COMMISSIONER OF INCOME-TAX BIHAR AND ORISSA

v.

MANAGER, COURT OF WARDS ESTATE, BETTIAH

February 24, 1967

[M. HIDAYATULLAH, J. M. SHELAT AND G. K. MITTER, JJ.]

Practice and Procedure—Tax liability—Liability dependent on outcome of litigation—Assessment made while title suit was pending—High Court setting aside assessment—Propriety of—Procedure to be followed.

During the pendency of a suit by a person claiming to be the heir of the Bettiah estate which was in the possession of the Manager, Court of Wards, the Income Tax Officer made an assessment on the Manager. In those proceedings the State of Bihar and the Manager claimed that the estate had vested in the State by escheat and therefore the income was not liable to tax. The Income-tax Officer, the Appellate Assistant Commissioner and the Tribunal held that as the litigation was pending it could not be said of the estate that the same had vested in the State by escheat. The High Court on reference held that the income tax authorities could not impose the tax. Setting aside the judgment of the High Court this Court in appeal.

HELD : The proceedings should be made final after the disposal of the litigation and the High Court could call for a supplementary statement of the case if necessary [750 D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1172 of 1965.

Appeal from the judgment and order dated December 17, 1963 of the Patna High Court in Misc. Judicial Case No. 566 of 1960.

R. H. Dhebar for *R. N. Sachthey,* for the appellant.

S. P. Varma, for the respondent.

The Judgment of the Court was delivered by

Mitter, J., This is an appeal from a judgment and answer of the High Court of Judicature, Patna, on a certificate granted by it under s. 66-A(2) of the Income-tax Act of 1922 corresponding to s. 261 of the Income-tax Act of 1961. The Tribunal referred two questions of law to the High Court under s. 66(1) :

> "1. Whether on the facts and circumstances of the case, could assessment be made upon the Manager of Court of Wards, Bettiah Estate, in respect of the income from the Bettiah Estate ?
>
> 2. If the assessment could be made on the Manager of the Court of Wards in respect of the income from the

A Bettiah Estate, was it chargeable to tax at maximum rates under s. 41(1) of the Income-tax Act ?"

The facts of the case are as follows :— Maharani Janki Kuer who was the last holder of the Bettiah Estate in Bihar died on November 27, 1954. For many years past before her death, the estate was under the management of the Court of Wards and B continued under such management even after her death as it was not known whether she had left any heirs. Under s. 13 of the Bengal Court of Wards Act (IX of 1879)

> "Whenever, on the death of any ward, the succession to his property or any part thereof is in dispute, the Court may either direct that such property or part C thereof be made over to any person claiming such property, or may retain charge of the same until the right to possession of the claimant has been determined under Bengal Act VII of 1876, or until the dispute has been determined by a competent Civil Court."

"Court" here means the Court of Wards. One Suresh Nandan D Sinha filed a suit claiming the estate on the allegation that he was the nearest heir of the deceased Maharani. After the death of the Maharani, the Income-tax Officer made an assessment on the Manager of the Court of Wards as representing the estate of Bettiah, the assessment relating to the assessment year 1956-57 the accounting year being the financial year 1955-56. The Gov- E ernment of Bihar claimed that the estate had vested in the State Government by escheat and the Manager, Court of Wards put forward that claim before the Income-tax authorities. There was a further contention raised by the Manager that even if the assessment was made on him representing the estate, the income should not be taxed at a maximum rate under s. 41(1) of the Income-tax Act, 1922. As the litigation was pending, the Income-tax Officer F and the Appellate Assistant Commissioner both held that it could not be said of the estate that the same had vested in the State by escheat and they also held that the income was taxable at the maximum rate. The same plea was raised before the Appellate Tribunal and the Tribunal observed that as no notification had been issued by the Government on the death of the Maharani or G later to the effect that the estate had vested in the State of Bihar by escheat, there was no certainty as to who would be found to be the ultimate heir in view of the pending litigation.

The High Court on the case stated, referred to Arts. 289 and 296 of the Constitution and taking note of the contentions urged on behalf of the parties observed :

H

> "In the circumstances of the present case, it is manifest that the Income-tax authorities cannot validly impose a tax upon the Manager, Court of Wards,

> Bettiah Estate, merely because a title suit has been filed with regard to the heirship of the Bettiah Estate without deciding the question as to whether the claim of the State of Bihar that the property has vested in it by escheat is established or not." A

On this view, the first question was answered in favour of the assessee and no answer was given to the second question because it was academic. B

It was asserted on behalf of the respondent—and not denied by the appellant—that the suit of Suresh Nandan Singh had been dismissed, but an appeal had been preferred therefrom and was pending. On the facts as the same appear to us at present, it is not possible to hold that the estate of Bettiah has escheated to the State of Bihar. It is obvious that in case of such escheat there can be no assessment to income-tax. The position will be clarified after the appeal by Suresh Nandan Sinha is disposed of. In this view of the matter, the judgment of the Patna High Court is set aside. The proceedings should be finalised after the disposal of the litigation and the High Court may call for a supplementary statement of case, if it thinks necessary. The question as to whether the estate has escheated to the State of Bihar is left open, and the costs of this appeal will abide by the ultimate decision of the High Court. In case it be found that the escheat had taken place, the appellant before us will have to pay the costs of this appeal and if there is no escheat, the Commissioner will have the costs of this appeal. C D E

Y.P.