

J. N. SHARMA

v.

**H.H. VIJAYAKUVERBA MAHARANI OF MORVI AND
OTHERS**

November 17, 1965

[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

Expenditure Tax Act 1957 (29 of 1957), s. 18—Assessee dying before Act came into force—Whether expenditure incurred by deceased liable to tax—Liability of legal representatives to be assessed.

The Expenditure Tax Act, 1957 was brought into force with effect from April 1, 1958. The respondents executors under the will of M— were served a notice under s. 13(2) of the Act requiring them to furnish a return in respect of the expenditure incurred by M between April 1, 1957 and August 1957 the date of his death. The respondents objected that the Act did not apply to M because he had died before the date on which the Act came into force and on that account the respondents as executors of his will were not liable to submit the return demanded. The contention was overruled by the Expenditure-tax Officer whereupon the respondents filed a writ petition in the High Court praying that the proceedings be quashed. The High Court held that the charge under the Act in respect of expenditure incurred in the relevant previous year to the assessment year 1958-59 was not on the estate of any individual or any Hindu undivided family: it was on the individual or the Hindu undivided family incurring the expenditure, and as it was imposed for the first time on April 1, 1958, unless the unit of assessment was in existence on the date when the Act came into force, no tax could be levied. With certificate granted by the High Court the Revenue came to this Court.

HELD : (i) In terms sub-s. (1) of s. 18 imposes liability upon the legal representatives of a person who dies, to pay out of his estate, expenditure-tax assessed as payable by such person, or any sum which would have been payable by him if he had not died. There is nothing in the expression 'where a person dies' or in the context in which it occurs which suggests that it was intended thereby to restrict the operation of the sub-section to cases of persons dying after the Act was brought into force. [622 C-D]

(ii) In the context of the declared liability under sub-s. (1) and the provisions of sub-s. (3) of s. 18 which make sections 13, 14 and 15 of the Expenditure Tax applicable to the executor, administrator or legal representative, as they apply to any person, it would be difficult to hold that the legislature has not expressed its intention clearly so as to render the estate of a deceased person liable to be assessed to expenditure tax merely because he had died before that date in which this Act was brought into force. [625 D-E]

Ellis Reid v. Commissioner of Income-tax, 5 I.T.C. 100 : I.L.R. 55 Bom. 312 and *Income-tax Commissioner Bombay v. D. N. Mehta*, 3 I.T.R. 147, considered.

The judgment of the High Court had therefore to set aside. [625 H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 841 of 1964.

A Appeal from the judgment and order dated October 12, 1961 of the Bombay High Court in Misc. Application No. 379 of 1959.

A. V. Viswanatha Sastri, N. D. Karkhanis, R. H. Dhebar and R. N. Sachthey, for the appellants.

N. A. Palkhivala, O. P. Malhotra, J. B. Dadachanji, for the respondents.

The Judgment of the Court was delivered by

Shah, J. The Expenditure-tax Act 29 of 1957 which received the assent of the President on September 17, 1957, was brought into force on April 1, 1958. The Act provides for levy of tax on expenditure at the rate or rates specified in the Schedule to the Act, for every financial year commencing on and from the first day of April, 1958, in respect of the expenditure incurred by any individual or Hindu undivided family in the previous year.

C His Highness Mahendrasinghji, Ruler of Morvi died on August 17, 1957, having made a will appointing the respondents to this appeal as executors of his estate. The Expenditure-tax Officer issued a notice under s. 13(2) of the Expenditure-tax Act, 1947, requiring the respondents to furnish a return of the expenditure incurred by Mahendrasinghji for the period between April 1, 1957 to August 17, 1957. The respondents submitted that the Act did not apply to Mahendrasinghji because he had died before the date on which the Act came into force, and on that account the respondents as executors of his will were not liable to submit the return demanded. By letter dated November 19, 1959, the Expenditure-tax Officer rejected the contention raised by the respondents.

D The respondents then filed a petition in the High Court of Bombay under Art. 226 of the Constitution praying that the proceedings started by the Expenditure-tax Officer for assessing and levying tax on the expenditure incurred by the late Mahendrasinghji during the previous year be quashed and that the Officer be restrained by an injunction from taking further steps or proceedings under the Act. The High Court held that the charge under the Act in respect of expenditure incurred in the relevant previous year to the assessment year 1958-59 was not on the estate of any individual or any Hindu undivided family : it was on the individual or the Hindu undivided family incurring the expenditure, and as it was imposed for the first time on April 1, 1958, unless the unit of assessment was in existence on the date when the Act came into force, no tax could be levied. With certificate granted by the High Court, this appeal has been preferred.

Section 2(c) of the Expenditure-tax Act 29 of 1957 defines an assessee as meaning an individual or a Hindu undivided family by whom expenditure-tax or any other sum of money is payable under the Act, and includes every individual or Hindu undivided family against whom any proceeding under the Act has been taken for the assessment of his expenditure. "Assessment year" under the Act means the year for which tax is chargeable under s. 3, and "previous year" is defined in relation to any assessment year as meaning the previous year as defined in cl. (11) of s. 2 of the Income-tax Act if an assessment were to be made under the said Act for that year. The relevant part of s. 3 which is the charging section provides.

"(1) Subject to the other provisions contained in this Act, there shall be charged for every financial year commencing on and from the first day of April, 1958, a tax (hereinafter referred to as expenditure-tax) at the rate or rates specified in the Schedule in respect of the expenditure incurred by any individual or Hindu undivided family in the previous year :"

Section 13 deals with returns of expenditure for the purpose of assessment of tax. It provides :

"(1) Every person whose expenditure for the previous year was of such an amount as to render him liable to expenditure-tax under this Act shall, before the thirtieth day of June of the corresponding assessment year, furnish to the Expenditure-tax Officer a return in the prescribed form and verified in the prescribed manner setting forth his expenditure for the previous year.

(2) If the Expenditure-tax Officer is of the opinion that the expenditure of any person for any year is of such an amount as to render him liable to expenditure-tax, then, notwithstanding anything contained in subsection (1), he may serve a notice upon such a person requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be required in the notice relating to the expenditure of such persons for the previous year mentioned in the notice.

(3)

- A Section 14 enables a return to be made, if it is not furnished within the time allowed, or to be modified, at any time before the assessment is made. Section 15 confers power upon the Expenditure-tax Officer to assess tax. If the Officer is satisfied without requiring the presence of the assessee or production by him of any evidence that a return made under s. 13 or s. 14 is correct and complete, he must assess the taxable expenditure of the assessee and determine the amount payable by him as expenditure-tax. If the Expenditure-tax Officer is not so satisfied, he may serve a notice on the assessee requiring him either to attend in person or to produce any evidence on which the assessee may rely in support of his return. By sub-s. (3) of s. 15 the Expenditure-tax Officer is authorised to determine the taxable expenditure of the assessee and the amount payable by him as expenditure-tax. By sub-s. (5) the Expenditure-tax Officer is authorised to make the assessment to the best of his judgment and to determine the amount payable by the person as expenditure-tax on the basis of such assessment. Section 18 provides :

E “(1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge, the expenditure-tax assessed as payable by such person, or any sum which would have been payable by him under this Act if he had not died.

F (2) Where a person dies without having furnished a return under the provisions of section 13 or after having furnished a return which the Expenditure-tax Officer has reason to believe to be incorrect or incomplete, the Expenditure-tax Officer may make an assessment of the expenditure of such person and determine the expenditure-tax payable by the person on the basis of such assessment, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person if he had survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which might under the provisions of section 15 have been required from the deceased person.

H (3) The provisions of section 13, section 14 and section 15 shall apply to an executor, administrator or

other legal representative as they apply to any person referred to in those sections.”.

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Power of the Parliament to enact legislation for assessing tax against the representatives of a person who died before the date on which the Act was brought into force and for collecting it from his estate is not challenged. It is however submitted that the Parliament has failed to set up effective machinery for assessing tax against the estate of a person who died during the previous year relevant to the assessment year 1958-59 so as to render his estate liable under the Act.

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In terms, sub-s. (1) of s. 18, imposes liability upon the legal representatives of a person who dies, to pay out of his estate, expenditure-tax assessed as payable by such person, or any sum which would have been payable by him if he had not died. There is nothing in the expression “Where a person dies” or in the context in which it occurs which suggests that it was intended thereby to restrict the operation of the sub-section to cases of persons dying after the Act was brought into force. Sub-section (2) sets up machinery for assessing liability to tax where the person liable to pay tax has died before submitting a return, or after submitting a return, but before the assessment is completed. It confers powers upon the Expenditure-tax Officer exercisable against the legal representatives which but for death of the person liable, would have been exercised under s. 13(2) and s. 15 against such person. Sub-section (3) which makes the provisions of ss. 13, 14 & 15 applicable to legal representatives as they apply to any person referred to in those sections clearly indicates that the legal representatives of a person who had died are under the same obligations as the deceased was to make a return under s. 13(1), and that the Tax Officer is invested with power to call for return from the legal representative of a deceased person and to assess, which could have been exercised against that person, if he had not died. The scheme of s. 18 is that by sub-s. (1) liability of the estate of a person who dies, to satisfy the tax liability if his expenditure in the previous year exceeds the amount which renders him liable to the expenditure-tax, is declared, and by sub-ss. (2) & (3) the Expenditure-tax Officer is invested with power to require a return to be made by the legal representative of a deceased person whose estate is liable to pay the tax, or to deal with a return already made, and to determine after assessment the tax payable. The legal representative of the person dying may therefore be called upon by the Tax Officer to make a return, and on the return so made the expenditure-

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- A** tax or any other sum which would have been declared payable, if he had not died, may be assessed or determined, and collected from the estate in the hands of the legal representative. If the legal representative fails to make a return, a best judgment assessment may be made by the Tax Officer.
- B** The operative terms of sub-s. (1) of s. 18 are identical with the terms of s. 24B (1) of the Indian Income-tax Act, 1922. Section 24B was added in the Income-tax Act, 1922, by the Income-tax (Second Amendment) Act 18 of 1933 with effect from September 11, 1933, to remedy a lacuna which was pointed out by the Bombay High Court in the machinery provisions of the
- C** Income-tax Act insofar as they related to assessment of tax against the estate of a person who died before assessment was completed. In *Ellis Reid v. Commissioner of Income-tax*⁽¹⁾, the Bombay High Court held that where a person dies after the issue of a notice under s. 22(2) of the Income-tax Act, 1922, to make a return of his income, but before he makes a return, assessment proceedings
- D** commenced against him under the Income-tax Act cannot be continued and his legal representative will not be liable to pay tax which such person may, if he had not died, have been assessed to pay. In the view of the High Court the definition of "assessee" applies only to a living person, the expression used by the Legislature being "a person by whom income-tax is payable" and not "a person by whom or whose estate income-tax is payable". With a view to remove the defect pointed out by the High Court in the scheme of the Act, s. 24B was inserted providing machinery for assessment of tax against the estate in the hands of the legal representative of a person liable to pay tax and for levy and collection
- E** of tax from his estate. The Parliament adopted the scheme of s. 24B with some variations in enacting ss. 18(1) & (2) for rendering the estate of a person who would, if he had not died, have been liable to pay expenditure-tax. This is not denied. But counsel for the respondent said that s. 18 of the Expenditure-tax Act does not bring within the net of taxation cases of persons who died before the Act was brought into force: it only sets up
- F** machinery for enforcing liability against the estate of a person dying after the Act is brought into force. Counsel placed strong reliance upon *Income-tax Commissioner, Bombay v. D. N. Mehta*⁽²⁾ decided by the Bombay High Court, and submitted that Parliament having adopted the same phraseology as was used in
- G** s. 24B (1) of the Income-tax Act, it may be inferred that it was intended to give legislative recognition to the interpretation of
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(1) 5 I.T.C. 100 : I.L.R. 55 Bom. 312.

(2) 3 I.T.R. 147

s. 24B insofar as it is applicable to the Expenditure-tax Act. In *D. N. Mehta's case*⁽¹⁾ one Avabai died on May 6, 1932 after she was served with a notice requiring her to make a return of her income under s. 22(2) of the Indian Income-tax Act, 1922. Section 24B was thereafter inserted in the Income-tax Act on September 11, 1933. In proceedings for assessment of income-tax against her legal representatives it was contended that Avabai had died before the date on which the amendment was made, her estate was not liable to be taxed under the machinery incorporated in the Act in s. 24B. This contention found favour with the Bombay High Court in *D. N. Mehta's case*⁽¹⁾. Beaumont, C.J., delivering the judgment of the Court observed :

“ that s. 3 of the Income-tax Act charges the tax upon every one coming within the purview of the Act who was alive at the beginning of the financial year, but in the case of a person dying before assessment, that liability was inchoate only, and crystallized into an enforceable liability for the first time on the passing of the Amendment Act. It is therefore not quite accurate to say that the Amendment Act merely deals with machinery; it does for the first time impose an enforceable liability. The principle which must always be applied in construing a taxing Act is that the Government must show that the tax sought be recovered has been imposed in language which admits of no reasonable doubt. The opening words of each sub-section to Section 24-B: “Where a person dies”, though the use of the present tense is not altogether appropriate on any reading of the Act, seem to me more appropriate to future than to past deaths. If the Legislature had intended the Act to have a retrospective effect, it would have been very easy to have said, “dies whether before or after the passing of this Act”. Inconvenience and hardship might be caused by making the tax payable out of an estate which has been distributed on the basis of the then existing law.”

Counsel for the respondents maintained that as with this judicial interpretation of s. 24B before it, the Parliament adopted the same phraseology and scheme in enacting s. 18(1) of the Expenditure-tax Act, Parliament must be deemed to have intended to enact the rule laid by the Bombay High Court in its application to the Expenditure-tax Act. It was open to the Parliament,

(1) 3 I.T.R. 147.

- A said counsel, to use adequate phraseology such as "dies whether before or after the passing of this Act" and the Parliament not having done so, it must be deemed to have accepted the interpretation placed by the Bombay High Court and to have evinced an intention not to render the estate of the person, who died before the date on which the Act was brought into force, liable to expenditure-tax.
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We are unable to agree with this contention. The expression "Where a person dies" standing by itself in s. 18 does not suggest that thereby it was intended to refer only to death of the person liable after the Act was brought into force : and read with the remaining clauses in the context of sub-ss. (2) & (3) it is clear that the Parliament intended to attract the entire charge to tax and machinery prescribed by ss. 13 & 15 so as to render the estate of a person dying before the Act liable to satisfy the tax or other liability which would have been assessed or imposed upon him if he had not died. In the context of the declared liability under sub-s. (1) and the provisions of sub-s. (3) of s. 18, which make sections 13, 14 and 15 of the Expenditure-tax Act applicable to the executor, administrator or legal representative, as they apply to any person, it would be difficult to hold that the Legislature has not expressed its intention clearly so as to render the estate of a deceased person liable to be assessed to expenditure-tax merely because he had died before the date on which the Act was brought into force.

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The argument of inconvenience has no substance. A person who has rendered himself liable to pay tax on the expenditure incurred by him in the previous year may, not being aware of the proposal to enact a statute like the Expenditure-tax Act, part with his estate. But on that account he cannot set up a defence against the levy of the tax that he has parted with the estate. Nor can the legal representative of a deceased person set up a plea that because the estate is distributed, he should not be rendered liable to pay the expenditure-tax which has been imposed by the statute.

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We are unable therefore to agree with the High Court that by enacting s. 18 of the Act the Parliament has not rendered the estate of a person liable to expenditure-tax, if such person had died before the date on which the Act was brought into force.

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The appeal is therefore allowed and the order passed by the High Court is set aside, and the petition filed by the respondents is dismissed with costs in this Court and the High Court.

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Appeal allowed.