Penal Code and, therefore, the courts have rightly held that the appellant had committed the offence of theft.

No other point was pressed before us. In the result the appeal fails and is dismissed.

Appeal dismissed.

THE COMMISSIONER OF INCOME-TAX, BOMBAY CITY I, BOMBAY

v.

AMARCHAND N. SHROFF, BY HIS HEIRS AND LEGAL REPRESENTATIVES

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Income Tax—Liability to tax of income of deceased person—Such income in hands of the legal representatives—Income of the previous year—Indian income-tax Act, 1922 (11 of 1922), s. 24B.

Sub-section (1) of s. 24B of the Indian Income-tax Act, 1922, provided that where a person dies his heirs and legal representatives are liable to pay out of the estate of the deceased the tax assessed as payable by the deceased or any tax which would have been payable under the Act by the deceased if he had not died.

A who was one of the three partners in a firm of solicitors died on July 7, 1949, and thereafter the partnership was carried on by the other two partners till December 1, 1949, when R, son of A, joined the firm as the third partner. After the death of A the arrangement between the various partners in regard to the realisations of the old outstandings was that in respect of the work done up to the death of A the realisations were to be divided between A and the other two partners. The firm

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kept its accounts on cash basis. For each of the five assessment years, 1950-1955, certain amounts were received by the heirs and legal representatives of A out of the outstandings. Proceedings were started by the Income-tax Officer under s. 34 of the Indian Income-tax Act, 1922, in respect of the aforesaid income, and the various amounts were assessed to income-tax in the hands of the respondents, the heirs and legal representatives of A, under s. 34 (1) (b) read with s. 24B of the Act, for the five respective assessment years, on the footing that the amounts which were received by the heirs and legal representatives of A after his death should be deemed by virtue of the words in sub-s. (1) of s. 24B to be income received by A and liable to tax under that sub-section.

Held, that the words "or any tax which would have been payable by him under this Act if he had not died" under s. 24B(1) of the Indian Income-tax Act, 1922, are restricted to the income received by the deceased person before his death and to the income received after his death by his heirs and legal representatives in the "previous year" and which had not been assessed but would have been assessed as income received by him, if death had not taken place. The provisions of s. 24B do not extend to tax liability of the estate of a deceased person beyond the previous or the account year in which that person dies. Apart from s. 24B no assessment can be made in respect of the income of a person after his death.

Held, that as the income was received after the expiry of the previous year in which A died it was not liable to be taxed as the income of A in the hands of his legal representatives in the several years of assessment.

Allen v. *Trehearne*, (1938) 22 Tax Cas. 15, *Ellis C Reid* v. *Commissioner of Income-tax Bombay*, 5 I. T. C. 100 and *Wallace Brother & Co. Ltd.* v. *Commissioner of Income-tax, Bombay City*, [1948] 16 I. T. R. 240, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 15 to 19 of 1962.

Appeal from the judgment and order dated October 10, 1958, of the Bombay High Court in Income-tax Reference No. 22 of 1958.

H. N. Sanyal, Additional Solicitor-General of India, N. D. Karkhanis and *R. N. Sachthey*, for the appellant.

A. V. Viswanatha Sastri, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the respondents.

1962. October, 23. The Judgment of the Court was delivered by

KAPUR, J.—These appeals pursuant to a certificate of the High Court of Bombay raise the question of interpretation of s. 24B of the Income-tax Act in an Income-tax Reference. The question referred was answered in the negative and against the Commissioner of Income-tax who is the appellant in these appeals, the respondents being the heirs and legal representatives of one Amarchand N. Shroff deceased. The appeals relate to the assessment years 1950-51, 1951-52, 1952-53, 1953-54 and 1954-55.

Shortly stated the facts of the case are these: Amarchand N. Shroff, Mangaldas and Hiralal were partners in a firm of solicitors. Amarchand died on July 7, 1949. Thereafter the partnership was carried on by Mangaldas and Hiralal up to November 30, 1949, and on December 1, 1949, Ramesh son of Amarchand who had by then qualified as a solicitor joined the firm as the third partner. After the death of Amarchand the arrangement between the various partners in regard to the realisations of the old outstandings was that in respect of the work done up to the death of Amarchand the realisations were to be divided amongst Amarchand, Mangaldas and Hiralal, in respect of the work between July 8, 1949, and November 30, 1949, the realisations were to be divided between Mangaldas and Hiralal and in respect of work done after December 1, 1949, the realisations were to be divided amongst Mangaldas, Hiralal and Ramesh. The firm kept its accounts on cash basis. For the five assessment years 1950-51 to 1954-55 the following amounts were received: Rs. 37,847/-, Rs. 43,162/-, Rs. 34,899/-, Rs. 13,402/- and

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Rs. 32,523/- by the heirs and legal representatives of Amarchand out of the outstandings. The Income-tax Officer sought to tax these realisations. For the assessment years 1950-51 and 1951-52 he assessed the amounts in the hands of the heirs and legal representatives of Amarchand as a Hindu undivided family. Against that order an appeal was taken to the Appellate Assistant Commissioner and then to the Appellate Tribunal. The two members of the Tribunal agreed in holding, though for different reasons, that the amounts were not the income of the Hindu undivided family but merely represented inheritance or realisations of the assets of Amarchand.

The matter was not pursued further by the Revenue but sometime later proceedings were started by the Income-tax Officer under s. 34 in respect of the same income in the hands of "Amarchand N. Shroff by his heirs and legal representatives". The status of that entity was taken to be that of an individual and not Hindu undivided family. The various amounts were assessed to income-tax in the hands of the respondents under s. 34(1) (b) read with s. 24B of the Income-tax Act. The assessments so made were for the assessment years 1950-51, 1951-52, 1952-53, 1953-54 and 1954-55. On appeal the Appellate Assistant Commissioner held that the notice unper s. 34 could validly be served only for the assessment years 1950-51 and notices for the subsequent years were invalid. The assessments for 1951-52 to 1954-55 were therefore quashed. The Commissioner of Income-tax took an appeal to the Appellate Tribunal and the Tribunal held that assessment could not be made on Amarchand and that s. 24B had no application to the income received after the death of Amarchand and that it was capital receipt and not revenue receipt. The order of the Appellate Assistant Commissioner was therefore upheld. On the application of the Commissioner of

Income-tax the following question of law was referred to the High Court :—

> "Whether on the facts and in the circumstances of the case, the sums of Rs. 37,847/-, Rs. 43,162/-, Rs. 34,899/-, Rs. 13,402/- and Rs. 32,523/- were assessable to income-tax in the hands of the assessee "Amarchand N. Shroff by his legal heirs and representatives" in the five respective years under reference ?".

The High Court answered the question in the negative. It held that apart from s. 24E of the Income-tax Act the amounts were not taxable and that the section had no application to the case.

It was argued by counsel for the Commissioner of Income-tax that on a correct interpretation of s. 24B the amounts which were received by the heirs and legal representatives of Amarchand after his death should be deemed by the fiction incorporated in sub-s. (1) to be income received by Amarchand and liable to tax under s. 24B (1) of the Income-tax Act. In other words the respondents as heirs and legal representatives of the deceased Amarchand were liable to pay out of the estate of the deceased Amarchand on those amounts to the extent of the estate as the estate was liable for tax on the amounts received by the heirs and legal representatives just as the deceased Amarchand would have been had he not died. The emphasis was on words in s. 24B (1) "or any tax which would have been payable by him under this Act if he had not died" Section 24B is as follows :—

S. 24B *"Tax of deceased person payable by representative—*

> (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

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is capable of meeting the charge the tax assessed as payable by such person or any tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 22 or before he is served with a notice under sub-section (2) of section 22 or section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 22 or under s. 34, as the case may be, comply therewith and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of section 22, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him 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 had he survived require any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person."

Sub-section (1) provides that where a person dies his heirs and legal representatives are liable to pay out

of the estate of the deceased the tax assessed as payable by the deceased or any tax which would have been payable under the Act by the deceased if he had not died. According to the submission of counsel for the Commissioner of Income-tax the words of sub-s. (1) "or any tax which would have been payable by him under this Act if he had not died" mean that irrespective of the date of receipt of income receivable by a person, if the income is received by his heirs and legal representatives after his death, they are liable for payment of the tax just as the deceased would have been liable when the income was received had he been living. But this interpretation is not in accord with the language used in s.24B. All the sub-sections have to be read together. Sub-section (1) can be divided into two parts; (1) when the income of the deceased was assessed before his death and (2) where the income was not so assessed but it would have been liable to tax had he not died. The second part or the words above quoted when read with sub-ss. (2) and (3) show that they are confined to cases therein mentioned. They show that those words also have to be restricted to the income received by the deceased person before his death and to the income received after his death by his heirs and legal representatives but in the "previous" year and which had not been assessed but would have been assessed as income received by him if death had not taken place. See *Allen* v. *Trehearne*(1) where the words "if he had not died" were interpreted. Sub-section (2) provides that if a person dies before the publication of the public notice under s.22 (1) or before a notice is served on him under sub-ss. 2 of s. 22 or s. 34 then the Income-tax Officer may proceed to compute or assess the total income of the deceased person as if the heirs and legal representatives were the assessees. Sub-section (3) provides that when a person dies before a return is furnished by him under the provisions of s.22 or dies after having furnished the return which the

(1) (1938) 22 Tax. Cas. 15.

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Income-tax Officer finds incorrect or incomplete then the Income-tax Officer can make assessment on the total income of the deceased person and certain other consequences follow but in all the cases enumerated above the language used in sub-ss. 1, 2 and 3 of s.24B contemplates that the heirs and legal representatives of a deceased person are liable to pay income-tax out of his estate (1) where assessment had already been made and (2) where he dies before the assessment but the income was received before his death or by his heirs and legal representatives after his death which occurs during the previous year. If he dies before the publication of the notice under s.22(1) or before the service under s.22(2) or after the service but before he has furnished a return or filed an incorrect or incomplete return then the Income-tax Officer should make an assessment of the total income of such deceased person and determine the tax payable thereupon. Section 24B does not authorise levy of tax on receipts by the legal representatives of a deceased person in the years of assessment succeeding the year of account being the previous year in which such person died.

Income-tax is exigible in reference to a person's total income of the previous year. The question before us is whether the income which was received subsequent to the previous year in which Amarchand died is liable to be assessed to income-tax under s. 24B as his income in the hands of his heirs and legal representatives. In the present case the accounts were kept on cash basis. The assessee under the Act has ordinarily to be a living person and cannot be a dead person because his legal personality ceases on his death. By s. 24B the legal personality of a deceased assessee is extended for the duration of the entire previous year in the course of which he died and therefore the income received by him before his death and that received by his heirs and legal representatives after his death but in that previous

year becomes assessable to income-tax in the relevant assessment year. The section was enacted by the Legislature to bring to tax, after his death, income received during his lifetime, and fill up the lacuna which was pointed out by the High Court in *Ellis C. Reid* v. *Commissioner of Income-tax, Bombay*(1). Any income received in the year subsequent to the previous or the account year cannot be called income received by the person deceased. The provisions of s. 24B do not extend to tax liability of the estate of a deceased person beyond the previous or the account year in which that person dies. In support of his contention counsel for the Commissioner of Income-tax relied upon the scheme of the Act as given in *Additional Income-tax Officer* v. *E. Alfred*(2). There is nothing said in that case which supports the contention raised by the Commissioner of Income-tax. Reliance was next placed on certain observations in a judgment of the Bombay High Court *in re. B. M. Kamdar*(3). Those observations also are of no assistance to the Commissioner of Income tax, Kania, J., (as he then was) there observed that the question whether a particular amount was income or not had nothing to do with the time of its receipt and the question of receipt was material only for the purpose of determining whether on that amount tax was to be levied under the Act in the year of assessment. That was a case where a consulting engineer discontinued his practice as such from February 15, 1938, and he received a sum of money representing the outstanding professional fees earned by him prior to the discontinuance of his practice but realised by him during the Calendar year which was the previous year. The assessee was keeping his accounts on cash basis and he contended that as he had discontinued his profession in the previous year the source had come to an end and the amounts received by him were not liable to income-tax. It was held that the income was assessable. The assessee in that case was still alive when the income

(1) 5 I.T.C. 100. (2) [1962] 44 I.T.R. 442, 445.
(3) [1946] 14 I.T.R. 10.

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was received by him and s. 24B had no application to the facts of the case.

Counsel also relied on the observations of Derbyshire, C.J., *in re Sreemati Usharani Shoudhurani*(1). In that case the managing agent of a limited company died on May 12, 1938. At the time of his death there was a credit with the company of a sum of money on account of commission earned by him and due to him prior to the date of his death. This sum was paid after his death in the previous year 1938-39 and was sought to be taxed under s. 24B of the Income-tax Act. It was held that this income was taxable. Derbyshire, C.J., said at p. 205 that the assessee who was the widow had received the salary due to her husband; that the Income-tax Officer was entitled to assess the total income of the deceased person as if the legal representatives were the assessees and the amount was liable to tax under s. 24B (1), but in that case also the amount was received by the widow in the previous year and it was earned by the deceased during the previous year.

The correct position is that apart from s.24B no assessment can be made in respect of the income of a person after his death. See *Ellis C. Reid* v. *Commissioner of Income-tax, Bombay*(2). In that case, and that was a case before s. 24B was enacted, a person was served with a notice under s. 22(2) of the Income-tax Act but no return was made within the period specified and he died. It was held that no assessment could be made under s. 23(4) of the Act after his death. At p.106 it was observed :—

> "It is to be noticed that there is throughout the Act no reference to the decease of a person on whom the tax has been originally charged, and it is very difficult to suppose the omission to have been unintentional. It must have

(1) [1942] 10 I.T.R. 199. (2) 5 I.T.C. 100.

been present to the mind of the legislature that whatever privileges the payment of income-tax may confer, the privilege of immortality is not amongst them. Every person liable to pay tax must necessarily die and, in practically every case, before the last instalment has been collected, and the legislature has not chosen to make any provisions expressly dealing with assessment of, or recovering payment from the estate of a deceased person".

The individual assessee has ordinarily to be a living person and there can be no assessment on a dead person and the assessment is a charge in respect of the income of the previous year and not a charge in respect of the income of the year of assessment as measured by the income of the previous year. *Wallace Brothers & Co. Ltd.* v *Commissioner of Income-tax, Bombay City*(1). By s. 24B the legal representatives have, by fiction of law, become assessees as provided in that section but that fiction cannot be extended beyond the object for which it was enacted. As was observed by this Court in *Bengal Immunity Co. Ltd.* v. *The State of Bihar*(2) legal fictions are only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond that legitimate field. In the present case the fiction is limited to the cases provided in the three sub-sections of s. 24B and cannot be extended further than the liability for the income received in the previous year.

In the present case the amounts which are sought to be taxed and which have been held not to be liable to tax are those which were not received in the previous year and are therefore not liable to tax in the several years of assessment. It cannot be said that they were income which may be deemed by fiction to have been received by the dead person and therefore they are not liable to be taxed as income

(1) [1948] 16 I.T.R. 240, 244. (2) [1955] 2 S.C.R. 603, 664.

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of the deceased Amarchand and are not liable to be taxed in the hands of the heirs and legal representatives who cannot be deemed to be assessees for the purpose of assessment in regard to those years.

In our view the High Court rightly answered the question in the negative and against the Commissioner of Income-tax. The appeals therefore fail and are dismissed with costs.

Appeals dismissed.

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October, 23.

BAGALKOT CITY MUNICIPALITY

v.

BAGALKOT CEMENT CO.

(S. K. DAS, J. L. KAPUR, A. K. SARKAR, M. HIDAYATULLAH and RAGHUBAR DAYAL, JJ.)

Octroi Duty—Municipal District, connotation of—Octroi limits equated with municipal district—Extension of municipal district—Whether octroi limits also extended—If extended area liable to octroi duty—Bombay District Municipal Act, 1901 (Bom. 3 of 1901), ss. 3(5), 4, 18, 59—Bombay General Clauses Act, 1904 (Bom. 1 of 1904), s. 20.

The appellant municipality imposed octroi duty on certain goods brought within the octroi limits. The by-laws fixed the octroi limits to be the same as the Municipal District. Section 4 of the Bombay District Municipal Act 1901, under which the municipality was constituted, empowered the Government to declare any local area to be a municipal district. At the time of the imposition of the octroi duty the respondent's factory was situated outside the municipal district and was not subject to the octroi duty. Subsequently, the Government extended the municipal district so that the factory came to be included within that district. The appellant contended that upon such extension its octroi limits also stood extended to include the factory and the respondent became liable to pay octroi duty in respect of goods brought into the factoty.