

*Privy Council Appeal No. 77 of 1933.*  
*Patna Appeal No. 13 of 1932.*

The Maharajadhiraj of Darbhanga - - - - *Appellant*

*v.*

The Commissioner of Income Tax, Bihar and Orissa - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 19TH JUNE, 1934.

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*Present at the Hearing :*

LORD TOMLIN.

LORD MACMILLAN.

SIR JOHN WALLIS.

[*Delivered by* LORD TOMLIN.]

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This is an appeal from a judgment of the High Court of Judicature at Patna delivered on a question of law referred under section 66 (2) of the Indian Income-tax Act, 1922, by the Commissioner of Income-tax, Bihar and Orissa.

The question referred was answered by the Court adversely to the appellant, the subject, and the appeal to His Majesty in Council followed.

The point arises in this way. The late Maharajadhiraj died on the 3rd July, 1929. At the date of his death the Maharajadhiraj had been served with a notice under section 22 (2) of the Income-tax Act to furnish a return of his income in the prescribed form. At the date of his death the time for furnishing that return had not expired and no return had been made. The return required was for the year, 1st April, 1929, to 31st March, 1930 ; but that return should have been based upon the income of the previous year, that is to say, in this particular case, the income for the year commencing the 1st October, 1927, and ending

30th September, 1928, that being the Fasli year which governed the making up of accounts of the Maharajadhiraj's estate.

Now it seems to be accepted, at any rate for the purpose of this case it must be accepted, that in the ordinary way a deceased person's estate cannot be fixed with tax in respect of a period for which no return has been made and in respect of which there has been no default in making a return, nor can a representative of such person be fixed with tax in respect of the profits of that period received by the deceased person. That position seems to have been accepted; but the Commissioner of Income-tax held that inasmuch as the Maharajadhiraj was carrying on a number of businesses to which his son, the present appellant, succeeded, the present appellant was taxable under section 26 (2) of the Act added by amendment by Act 3 of 1928. This decision of the Commissioner was affirmed by the High Court upon the question referred to them, and is now called in question here by the appellant.

The sub-section in question provides that :—

“Where, at the time of making an assessment under section 23, it is found that the person carrying on any business, profession or vocation has been succeeded in such capacity by another person, the assessment shall be made on such person succeeding, as if he had been carrying on the business, profession or vocation throughout the previous year, and as if he had received the whole of the profits for that year.”

Now the appellant urges that the section is not applicable for two reasons: First of all, he says that although the Commissioner of Income Tax has found as a fact that the business to which the appellant succeeded was being carried on by the appellant, that finding of fact can be gone behind because the Commissioner of Income Tax mis-directed himself in point of law and, therefore, that there was not here a succession “in such capacity”—that is, a succession by a person carrying on the business. The moment you so find, the finding of the Commissioner of Income-tax that the business was being carried on ought, it is maintained, to be displaced.

The way in which it is put is this: The Maharajadhiraj carried on apparently a number of businesses, including that of a mill owner, but his main business appears to have been the business of money-lending. The onus, says the appellant, is on the Crown to show under the sub-section that not only did the appellant succeed to the business, but that he carried it on. It is true that the Commissioner of Income Tax found that he did carry it on, but he mis-directed himself, it is suggested, in point of law. The Commissioner said this:

“The second question of fact upon which I have to find is whether, as contended by the assessee, the business in money-lending was discontinued at the death of the late Maharajadhiraja. At that date loans out at interest amounted to some two crores of rupees. No evidence has been put in to show that any attempt has since been made to call in or realise any parcel of this amount. It is simply represented that no fresh

loans have been given out. But to give out no fresh loans would not amount to closing the business. Moreover, the contention that the business had been closed on the death of the late Maharajadhiraja was not made at the time during the assessment proceedings, which were not completed until the 27th March, 1930, while the decease of the late Marajadhiraja occurred on the 3rd July, 1929, but the contention was first put forward in the appeal petition dated the 28th April, 1930. From this fact it appears to me plain that the contention was an afterthought."

It is suggested that in that language the Commissioner of Income-tax has mis-directed himself in regard to onus by treating the appellant as having to discharge the onus of proving that he discontinued the business, and by treating the non-calling in of outstanding loans as necessarily in law conclusive that the business was being continued. Their Lordships do not think that is a fair inference to be drawn from the language. The Commissioner of Income-tax is weighing the factors which in his opinion are relevant to be considered for the purpose of determining the question whether or not the business was being carried on, and he is not saying that the appellant must show it was discontinued or that the fact of the loans not having been called in is conclusive that the business was being carried on. That being so, it seems to their Lordships that the point of mis-direction fails and that the matter must be considered on the footing that there was a business being carried on by the late Maharajadhiraj, that the appellant succeeded to it and that having succeeded to it he carried it on.

Now the second point that is made is this : Assuming those three things nevertheless, the subsection does not apply because the opening words : "Where, at the time of making an assessment under section 23, it is found that the person carrying on any business, profession or vocation has been succeeded," must apply only to those cases where it was possible under section 23 to assess the predecessor. That seems to their Lordships to put upon the word "assessment" the narrow meaning which was deprecated by their Lordships in the case of *Rajendra Nath Mukerjee v. Commissioner of Income-tax* (61 I.A. 10, at page 15). In that case, in the judgment of the Board delivered by Lord Macmillan, this was said : "That the word 'assessment' is not confined in the statute to the definite act of making an order of assessment appears from section 66, which refers to 'the course of any assessment.'" On that view of "assessment" it seems to their Lordships that where a notice has been given under section 22 (2) to a person to furnish within the time specified a return in the prescribed form the process of assessment has begun and continues until some order of assessment is made. If that be so, the words "at the time of making the assessment" mean in the course of the process of assessment and in as much as in the present case a notice was duly served on the late Maharajadhiraj the process of assessment had begun and it would be impossible to say that the event had not occurred which enabled the tax officer to find, if the facts justified the finding, that the person

on whom this notice had been served had carried on a business and had been succeeded in such capacity by another person.

It was also suggested that inasmuch as you could not tax a deceased person who had not made a return or was not in default in making a return, the sub-section ought to be confined to cases of a succession to somebody who was himself liable to tax and that that would lead to construing the section as applying only to cases of succession *inter vivos*.

Their Lordships are of opinion that approached in either of those ways it is not possible to read the sub-section as the appellant desires and that this case falls within the language of the sub-section. The assessment was thus properly made.

Their Lordships will accordingly humbly advise His Majesty that the appeal be dismissed. The appellant must pay the costs of the appeal.



In the Privy Council.

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THE MAHARAJADHIRAJ OF DARBHANGA

v.

THE COMMISSIONER OF INCOME TAX,  
BIHAR AND ORISSA.

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DELIVERED BY LORD TOMLIN.

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