

## INCOME TAX OFFICER 'A' WARD, CALCUTTA

v.

RAMNARAYAN BHOJNAGARWALA

September 26, 1975

[V. R. KRISHNA IYER AND A. C. GUPTA, JJ.]

*Income-tax — Disputed ownership of bank account — Income-tax Officer, if bound to determine the question of ownership before proceeding against respondent.*

*Income-tax Act, Section 148.*

There was a Bank account in which a huge sum was seen as lying in deposit. The assessing authority proceeded on the footing that the amount represented the income of one Madan Lal, in whose name the Bank account stood. He contested his ownership and urged that really this sum belonged to his uncle who is the respondent in this appeal. His contention was over-ruled by the Income-tax Officer, but, in appeal, the Appellate Assistant Commissioner set aside the order and directed that the Income-tax Officer do determine the real ownership of the bank deposit. This order was made in September 1970. The respondent went up in litigation in High Court. He succeeded in the High Court, but there was no investigation into the basic question raised before the High Court by the respondent that the Income-tax Officer had no jurisdiction to start proceedings under Section 148 on the score that he had no 'reasonable belief', which is the *sine qua non* for the initiation of such proceedings.

Allowing the appeal by special leave,

**HELD :** Either the uncle or nephew must pay the tax under normal circumstances and they cannot play off one against another to defeat the claims of the Revenue. In as much as the High Court has disposed of this case on certain assumptions and representations, the foundational fact of reasonable belief has not been decided. Therefore, the judgment of the High Court has to be set aside and remanded to the High Court for a fresh hearing on this the foundational fact. But the Income-tax Officer must determine the ownership of the bank deposits within six months. [1015 E-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 318 of 1971.

Appeal by Special Leave from the Judgment and Order dated the 3rd June, 1969 of the Calcutta High Court in Appeal No. 233 of 1968.

*S. P. Nayar* and *B. B. Ahuja* for the appellants.

*S. T. Desai*, *H. S. Parihar* and *I. N. Shroff* for the respondent.

The Judgment of the Court was delivered by

KRISHNA IYER, J. This is really a case where litigation would have been avoided, had the concerned Income-tax Officer carried out the directions issued by the Appellate Assistant Commissioner, with quick dispatch to determine the ownership of the deposit in the Bank account as between the respondent before us and his nephew Madanlal.

*The Facts*

There was a Bank account in which a huge sum was seen as lying in deposit. The assessing authority proceeded on the footing that

A the amount represented the income of one Madanlal, in whose name  
the Bank account stood. He contested his ownership and urged that  
really this sum belonged to his uncle who is the respondent before us.  
Any way his contention was over-ruled by the Income-tax Officer, but,  
B in appeal, the Appellate Assistant Commissioner set aside the order  
and directed that the Income-tax Officer do determine the real owner-  
ship of the bank deposit. This was done in *September* 1970. It is  
admitted before us that although we are in October 1975, the Income  
Tax Officer has not yet determined the real ownership of the deposit  
as between the uncle and the nephew. There is no valid reason why  
the Income Tax Officer should have delayed so long and indeed admin-  
C istrative officers and tribunals are taking much longer time than is  
necessary, thereby defeating the whole purpose of creating quasi-  
judicial tribunals calculated to produce quick decisions, especially in  
fiscal matter. Five years to dawdle over the decision of a small mat-  
ter directed by an appellate authority amounts to indiscipline subver-  
sive of the rule of law. We hope that the Administration, takes  
serious notice of delays caused by tax officers lethargy, under some  
pretext or other, in speeding up enquiries into incomes and finalizing  
assessments. The mere fact that a Writ Petition was pending in the  
D High Court, especially in the background of no stay having been  
granted, shows that the alibi of a High Court proceeding cannot be  
successfully put forward by the Income-tax Officer for his slow motion  
in settling the question directed by his Appellate Officer. Law must  
move quick not merely in the Courts but also before tribunals and  
officers charged with the duty of expeditious administrative justice. We  
emphasize this because if the Income Tax Officer had fixed the owner-  
E ship of the deposit years ago, maybe the respondent before us might  
not have had to go up in litigation in High Court and the Income  
Tax Department itself would not have had to proceed against him.

We have no doubt that either the uncle or nephew must pay  
the tax under normal circumstances and they cannot play off one  
against the another to defeat the claims of the Revenue. Even so,  
F High Court has disposed of this case in appeal before the Division  
Bench on certain assumptions and representations, for which counsel  
for the Income-tax Department was largely responsible. The result  
is that there has been no investigation into the basic question raised  
before the High Court by the respondent that the Income Tax Officer  
had no jurisdiction to start proceedings under Section 148 on the  
score that he had no 'reasonable belief', which is the *sine qua non*  
G for the initiation of such proceedings. This question remains to be  
decided by the High Court. We, therefore, set aside the judgment  
of the High Court but remand that Appeal to the High Court for  
a fresh hearing on the question as to whether the foundational fact  
of reasonable belief is satisfied in this case or not.

H However, if the Income Tax Officer at least at this late stage  
will bestir himself to adjudicate upon the ownership of the bank  
deposit and if he holds that the nephew Madanlal is the owner of  
such deposit, the Writ Appeal before the High Court may not have  
to be proceeded with—of course, subject to appeals that may be

available to Madanlal. We direct that the Income Tax Officer determine the ownership of the bank deposits within six months from today, and thereafter only the Appeal before the High Court need be considered. We may observe in conclusion that Shri S. T. Desai, counsel for the respondent has fairly assured us that, so far as his client is concerned, all cooperation will be available to enable the Income Tax Officer to determine who the owner of the Bank deposit is. Indeed he is interested in this subject matter and we hope that such evidence as the Income Tax Officer requires from him will be readily forthcoming. With this direction we allow the Appeal and remand the case to the High Court for fresh disposal in the light of our observations. No order as to costs.

V.M.K.

*Appeal allowed.*