

PETITIONER:
COMMISSIONER OF INCOME TAX, MADHYA PRADESH, NAGPUR

Vs.

RESPONDENT:
HUKAMCHAND MOHANLAL

DATE OF JUDGMENT 17/09/1971

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
HEGDE, K.S.

CITATION:
1971 AIR 2591 1972 SCR (1) 786
CITATOR INFO :
D 1991 SC 70 (3)

ACT:
Income Tax Act, 1961, s. 41(1)- Assessee successor in business to her deceased husband--Amount received by assessee by way of remission of sales tax paid by husband -If liable to tax in the hands of the assessee under s. 41(1).

HEADNOTE:
The assessee who was successor-in-business to her deceased husband was sought to be taxed under s. 41 (1) of the Income-tax Act, 1961, in respect of certain amount received by her by way of remission from the sales tax recovered from her husband. On the 'question whether the amount was assessable under s. 41(1) of the Act.

HELD : Section 41(1) does not apply, because, the assessee who is sought to be taxed is not the assessee contemplated by the section. If the husband of the assessee had been alive and had received the amount which had been remitted during his life time he would certainly have been liable to pay tax under the provisions of s. 41(1). But the husband having died the Revenue could not take any advantage of its provisions. The Act does not contain any provision making a successor-in-business or the legal representative of an assessee to whom an allowance has already been granted liable to tax under s. 41(1) in respect of the amount remitted and received by the successor or the legal representative. [788 C-D, 789 A-B]

C.I.T., Bombay City v. Amarchand N. Shroff 40 I.T.R 59 and C.I.T Bombay v. James Anderson, 51 I.T.R. 345, referred to.

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2421 of 1968.
Appeal from the judgment and order dated January 31, 1967 of the Madhya Pradesh High Court in Misc. Civil Case No. 88 of 1966.
R. N. Sachthey and B. D. Sharma, for the appellant.
Rameshwar Nath and Swaranjit Sondhi, for the respondent.
The Judgment of the Court was delivered by

Grover, J. This is an appeal by certificate from a judgment of the Madhya Pradesh High Court in an Income tax Reference. The Reference related to the assessment made on the assessee for the year 1962-63 for which the accounting period was the year ending March 31, 1962. The assessee carried on business as sole, selling agent of M/s. Mohanlal Hargovindas, Jabalpur. The assessee succeeded to this business on the death of her husband on or about February 17, 1960. It would appear that M/s. Mohanlal Hargovindas had recovered a certain amount towards sales-tax from the assessee's husband relating to the period January 26, 787

1950 to March 31, 1951. In an appeal filed by the said firm, however, the Assistant Commissioner of Sales Tax remitted the sum of Rs. 24,341/- so recovered by the firm by an order dated November 31, 1960. Consequently M/s. Mohanlal Hargovindas refunded that amount to the assessee by means of a draft dated October 31, 1961. This draft was received by the assessee on November 9, 1961 which fell in the accounting period. The Income tax Officer sought to tax this amount under the provisions of s. 41 (1) of the Income tax Act 1961, hereinafter called the 'Act'. He did not accede to the contention of the assessee that the income, if at all, was the income of the assessee's deceased husband and not her income. The Appellate Assistant Commissioner dismissed the appeal filed by the assessee. The Tribunal acceded to the contention of the assessee that since the allowance or deduction in question had been obtained by a different assessee, namely, her husband she was not liable to pay tax on that amount under s. 41 (1) of the Act. The Tribunal was moved by the Commissioner of Income tax for stating a case and referring the following question to the High Court :

"Whether the sum of Rs. 24,341 was liable to tax under s. 41 (1) of the Income tax Act, 1961 ?"

The High Court answered the question in favour of the assessee.

Section 41(1) is in the following terms:-

"41 (1) Where an allowance or deduction, has been made in the assessment for an year in respect of loss, expenditure or trading liability incurred by the assessee, and subsequently during any previous year the assessee has obtained whether in cash or in any other manner

whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit accruing to him, shall be deemed to be profits and gains of business or profession and accordingly chargeable to income tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not".

As pointed out by the High Court under the general law if a trading liability has been allowed as a business expenditure and, if this liability is remitted in any subsequent year the amount remitted cannot be taxed as income of the year of the remission nor can the account for the year in which the liability

was allowed be reopened or adjusted. Section 41(1) was enacted to supersede this principle but this section can apply only to the a In 788

the present case if the husband of the assessee had been alive and had received the amount which had been remitted during his lifetime he would certainly have been liable to pay tax under the provisions of S. 41(1). But Kanhaiyalal having died and his widow being the assessee she cannot possibly be brought within the section. Section 2(7) of the Act defines the word "assessee". The definition is very general and assessee is stated to mean a person by whom income tax or super tax or any other sum of money is payable under the Act and includes every person as mentioned in clauses (a), (b) and (c). The assessee, in the present case, does not fall within any of those clauses. There is no specific provision in the Act under which it can be said that the assessee is a person by whom income tax is payable on the amount of Rs. 24,341/- which came to her by way of remission on account of what had transpired in the lifetime of her husband. The Act does not contain any provision making a successor in business or the legal representative of an assessee to whom an allowance has already been granted liable to tax under s. 41(1) in respect of the amount remitted and received by the successor or the legal representative. The only provision which relates to the liability of the legal representative is s. 159 of the Act. Sub-section (1) thereof provides that where a person dies his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died in the like manner and to the same extent as the deceased. The corresponding provision in the Income tax Act 1922 was s. 24B. In Commissioner of Income tax Bombay v. Amarchand N., Shroff (1) it was laid down by this Court that s. 24B did not authorise the levy of tax on receipts by the legal representative of a deceased person in the year of assessment succeeding the year of account being the previous year in which such person died. The assessee had ordinarily to be a living person and could not be a dead person. By S. 24B the legal personality of the deceased assessee was extended for the duration of the entire previous year in the course of which he died. The income received by him before his death and that received by his legal representative after his death but in that previous year became assessable to income tax in the relevant assessment year. Any income received in the year subsequent to the previous year or the accounting year could not be called income received by the deceased person. Thus the provisions of s. 24B did not extend to tax liability of the estate of a deceased person beyond the previous or the accounting year in which that person

Income tax, Bombay v. James Anderson(1).
Indeed the learned
counsel for the Revenue did not and could
not rely on the provisions of s. 159 of the
Act in the present case nor was any reliance
(1)1. T. R. 59.
(2) 51 1. T. R. 345.

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placed on any other section in the Act apart from s. 41 (1).
The, question referred is also based on that very section.
That section, in our opinion cannot possibly apply to the
present case because the assessee who is now sought to be
taxed is not the assessee contemplated by that section. The
assessee within s. 41 (1), namely, Kanhaiyalal having died
the Revenue could not take any advantage of its provisions.
The High Court rightly observed that the question whether
the amount of Rs. 24,341/- was liable to tax as the personal
income of the assessee did not arise in the present case in
which the sole point to be decided was whether that amount
was assessable in the assessee's hands under s. 41 (1) of
the Act.

We, therefore, entirely concur in the view of the High Court
and agree with the answer returned by it. In the result the
appeal fails and it is dismissed with costs.

K.B.N.

Appeal

dismissed.

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