

WP No.504 of 2017
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

ARVIND KAYAN
Versus
UNION OF INDIA & ORS.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 30th August, 2017

Appearance
Mr. Koushik Chowdhury, Adv. with
Ms. Sumita Shaw, Adv.
..for the petitioner

Mr. Kaushik Chandra, ld. ASG with
Md. Nizumuddin, Adv.
Ms. Smita Das De, Adv.
..for the respondents

The Court : The petitioner assails an order dated May 18, 2016 passed by the Tax Recovery Officer under Section 159 of the Income Tax, 1961 as affirmed by the Appellate Authority by its order dated July 6, 2017.

The learned Advocate appearing for the petitioner submits that, the petitioner is not the legal representative of the deceased. He submits that, although the petitioner is the son of the deceased, the petitioner had severed all relationship with the deceased in 1999. The petitioner had purchased the shares belonging to his deceased father during his lifetime for valuable consideration. The purchase of such shares has been disclosed in the income tax return of the petitioner for the relevant assessment year. The petitioner not having succeeded to the estate of the deceased by reason of the severance of the relationship in 1999 and the petitioner not having intermeddled with the

affairs of the deceased subsequent to his death, the petitioner cannot be considered to be a legal representative of the deceased. In support of such contention, he draws the attention of the Court to Section 2(29) of the Income Tax Act, 1961. He submits that Section 2(29) of the Act of 1961 imports the definition of a legal representative as given in Section 2(11) of the Code of Civil Procedure, 1908 into the Act of 1961. Taking the definition of Section 2(11) of the Code of Civil Procedure, 1908, the petitioner cannot be considered as a legal representative of the deceased. Consequently, the proceeding under Section 159 of the Act of 1961 was misplaced against the petitioner. The orders passed by the Tax Recovery Officer as also the Appellate Authority, therefore, are vitiated and should be set aside.

The learned Additional Solicitor General appearing for the Revenue submits that, the definition of legal representative as obtaining in Section 2(11) of the Code of Civil Procedure, 1908 and as understood in the context of the Income Tax Act, 1961 is an inclusive definition. Every person who is found to meddle in the estate of the deceased can be considered as a legal representative of the deceased. The fact that the petitioner is the son of the deceased is not disputed. The learned Additional Solicitor General relies upon a judgment reported in AIR 1989 SC 1589 [Custodian of Branches of BANCO National Ultramarino vs. Nalini Bai Naique] and submits that the definition of legal representative is an inclusive one. He draws the attention of the Court to the order of the Appellate Authority. He submits that, the Appellate authority had concurred with the factual findings of the Tax Recovery Officer. Although

the appeal was preferred beyond time, the Appellate authority had looked into the merits of the case and has arrived at a finding after considering the order passed by the Tax Recovery Officer. He submits that, both the Tax Recovery Officer as well as the Appellate Authority had found that the deceased had shares in a company and that to the petitioner had succeeded to much shares. At least, the petitioner has not produced any material to rebut such a presumption. Therefore, it can be safely inferred that the petitioner has meddled with the estate of the deceased subsequent to his death. He draws the attention of the Court to the fact that, the death had occurred on May 12, 2014, much after the so-called severance of relationship in 1999 as claimed by the petitioner. Moreover, the petitioner and his deceased father had worked as Directors of Companies. Taking these facts into consideration, it cannot be said that, there was a severance of relationship between the petitioner and his deceased father in 1999. He submits that, two fact finding authorities having concurred on the issues raised, unless the findings are demonstrated to be perverse, the Writ Court need not interfere. The Writ Court is not a second Appellate authority for such purposes. There being no infirmity in the impugned orders, he submits that, no interference is called for by the Writ Court.

I have considered the rival contentions of the parties and the materials made available on record.

A proceeding under Section 159 of the Income Tax Act 1961 was initiated against the petitioner. It was in respect of the deceased defaulter

assesse namely, Sushil Kumar Kayan. Sushil Kumar Kayan is deceased father of the petitioner. The deceased had two sons namely, the petitioner and Vikrant Kayan. The Tax Recovery Officer by his order dated May 18, 2016 after considering the factual position finds that the petitioner is a member of a Hindu Undivided Family along with the deceased father till the time of death of the father. The Tax Recovery Officer has also noted the share transactions between the father and the petitioner.

The Appellate authority by the impugned order dated July 6, 2017 has concurred with the Tax Recovery Officer. Both are of the view that the petitioner and his brother are heirs and legal representatives of their deceased father.

Section 2(29) of the Act of 1961 stipulates that the meaning of legal representative assigned to it in Clause (11) of Section 2 of the Code of Civil Procedure 1908 would apply to the Income Tax Act, 1961. Section 2 (11) of the Code of Civil Procedure 1908 stipulates that a legal representative means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased. It also includes a party who sues or is sued in a representative character on whom the estate devolves on the death of the party so suing or sued.

Nolini Bai (Supra) is of the view that, the definition of legal representative given in the Code of Civil Procedure, 1908 is inclusive in character and its scope is wide. It is not confined to legal heirs only. It may be a person who may or may not be the heir, competent to inherit the property of

the deceased. However, such person is representing the estate of the deceased. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. Such persons are covered by the expression legal representative. Viewed from such perspective, the petitioner is one his heirs and legal representatives of the deceased.

A Writ Court is not the second Appellate Authority. A Writ Court is called upon to interfere in an order impugned before it, without the petitioner before it, substantiating that, the impugned order is without jurisdiction, or is vitiated by the principles of natural justice, or is a non-speaking one or is vitiated by fraud or actuated by mala fides. None of the grounds noted above are substantiated in the facts of the present case.

In such circumstances, I am not minded to interfere in the present writ petition.

WP No.504 of 2017 is dismissed without any order as to costs.

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(DEBANGSU BASAK, J.)