

## REFERENCE UNDER THE INCOME-TAX ACT.

Before Costello and Panckridge J.J.

1937  
Jan. 28.

*In the matter of* THE OFFICIAL ASSIGNEE.\*

*Insolvency—Adjudication order—Insolvent's property—Official Assignee, whether owner—"Legal estate"—"Equitable estate"—Indian Income-tax Act (XI of 1922), ss. 22(2), 41—Presidency-towns Insolvency Act (III of 1909), s. 17.*

When on the making of an order of adjudication under the Presidency-towns Insolvency Act the property of the insolvent becomes vested in the Official Assignee and he takes possession thereof and income, profits and gains of such property are received by the Official Assignee, tax in respect thereof is recoverable from the Official Assignee.

*Vis-a-vis* the revenue there is no change of character when house property of the insolvent passes into the hands of the Official Assignee, and it does not cease to be a fit subject matter of income-tax upon the basis of the *bona fide* annual value.

Upon the insolvent's property vesting in the Official Assignee he becomes the "owner" within the meaning of s. 41, Indian Income-tax Act, and that is sufficient to make him liable to assessment.

In British India there is no difference between "legal estate" and "equitable estate."

On general principles arising out of the provisions of s. 17, Presidency-towns Insolvency Act, the Official Assignee is the "owner" of such property.

*Trustees of Sir Currimbhoy Ebrahim Baronetcy Trust v. Commissioner of Income-tax, Bombay (1) and Commissioner of Inland Revenue v. Fleming (2) referred to.*

## INCOME-TAX REFERENCE.

The facts of the case and the arguments in the Reference appear sufficiently in the judgment.

*Page and B. C. Mitter* for the Official Assignee (assessee).

\*Income-tax Reference, No. 12 of 1936, under s. 66(1) of the Indian Income-tax Act.

(1) (1934) I. L. R. 58 Bom. 317;  
L. R. 61 I. A. 209.

(2) (1928) 14 Tax Cas. 78.

*Sir A. K. Roy*, Advocate-General, with *Radha Binode Pal* and *Ramesh Chandra Pal* for the Commissioner of Income-tax, Bengal.

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COSTELLO J. This matter comes before us on a Reference under s. 66 (1) of the Indian Income-tax Act, 1922, in respect of an assessment for the year 1934-35 for the income of the year of account ending March 31, 1934.

The question propounded by the Commissioner of Income-tax for our consideration is stated in para. (3) of his statement of the case and is in this form :—

Whether, when on the making of an order of adjudication under the Presidency-towns Insolvency Act (III of 1909) the property of the insolvent becomes vested in the Official Assignee and such Official Assignee takes possession thereof, the tax in respect of the income, profits and gains of such property chargeable under the Income-tax Act (XI of 1922) and received by the Official Assignee should or should not be leviable and recoverable from such Official Assignee ?

The facts briefly stated were these :—

One Jnanendra Nath Pramanik was adjudged an insolvent by an order of this High Court on May 16, 1933. Thereupon all his estate and effects vested in the Official Assignee by virtue of the provisions of s. 17 of the Presidency-towns Insolvency Act. The Official Assignee since the date of the adjudication has been administering the estate of the insolvent. That estate consists of certain house properties situated in the city of Calcutta. The Income-tax Officer took the view that the Official Assignee was a person falling within the purview of s. 41 of the Indian Income-tax Act and, accordingly, he issued upon him a notice under s. 22 (2) of the Act. That notice was dated January 24, 1935, and required the Official Assignee to submit a return of the income of the insolvent's estate. In reply to that notice, the Official Assignee wrote a letter to the Income-tax Officer dated February 14, 1935, in which he intimated that no statement of income in an insolvent estate could be rendered and that all that he could do in the matter was to send a

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statement of the deficiency account as disclosed in the schedule of affairs which was filed by the insolvent. The Income-tax Officer was apparently of the opinion that, as the legal ownership of the property remained vested in the Official Assignee and as before the ultimate disposal of the property it produced income, profits or gains and as such income, profits or gains were receivable and received by the Official Assignee, he was a person who was bound in accordance with the provisions of the Income-tax Act to submit a return. No return was, however, submitted and accordingly, the Income-tax Officer exercised the powers conferred on him by s. 23(4) of the Act and made an assessment to the best of his judgment. That assessment was dated March 12, 1935. Consequent upon that a demand notice under s. 29 of the Act was duly issued on March 25, 1935. In connection with the assessment which had been made, the Income-tax Officer found that the income of the estate was derived from certain house properties—most of which were situated in Old China Bazar Street and the rest in other streets of this city. The entire estate in fact consists of these properties. The *bona fide* annual value of the properties was the criterion to be applied for the purpose of assessment of the income-tax. That is by virtue of the terms of s. 9, sub-s. (2) of the Act. That value was determined by the Income-tax Officer to be Rs. 9,600 and allowing deduction for repairs as permitted by s. 9(1) the net income was determined to be Rs. 8,000 and the tax demanded was Rs. 468-12as. On receipt of the demand notice which I have already mentioned, the Official Assignee in a letter to the Income-tax Officer dated March 28, 1935, contended that no income accrued to the insolvent estate and requested the Income-tax Officer to put the correspondence before the Commissioner or Assistant Commissioner to arrive at a finality in the matter and with this letter he returned the demand notice. The Income-tax Officer in reply informed the Official Assignee that, if he was

dissatisfied with the assessment made, he could proceed under s. 27 of the Income-tax Act or under s. 33 of the Act for a review of the case by the Commissioner of Income-tax. I need not enter into further details as to the subsequent proceedings, which ultimately led up to the Commissioner of Income-tax deciding to state a case for the opinion of this Court. The amount of the tax, *i.e.*, the sum of Rs. 468-12 aforesaid, was paid under protest on February 24, 1936.

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The question which we have to decide is the one which is set out in para. (2) of the case. The Commissioner of Income-tax points out that the only source of the income in question in this case was the house property. That house property vested in the Official Assignee under the Presidency-towns Insolvency Act, 1909. Now s. 9(1) of the Indian Income-tax Act provides that—

Tax shall be payable by an assessee under the head "property" in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portion of such property as he may occupy for the purposes of his business.

The Commissioner of Income-tax expressed the opinion that, when property vests in the Official Assignee under the provisions of the Presidency-towns Insolvency Act, he becomes the owner of the property within the meaning of s. 9 of the Income-tax Act and consequently, in the case of house property tax becomes payable by the Official Assignee in respect of the *bona fide* annual value of the property which has vested in him. The Commissioner of Income-tax has stated:—

This is what has been done and I do not see how the Official Assignee can avoid this taxation.

He then makes reference to s. 41 of the Income-tax Act (a section which we have had to consider quite recently) which runs thus:—

In the case of income, profits, or gains chargeable under this Act which are received by the Courts of Wards, the Administrator-General, the Official Trustees or by any receiver or manager (including any person whatever

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his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in the like manner and to the same amounts as it would be leviable upon and recoverable from any person on whose behalf such income, profits or gains are received and all the provisions of this Act shall apply accordingly.

Now the Commissioner says, in his opinion, the Official Assignee is an Officer who has been appointed by an order of the High Court and is a person who, in fact is managing property on behalf of another. The Commissioner expresses his opinion in these words :—

The Official Assignee is one of the persons contemplated by s. 41 and as he is the owner of the house property for the time being by reason of the same being vested in him and is in receipt of its income he is amenable to all due processes available under the Act, like any other assessee, and as such, bound to submit a return when called upon to do so under s. 22(2) of the Act in respect of the income from the said house property. He was duly served with the requisite notice under s. 22(2) of the Act and was given ample time for complying with that notice. But he made default in complying with this notice and the Income-tax Officer made the assessment to the best of his judgment in respect of what he found to be the *bona fide* annual value of the property.

Finally, he says :—

In my opinion, both under s. 9 and s. 41 he is the person liable to be assessed and consequently he has been rightly assessed.

Now it is our task to decide whether that is so and whether on the facts and in the circumstances of this case the Official Assignee was liable to be assessed and whether he was rightly assessed. It is to be observed that the Commissioner of Income-tax bases his opinion both upon the provisions of s. 9 and upon the provisions of s. 41.

Mr. Page appearing on behalf of the assessee argues that neither of those sections applies to the circumstances of this case. I am of the opinion that Mr. Page is correct to this extent that those sections cannot *both* apply to the circumstances of this case and the most that can be said is that one of them may apply. Mr. Page's first point was that the subject

matter of the assessment with which we are concerned, changed its character when it passed into the hands of the Official Assignee and that, although it was house property when it belonged to the insolvent and as such would have been a fit subject matter of income-tax upon the basis of the *bona fide* annual value, yet when it passed into the hands of the Official Assignee (by reason of the provisions of s. 17 of the Presidency-towns Insolvency Act) the property ceased to have the same taxable quality and was no longer a fit subject for taxation in the hands of the Official Assignee. With that contention I find myself unable to agree. In my view, *vis-a-vis* the revenue there was no change of character whatever. The house property consisted of a number of houses in this city. Normally, they would be the subject of income-tax upon the basis of their *bona fide* annual value. It cannot make any difference whether they are in law the properties of Jnanendra Nath Pramanik or whether in law they have become vested in the Official Assignee of the insolvent estate. The real question we have to decide is whether we should look at the matter from an angle of the person concerned or rather whether on looking at the person concerned it can rightly be said that the Official Assignee was the owner of the property so as to bring him within the four corners of the provisions of s. 9. If he was the owner that is sufficient to make him liable to assessment. If he was not the owner then we have to consider whether he is one of the class of persons enumerated in s. 41 of the Income-tax Act.

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With regard to the first point Mr. Page argued that, although by s. 17 of the Presidency-towns Insolvency Act these properties vested in the Official Assignee, he did not thereby or thereupon become the owner of those properties within the meaning properly ascribable to that word for the purposes of the applicability of s. 9. What Mr. Page really invited us to do was to restrict the meaning of the word by putting before it the qualifying adjective "beneficial".

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What was argued by Mr. Page was that the Official Assignee had no legal interest in the properties themselves, they were merely vested on him for the purposes of the administration of them in the interest of the creditors of the insolvent. I am unable to accept Mr. Page's contention. In this country there is no difference between "legal estate" and "equitable 'estate'". In this connection the case of *Trustees of Sir Currimbhoy Ebrahim Baronetcy Trust v. Commissioner of Income-Tax, Bombay* (1) is of assistance. Sir Sydney Rowlatt when giving the judgment of the Privy Council made this observation:—

In Their Lordships' opinion the effect of the Act creating these trusts is not to give the Baronet for the time being any right to any part of the interest or property specifically or any right which, even granting that the legal title is not the only thing that can ever be looked at, would make it true to say that any proportion of the interest is not "receivable" or any proportion of the property is not "owned" by the incorporated trustees.

The point we have to decide is, I think, covered by the opinion in a case to which our attention was drawn by the Advocate-General, namely, the case of the *Commissioner of Inland Revenue v. Fleming* (2). The headnote of that case is:—

The respondent's estates were sequestrated in 1921 under the Bankruptcy (Scotland) Act, 1913, and a trustee was appointed. The assets included heritable properties subject to mortgages, and the rents were applied by the trustees in payment of mortgage interest and redemption of mortgages, but not in payment of dividends to creditors. At the close of the sequestration the respondent was re-invested in those properties which had not been sold, and received the balance of rents in the trustee's hands. Ordinary creditors received 9s. in the £, out of the amount realised by the trustee, and the respondent obtained his discharge in 1926 on payment of a composition of a further 1s. in the £.

The respondent thereupon claimed repayment of tax suffered on the heritable properties for each year from 1920-21 to 1925-26 in respect of the personal allowance to which he contended he was entitled. It was contended that in spite of the sequestration the radical right in the estate remained with the bankrupt and that the income arising during sequestration was his income for income-tax purposes.

On appeal the General Commissioners admitted the respondent's claim.

(1) (1934) I. L. R. 58 Bom. 317 (325-6); (2) (1928) 14 Tax Cas. 78, 84. L. R. 61 I. A. 209 (217).

It was there held that during sequestration the income from the sequestrated estate which was vested in the trustee was the trustee's income and not the bankrupt's, and that neither the trustee nor the bankrupt was entitled to claim the relief sought. There is a significant passage in the judgment of His Lordship in that case, which His Lordship stated thus :—

It is obvious that, unless during the years in question the annual value of the properties was income of the respondent, he cannot have any claim to abatement of it for income-tax purposes; and accordingly everything depends upon the soundness of the proposition that the income consisting in the annual value of these properties was truly income of the respondent. I do not see how it can possibly be so described. It was part of the income arising from the sequestrated estates vested in the trustee for the respondent's creditors. Any income that did arise from those estates was income of the trustee as such, and he (and he alone) had the right to put it into his pocket as income. It was not income that went or could go into the pocket of the respondent as income in any of the years in question. How then can it be said to have reached his pocket as income of his subsequent reinvestiture? What was he reinvested in? It is said that he was reinvested in whatever substance remained of the radical right belonging to him all along. But the radical right of a bankrupt in his sequestrated estate is nothing but a right of reversion to the balance remaining after the creditors are satisfied; for which balance he is entitled to call the trustee to account. It is not, I think, a specific right to any particular assets, or a right which applies specifically to that part of the reversion which originated from revenue on the one hand and that part which originated from capital on the other hand.

It seems to me that this opinion of the Lord President is ample authority for taking the view that the property had become entirely vested in the Official Assignee and that the income derived from the said property became the income of the Official Assignee for the purpose of income-tax and so subject to taxation. In the present case the income was in the nature of statutory income arrived at upon the basis of the *bona fide* annual value of the property in question. On the authority of the case, I have just cited, and indeed on general principles arising out of the provisions of s. 17 of the Presidency-towns Insolvency Act, we have come to the conclusion that it is right to say that the Official Assignee is the owner of the property which was the subject matter of the particular assessment with which we are now

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concerned. Upon that view of the matter, it is not necessary to consider, I think, whether or not the provisions of s. 41 of the Income-tax Act of 1922 can be prayed in aid by the income-tax authority for the purpose of extracting tax from the Official Assignee in the circumstances such as the present. Nor do we think it necessary to consider whether there were any other assets which might have come into hands of the Official Assignee in connection with this particular insolvency. All we are concerned with is the property which is the subject-matter of the particular assessment.

We are not prepared to give answers to hypothetical questions or to deal with circumstances, which are not directly in point, in connection with questions formulated by the Commissioner of Income-tax and submitted to us for our opinion. I hold that the Commissioner of Income-tax was right in his view that the Official Assignee was a person liable to assessment and that the Official Assignee was rightly assessed under the provisions of s. 9 of the Indian Income-tax Act, 1922.

We make no order as to costs in this reference.

PANCKRIDGE J. I agree.

Attorneys for assessee: *Mitra & Mukherjee.*

Advocate for Income-tax Department: *Ramesh Chandra Pal.*

G. S.