Chimmonlall Rameshwarlall

Vs

Commissioner of Income-Tax (Central), Calcutta

The order of the Income-tax Appellate Tribunal, Bombay Bench A, dated June 8, 1951, in R. A. Nos. 737 to 740 of 1949-50

(CJI S. R. Dass, N. H. Bhagwati, Syed Jafar Imam, J. L. Kapur, M. Hidayatullah JJ)

01.05.1959

JUDGMENT

BHAGWATI, J. -

These four appeals with special leave granted by this court under article 136 of the Constitution are directed against the orders, dated the 8th June, 1951, of the Income-tax Appellate Tribunal, Bombay A, in Reference Applications Nos. 737, 738, 739 and 740 of 1949-50 and arise under the following circumstances :

The appellants were at all material times a Hindu undivided family of which Rameshwarlal Ganeriwalla is the karta. As a result of certain transactions which need not be detailed her Rameshwarlal Ganeriwalla became the creditors of the Nawab Bahadur of Murshidabad in a large sum of over Rs. 6,38,000 by about 1928-29. Some time in 1933, an Act named the Murshidabad Estate Administration Act, 1933 (XXIII of 1933), was enacted under the provisions whereof the Estate of the Nawab Bahadur was taken over by the authorized manager. The debt due by the Nawab Bahadur to Rameshwarlal Ganeriwalla was admitted by the Board of Revenue in a sum of Rs. 5,42,173 as on 1st April, 1934, and the manager from time to time made payments by way of dividends to the appellants indicating in the covering letters how the payments were to be appropriated. The appellants for the assessment years 1938-39 to 1941-42 submitted income-tax returns in the first of which they did not mention any part of the money which they had received from the manager and in the rest of which they mentioned certain amounts as having been received by them. When the Income-tax Officers discovered that certain money had been received by the appellants from the manager he issued a notice under section 34 of the Income-tax Act in regard to the assessment year 1938-39. When in these Income-tax returns were considered by the Income-tax Officer he came to the conclusion that certain sums had been received by the appellants from the manager by way of interest which were liable to assessment and he accordingly included those sums in the assessment orders which he passed for those several years. These assessment orders were passed by the Income-tax Officer on the respective dates, the 20th March, 1943, 31st March, 1944, 30th November, 1944, and 31st October, 1945. The Appellant preferred appeals against these orders, being Income-tax Appeal Nos. 2/CC. II/43-44, Income-tax Appeals Nos. 8 and 22/CC-II/44-45 and Income-tax Appeal Nos. 13/CC-II/45-46 and the Appellant Assistant Commissioner by his order, dated 13th June, 1947, and 18th July, 1947, disposed of all these four appeals confirming the orders which had been passed by the Income-tax Officer. The appellants carried further appeal against these orders of the Appellant Assistant Commissioner to the Income-tax Appellant Tribunal being Appeals Nos. 1896, 1895, 1897 and 1898 of 1947-48. The Income-tax Appellant Tribunal by its order dated 3rd December, 1949, dismissed Income-tax Appeal No. 1895 of 1947. Income-tax

Appeal No. 1896 of 1947-48 was dismissed on the 7th November, 1949, and the two other appeals, being Income-tax Appeals Nos. 1897 and 1898 of 1947-48, were also dismissed on the 3rd December, 1949.

The appellants thereafter applied to the Income-tax Appellant Tribunal under section 66(1) of the Income-tax Act requiring the said Tribunal to state cases and refer certain questions of law to the High Court at Calcutta, for its opinion. These applications were registered as Reference Applications Nos. 737 to 740 of 1949-50. These applications were dismissed by the Income-tax Appellant Tribunal by its order dated 8th June, 1951.

The appellants thereupon applied to the High Court under section 66(2) of the Income-tax Act praying for for rule upon the respondent to show cause why the Income-tax Appellant Tribunal should not state cases relating to the above four assessment proceedings and refer certain questions of law to the High Court. Rules were issued by the High Court as prayed for. But on the Income-tax References Nos. 90, 91, 92 and 93 of 1951 coming up for hearing before it the High Court by its order dated the 15th June, 1953, discharged the said rules. The appellants thereafter filed four petitions for special leave to appeal against the aforesaid orders of the Income-tax Appellant Tribunal dated 8th June, 1951, in Reference Applications Nos. 737 to 740 of 1949-50 in which leave was granted by this court by its order dated 27th September, 1954. Hence these appeals.

After the appeal paper book had been filed as also the statement of cases by the respective parties to these appeals, the respondent on the even of the hearing, that is, on the 19th February, 1959, made an application before this court for leave to file a supplementary statements of case which application was granted by this court at the hearing. In the said supplementary statement of case it was urged on behalf of the respondent that the appellants, not having filed any appeals either against the orders of the Income-tax Appellate Tribunal under section 33(4) of the Income-tax Act or against the order of the High Court under section 66(2) of the Act refusing the applications of the appellants to require the Tribunal to state the case, could not be allowed to maintain the present appeals. It was submitted that what the appellants sought to do was in effect to call in question the correctness of the decision of the High Court under section 66(2) of the Act by appealing directly to this court against the Tribunal's rejection of their applications under section 66(1) of the Act, without appealing against the High Court's orders under section 66(1) of the Act. It was further submitted that whatever may be the scope of the appeal by special leave directly against an appellate order of the Income-tax Tribunal under section 33(4) of the Act, it was not open to the appellants to canvass the correctness in law or in fact of such order in an appeal against an order under section 66(1) of the Act refusing to state the case, the only matter open for discussion in these appeal as, if any, being whether and, if so, what question of law arose for determination out of the Tribunal's order under section 33(4) of the Act.

These appeals came up for hearing and final disposal before a Division Bench of this court, on the 24th February, 1959. At the very outset the learned Solicitor-General appearing for the respondent raised a preliminary objection to the hearing of the appeals on merits. Mr. A. Vishwanath Sastri, appearing for the appellants, replied to the said preliminary objection and after hearing both the parties, the court made the following order :

> "Let the preliminary objection raised by the learned Solicitor-General to the hearing of the appeals on merits be referred to a larger bench to be constituted by the Hon'ble the Chief Justice. This question is being raised repeatedly."

This is how the appeals have come up for hearing and final disposal today before this Bench.

It is significant to observe that the present appeals have been filed, though with special leave, not against the orders of the Income-tax Appellant Tribunal under section 33(4) of the Act nor against the orders of the High Court under section 66(2) of the Act refusing the statement of the case but only against the orders of the Income-tax Appellant Tribunal dated the 8th June, 1951, in Reference Applications Nos. 737 to 740 of 1949-50, that is against the orders of the Tribunal refusing to state a case on applications made to it under section 66(1) of the Act, it is extremely doubtful if an appeal would be entertain against such an order under section 66(1) of the Act even under the jurisdiction which we exercise under article 136 of the Constitution howsoever wide it may be. We do not, however, want to base our decision here only on this aspect of the question. In the present case the circumstance of very great materiality and significance which stares the appellants in the face is that in regard to this very point there is a considered judgment of the High Court delivered by it on the applications made by the appellants to it under section 66(2) of the Act which came to the conclusion that no question of law arose out of the order of the Tribunal, which judgment stands, not having been appealed against in any manner whatever by the appellants. The result of our going into these appeals before us on the merits would be either differ from it. If we did the former the appellants would be out of court, if, however, perchance we came to the contrary conclusion and accepted the latter view, namely, that the High Court and the other by us and we would be in effect, though not be the proper procedure to be adopted by the appellants in that behalf, setting aside the judgment of the High Court. This is an eventuality which we cannot view with equanimity. It is contrary to all notions of comity of courts and even though we are a court which could in certain events set aside and overrule the decisions of the High Court concerned, we cannot by-pass the normal procedure which is to be adopted for this purpose and achieve the result indirectly in the manner suggested by the appellants. We, therefore, think that in the circumstances her it would be inappropriate on our part to enter upon an adjudication of these appeals on merits. We would, therefore, dismiss these appeals without anything more.

In the peculiar circumstances of this case, however, and particularly having regard to the facts that the appeal paper books and statements of case had already been filed and both the parties had come prepared for hearing on the merits of the appeals before this court, before this preliminary objection was urged on behalf of the respondent, we feel that the interests of justice will be served if we make an order that each party do bear his own costs of these appeals and we order accordingly.

Appeals dismissed.

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