

HAMZA
v.
COMMISSIONER OF INLAND REVENUE

COURT OF APPEAL
RAMANATHAN, J.
C.A. 454/81; 455/81; 456/81; 457/81.
DECEMBER 09, 1987.

Inland Revenue Act No. 4 of 1963 – ss. 49 and 111(1), 111(6), 111(7) – Recovery of Income Tax from estate of deceased defaulter – Liability of administrator.

Taxes assessed against a person who dies thereafter can in default of payment be recovered by recovery proceedings filed in the Magistrate's Court against the administrator of the estate of the deceased. The defence that he was not the person assessed is not available to the administrator when recovery proceedings are filed against him in the Magistrate's Court to recover taxes due from the deceased person whose estate he is administering.

Case referred to:

Philip v. Commissioner of Inland Revenue. Sriskantha Law Reports Vol. 1, Part 10 p. 133.

APPLICATION for revision of order of the Magistrate of Kalutara.

A. C. M. Uvais for petitioner.

S. W. B. Wadugodapitiya, Addl. Solicitor-General with Tony Fernando for respondent.

Cur. adv. vult.

January 29, 1988.

RAMANATHAN, J.

This is an application to revise an order made by the Magistrate under the provisions of Section 111(1) of the Inland Revenue Act No. 4 of 1963 for the recovery of a sum of Rs. 21,450/- as a fine and in default of payment of such fine imposing a term of imprisonment.

The petitioner before this Court is the Administrator of the estate of the late O. L. M. Raphaie during this lifetime and the deceased had administration were issued to the petitioner on 7th January, 1976.

It is common ground that the taxes in default had been assessed on the late O. L. M. Raphaie during his lifetime and the deceased had defaulted in the payment of the said taxes.

In April, 1978 the Deputy Commissioner of Inland Revenue, Regional Office, Kalutara filed certificates in the Magistrate's Court of Kalutara in case Nos. 44300, 44299, 44298 and 44297 for the recovery of a total sum of Rs. 59,166/- in respect of different years of assessment. The petitioner who was summoned to appear in court to show cause why further proceedings for the recovery of the taxes should not be taken against him had applied for and obtained an adjournment under Section 111(6) of the said Inland Revenue Act. Thereafter four final certificates were filed under Section 111(7) in respect of the four cases. After inquiry the Magistrate made order in respect of case No. 44300 which it was agreed would be binding in the other cases as well. In his order the Magistrate held that once the final certificate was filed under Section 111(7) of the said Act the petitioner was precluded from showing cause and proceeded to impose as a fine the tax in default.

At the hearing before me the principal submission of learned counsel for the petitioner was that the petitioner was not a defaulter within the meaning of Section 111(1) of the said Act; inasmuch as he was not duly assessed in respect of the taxes sought to be recovered from him. Learned counsel for the petitioner contended that the taxes in default were assessed on the deceased Raphaie during his lifetime and it was the deceased who had defaulted in paying the said taxes. Hence, it is the deceased alone who is the defaulter. It was argued that proceedings under Section 111(1) of the said Act are available only against a defaulter, that is to say a person who has been

assessed to pay tax and has defaulted in payment of such tax. The petitioner however as administrator of the estate of the deceased was never assessed in respect of the taxes now sought to be recovered from him and is therefore not a defaulter in respect of the said taxes.

In my view, the above submissions advanced on behalf of the petitioner overlook the provisions of Section 49 of the Act which reads as follows:

"An executor of a deceased person shall be liable, to do all such acts, matters and things as such deceased person would be liable to do under this Act *if he were alive*, and shall be chargeable with income tax, wealth tax or gifts tax with which such deceased person would be chargeable *if he were alive* in respect of all periods prior to the date of the death of such person".

(The emphasis is mine)

As rightly submitted by learned Additional Solicitor-General the administrator of the estate of the deceased steps into the shoes of the deceased and is made chargeable "with income tax, wealth tax, or gifts tax with which such deceased person would be chargeable if he were alive in respect of all periods prior to the date of the death of such person". In my view, these are words of wide import and are sufficient to impose liability on the petitioner despite the fact that he was not "duly assessed". It was the submission of learned counsel for the petitioner that the purpose of Section 49 was to make the executor responsible for such matters as furnishing of returns and the giving of information which an assessor is entitled to call for in order to assess the executor's liability to tax for any period before the death of the deceased if the deceased has not been assessed to tax for such period. I find myself unable to agree with this submission. The amplitude of language of Section 49 does not warrant such a restrictive interpretation.

I wish to add that the case of *Philip v. Commissioner of Inland Revenue* reported in Sriskartha's Law Report Vol. 1 (part 10) page 133(1) relied on by counsel for the petitioner has no direct bearing on the present matter as the Court of Appeal in that case had no occasion to consider Section 49 of the Inland Revenue Act.

I, accordingly hold that Section 111(1) read with Section 49 of the Inland Revenue Act No. 4 of 1963 imposes liability on the petitioner to pay the taxes sought to be recovered in these proceedings.

As agreed to by counsel on behalf of the petitioner and respondent, this order binds C.A. Applications 455/81, 456/81 and 457/81.

In the result, the application fails and is dismissed.

Application dismissed.
