. 10,000 an in accordance therewith he reduced the assessment of the income of the estate. Then he claimed to reassess the assessee personally by adding to her income the Rs. 1,000 which, accepting the principle of her contention, she said was the amount spent by her on her own account under the provisions of the will. The assessee then said, or her advocate said, 'That is wrong. The widows maintenance would be something much less than that'. It seems to me that the assessee having contended first that this money, whether Rs. 30,000 or Rs. 10,000 was money spent by her on her own account under the provisions of the will and therefore was not the income of the estate, it is not open to her to contend almost immediately afterwards when being assessed personally that the first contention was incorrect. I think the Income-tax authorities were entitled to disregard her second contention, but acting on her first contention, assess her in respect of Rs. 10,000. Actually in this case the assessee, an administratrix it is true, received the income of this estate Rs. 1,25,792. The assessee spent that money, in part at any rate, on the maintenance of the family establishment and in

spending it she was spending it partly on her son and his wif e and partly on herself. Within rather board limits she could spend the money in such a way as she pleased partly for her own benefit and partly for the benefit of her son and his wife. Having regard to her contention it seems to me that the Rs. 10,000 were in fact her income and in fact were treated as such. She turned the money into board, lodging and the other requisites for her maintenance. It was not a case of her having Rs. 10,000 spent on her as board, lodging or maintenance in such a way that she was unable to turn it into money herself. In my view the Income-tax auth orities were right in assessing her as they did.

As regards the question asked I have to point out, (as I pointed out previously) that the question is asked in an abstract form and it is undesirable that questions should be asked in that way. I have given the answer to the question that arises upon the facts of this case and the contentions raised in it.

The Income-tax Department will have their costs of this reference.

COSTELLO, J. - It is apparent that the assessee in this case was determined to make the best of both worlds as remarked in some what picturesque language by the learned Commissioner of Income-tax. When the assessment was made for the year 1930-31 on the estate of Akhoy Kumar Ghose through the present assessee as administratrix she then claimed that a sum of approximately Rs. 33,000 shown as family expenses was really the amount spent by her for her own purposes under the provisions of her husbands will and as such was not part of the income of the estate at all. She succeeded in getting the Income-tax authoritises to accept her contention upon the basis of the principle undelying the decision in the case of Raja Bejoy Singh Dudhria v. The Commissioner of Income-tax, Bengal, but when it became the question of charging her with income-tax in respect of what I may call her aliquot part of Rs. 30,000 she then took up the attitude that no part of the Rs. 10,000 which was assumed to be her share of Rs. 30,000 could properly be considered as her own income because what she had received was not reducible to money. Thus it was that she was endeavouring to 'make the best of both worlds'.

The question which has been propounded for our consideration assumes that there was an amount charged upon the estate of Akhoy Kumar Ghose under the provisions of his will for the purpose of the suitable maintenance of his widow the assessee. It is to be borne in mind however that a widow;s claim to maintenance does not of itself constitute any charge on the estate of her deceased husband. The charge only arises either under a decree of a Court or by an agreement between the widow and the husbands representative or where there is actually a charge created by the terms of the will itself. In the present instance the relevant provision in the will was in these terms 'she shall be suitably maintained out of testators estate in the same way as she was being maintained during his lifetime and in case she did not like to live in the family, but desired to have her maintenance separately, she would get Rs. 80 per month for her maintenance, establishment and religious expenses but no other sum.' Whether that provision actually constitutes a charge on the estate or is merely a direction a charge on the estate or is merely a direction to the executor or administrator mat perhaps be open to question. I am, therefore, rather disposed to think that the hypothesis on which the question is based is not altogether accurate. The Income-tax authorities, however, acted upon the assumption that the matter was covered by the decision in Dudhurias case and accordingly as regards Rs. 10,000 at any rate, they thought that that was to be treated as not being part of the estate of Akhoy Kumar Ghose. We are informed that the authorities subsequently charged their view of the matter and as regards the more recent assessments they have made them on the footing that the widows share of the expenses was in fact part of the estate of Akhoy Kumar Ghose. For any present purpose, however, we have to deal with this matter upon the footing that the Income-tax authorities rightly or wrongly did act upon the basis of the principle laid down in Dudhurias case which decided this where, under a decree of a Court the entire estate of assessee both assessable and non-assessable was charged with the payment of maintenance annually to the step-mother of the assessee; that they were rather the allocation of sums out of the revenue before it became income in his hands and that therefore they were not chargeable to income-tax in the hands of the Raja.

Now towards the end of his judgment Lord MACMILLAN touching upon the position of the subject matter of the charge when it came to the hands of the step-

mother (at page 453 of the report) stated as follows :- 'As to whether the appellants step-mother is liable under the Act to assessment in respect of the payments received by her received by her their Lordships, like the Judges in the Court below, deem it inadvisable to say anything'. We are not in the happy position in this case in which Lord MACMILLAN found himself and we are obliged to say something on the question whether or not the Rs. 10,000 was assessable to income-tax in the hands of the widow. I agree with the learned Commissioner of Income-tax that the question which he has formulated and which we ar required to answer ought to be answered to be answered in the affirmative. I arrive at that conclusion for the reasons given by my Lord the Chief Justice but mainly on the ground that in all the circumstances and on the facts of this particular case having regard to the attitude previously adopted by the assessee she ought not to be allowed and it does not lie in her mouth to say that the sum which she declared not to be part of the income of the estate is not her income for taxation purposes when it comes into her own hands in the shape of the total sum of Rs. 10,000 assumed to be her share of the domestic and other expenses.

Reference answered accordingly.