

TULASAMMA
v.
VENKATA-
SUBBAYYA.
—
COURTS
TROTTER, C.J.

the widow. If there is a deficit after taking into account the sums of money recovered by the receiver, then the burden will lie upon the defendant. The general principle is clear that this man must show that those items which he alleges to be his own monies belong to him. It is no great hardship in this case, because the debts are mostly evidenced by promissory-notes and it cannot be very difficult if his case is a true one to rebut the presumption that they are really notes taken by him in respect of monies due to Narasayya's estate, by proving that he himself lent the money at a particular date, that it was his own money and that the negotiable security was given to him to secure a debt due to himself and to nobody else. The case must go back for a finding with regard to those items with the onus of proving that they are his cast upon the defendant. Both parties can adduce fresh evidence. Finding will be returned in three months. Ten days will be allowed for objections.

KRISHNAN, J. KRISHNAN, J.—I agree.

K.R.

APPELLATE CIVIL—SPECIAL BENCH.

*Sir Murray Coutts Trotter, Chief Justice, and
Mr. Justice Krishnan.*

THE COMMISSIONER OF INCOME-TAX, MADRAS,
REFERRING OFFICER,

v.

THILLAI CHIDAMBARAM NADAR, ASSESSEE.*

*Secs. 23 (2) and 63 (2) of Income-tax Act (XI of 1922)—
Unregistered firm—Service of notice under the Act on one
member of the firm, sufficient service on the firm.*

By virtue of section 63 (2) of the Income-tax Act (XI of 1922) an unregistered firm is validly served with notice

* Referred Case No. 19 of 1924.

mentioned in section 23 (2) of that Act, if it is served on any member of that firm.

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CASE stated under section 66 (2) of the Income-tax Act, 1922 (Act XI of 1922) referring for the decision of the High Court, the question of law, viz., "Whether in the case of an unregistered firm, a notice under section 23 (2) should be served only on the member of the firm who made the return under section 22 (2) or whether under section 63 (2) of the Indian Income-tax Act (Act XI of 1922) it can be served upon any member of the firm."

The facts and arguments are given in the judgment.

M. Patanjali Sastri for Referring Officer.

F. S. Vaz for the assessee.

JUDGMENT:—

COURTS TROTTER, C.J.—It was with the greatest difficulty that I could extract a question of law of any sort in this case; but, if there is any, I suppose it is this whether under section 23 (2) of the Income-tax Act "the person who made the return" in the case of a firm means the identical person who made the original return. Common sense would indicate that the only requisite is that the firm who made the return should, as a firm, have the notice properly delivered to them. That is a matter of general law and it is obviously a question of fact in most cases whether the notice was such as to reach the legal entity known as the firm. Here it was addressed to one of the partners and by the ordinary law and the specific provision of section 63 (2) of this very Act each partner is an agent for all the others in the firm. The question must be answered in this way. The assessee must pay the costs of this reference, Rs. 150 (Rupees one hundred and fifty).

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KRISHNAN, J.—I agree to the answer proposed by the learned Chief Justice. The question put to us by the referring authority is whether in the case of an unregistered firm a notice under section 23 (2) of the Income-tax Act should be served only on the member of the firm who made the return or whether under section 63 (2) of the Act it can be served on any member of the firm. There can be no doubt about the answer and it must be in the affirmative. Notice can be served on any member as provided for in section 63 (2) and such service is good service. The word "person" as pointed out by the referring officer, clearly includes a firm as provided by the General Clauses Act, 1897, and when the return is made on behalf of the firm by a partner, it is the firm that is the person who makes the return and any proper service on the firm as authorized by section 63 (2) will be a proper service.

I agree to the order proposed as to costs.

N.B.
