

INCOME-TAX REFERENCE.

*Before Sir Owen Beasley, Kt., Chief Justice,
Mr. Justice Cornish and Mr. Justice Bardswell.*

THE COMMISSIONER OF INCOME-TAX, MADRAS,
PETITIONER,

1933,
May 3.

v.

NACHAL ACHI, WIDOW OF S. R. M. R. M. RAMASWAMI
CHETTIAR, KARAIKUDI, RESPONDENT.*

Indian Income-tax Act (XI of 1922), sec. 34—Income escaping assessment—Assessment under section 34 in case of, on successor of person liable to tax—Permissibility—Sec. 26 (2)—Succession taking place after close of year in which income escaped assessment—Notice under section 34 served on predecessor—Continuance of proceedings against successor in case of, by issue of notices under sections 22 (4) and 23 (2)—Permissibility.

When income has escaped assessment, an assessment can be made under section 34 of the Indian Income-tax Act on the successor of the person who, if no succession had taken place, would have been liable to the tax. Such assessment, if otherwise valid, is not invalidated by the fact that the succession took place after the close of the year in which the income escaped assessment.

When a notice under section 34 of the Act has been served on a person and he has made a return in response thereto, the proceedings can be continued by the issue of notices under sections 22 (4) and 23 (2) of the Act to the successor of such person. Proceedings against the successor need not be started *de novo*.

R. Kesava Ayyangar for assessee.

M. Patanjali Sastri for Commissioner of
Income-tax.

* Original Petition No. 270 of 1932.

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JUDGMENT.

BEASLEY C.J.—Three questions have been referred to us by the Commissioner of Income-tax, Madras.

Question (i) is :

“ When income has escaped assessment can an assessment be made under section 34 on the successor of the person who, if no succession had taken place, would have been liable to the tax ? ”

Question (ii) is :

“ If such assessment is otherwise valid, is it invalidated by the fact that the succession took place after the close of the year in which the income escaped assessment (in this case the year 1929-30)? ”

Question (iii) is :

“ When a notice under section 34 has been served on a person and he has made a return in response thereto, can the proceedings be continued by the issue of notices under sections 22 (4) and 23 (2) to the successor of such person, or should proceedings against the successor be started *de novo*? ”

The facts of the case are that 1928-29 was the year of account and that an original assessment was made on the profits of the business carried on by the petitioner's husband (deceased) on the 18th July 1929. The assessment was upon Rs. 8,418. After this assessment had been made, the Income-tax Officer thought that the assessment was incorrect and that a large part of the income of the assessee, that is to say, the petitioner's now deceased husband, had escaped assessment. He accordingly gave notice to him under section 34 of the Act. This notice was dated 29th October 1930 and was admittedly in time. In response to this notice on 27th November 1930 the then assessee denied that his previous return had been incorrect and he repeated it. On 27th August 1931 he died and in November of the same year, in ignorance of

the fact that he was dead, notices under sections 22 (4) and 23 (2) of the Act were issued but of course could not be served upon him on account of his previous death. The Income-tax Officer, having discovered that he was dead, on the 14th December 1931 issued the same notices upon his widow, the petitioner here, and on the 15th April 1932 he made an assessment upon her as the successor to the business carried on by her husband under section 26 (2) upon Rs. 1,08,592.

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The petitioner raises three points here in support of the contention that this assessment was illegal.

The first point is that section 34 of the Act is inapplicable to a deceased person. The answer to this contention is that the notice was served on the petitioner's husband when he was sufficiently alive to deny that his previous return was false and to repeat that previous return which, in the light of the subsequent assessment, was grossly inaccurate. The premise, therefore, upon which this argument is based does not exist.

The second point raised is that the petitioner was improperly assessed as the successor to her husband under section 26 (2) because she did not succeed to her husband's business until his death on the 27th August 1931, because the Act only applies to a successor during the year of assessment or the previous year. That is not so. The Act provides for an assessment on the date on which the person carrying on business has been succeeded by another person in which case that other person is to be assessed as if he or she had been carrying on the business during the year of account and as if he or she had received the

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whole of the profits of that year of account. In this section the only important times are the date of the assessment and the year of account. In this case the Income-tax Officer in the course of his assessment found at the date of the assessment that the petitioner was carrying on the business of her husband (deceased). He, therefore, rightly found that she was the successor of her husband and strictly in compliance with the provisions of that section he made an assessment upon her as if she had been carrying on the business of her husband in the year of account and had received the profits of that year herself.

The third point raised is that, even if the petitioner is to be regarded as the successor to her husband's business, she could not be assessed under section 26 (2) without a notice having been served upon her under section 22 (2), that is to say, that proceedings against her in respect of income-tax should have been commenced *de novo*. This of course is an argument which, if accepted, would be of considerable benefit to the petitioner because admittedly the notice under section 22 (2) would be out of time and this income would thereby completely escape liability for payment of income-tax. But the section in question does not require such a notice to be given to the person who is assessed under that section. From a perusal of the section it is quite clear, on the face of it, that the Income-tax Officer can proceed to assess the successor as if he were the predecessor if in the course of making his assessment he discovers that another person is the successor to that predecessor. He can then and there assess that person under section 26 (2); and indeed the

section makes it quite clear that proceedings do not have to be commenced *de novo* and that an assessment can then and there be made. Admittedly the notice under section 34 was served upon the petitioner's husband (deceased) while he was alive and in time. The service of that notice upon him at once attracted all the provisions of sections 23 and 26. The proceedings, therefore, under section 23 which related to the assessment went on. The assessment was proceeding under section 23 and in the course of that assessment the discovery to which reference has already been made with regard to the succession was made and quite properly the provisions of section 26, having been attracted by the notice under section 34, were applied. The petitioner was therefore quite properly assessed to income-tax.

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In the result, I would answer question (i) in the affirmative, question (ii) in the negative and question (iii) by saying that proceedings against the successor should not be started *de novo*.

The petitioner is directed to pay the Income-tax Commissioner Rs. 250, costs.

CORNISH J.—I agree.

BARDSWELL J.—I agree.

A.S.V.
