Chandi Prasad Chokhani

Vs

State of Bihar

Civil Appeals Nos. 170 to 172 of 1959

(T. L. Venkatarama Ayyar, S. K. Das, J. L. Kapur, M. Hidayatullah, J. C. Shah JJ)

24.04.1961

JUDGMENT

S. K. DAS J. –

These three appeals with special leave granted under article 136 of the Constitution have been heard together and this judgment will govern them all. They raise a common question as to the practice of this court, which we shall presently state. But before we do so we must first set out the facts in so far as it is necessary to state then in order to appreciate the precise nature of the question that has arisen for consideration in these appeals.

The relevant facts are these. The firm of Messrs. Durga Dutt Chandi Prasad, appellant in these appeals, carried on a business of dealing in several kinds of goods but mostly in raw jute at Sahebganj in Bihar. It was registered as a dealer under section 4 of the Bihar Sales Tax Act, 1944, with effect from July 1, 1946. For three periods, commencing from October 1, 1947, and ending on March 31,1950, it was assessed to sales tax on its turnover of the relevant periods, which consisted inter alia of purchases alleged to have been made on behalf of two other juted mills outside Bihar, namely, the Raigarh Jute Mills and the Bengal Jute Mills, and also of dispatches of jute said to have been made to the dealer's own firm in Calcutta for sale in Calcutta. For the assessment period commencing on October 1, 1947, and ending on March 31, 1948, the appellant claimed a deduction of (a) Rs. 6,58,880- 5-9 on the ground that the said amount represented purchases made on behalf of the aforesaid two jute mills, and (b) Rs. 1,6

On June 7, 1951, the Sales Tax Officer concerned disallowed the claim of the appellant for the first two periods and by an order dated April 17, 1953, the claim for the third period was also disallowed. The appellant then preferred appeals under the relevant provisions of the Act. These appeals were heard by the Deputy Commissioner of Commercial Taxes Bihar, and were dismissed by him. Then the appellant filed applications in revision under section 24 of the Act to the Board of Revenue, Bihar. The Board by its orders dated August 20, 1953, and September 3, 1953, dismissed the petitions of revision relating to the first two periods and by its orders dated April 30, 1954, also dismissed the petition of revision relating to the third period. Under 25(1) of the Act the appellant moved the Board to state a case to the High Court of Patna on certain questions of law which according to the appellant, arose out of the orders passed. The Board however refused to state a case inasmuch as in its opinion no questions of

By an order dated November 17, 1954, the High Court dismissed two applications made to it for requiring the Board to state a case to the High Court with regard to the said two periods. On a similar application made by the appellant to the High Court with regard to the third period of

assessment the High Court directed the Board of Revenue to state a case on the following question :

> "Whether the petitioner is entitled to claim a deduction on account of sale of mustard seed to the extent of Rs. 1,00,513-11- 9 to Messrs. Panna Lal Binjraj as sales made to a registered dealer under the Schedule to Bihar Finance Act (2 of 1949) read with the Bihar Sales Tax Act (XIX of 1947)."

By an order dated January 21, 1957, the High Court answered the question against the appellant. The finding of the High Court was thus expressed :

> "We are satisfied that the petitioner was not entitled to deduction of the amount of the price of mustard seed sold to Messrs. Panna Lal Binjraj for the purpose of manufacture because there is no mention in the certificate of registration granted to Messrs. Panna Lal Binjraj that mustard seed could be sold to them for the purpose of manufacture free of tax. As the conditions imposed by the proviso to section 5 have not been satisfied in this case, the sales tax authorities rightly decided that deduction of the price of mustard seed sold to Messrs. Panna Lal Binjraj cannot be granted to the petitioner."

On February 17, 1955, the appellant made an application to this court for special leave to appeal from the orders of the Board of Revenue passed on the two applications in revision as respects the first two periods. This court granted the leave prayed for by an order dated December 23, 1955. It should be emphasised here that the appellant prayed for and got leave to appeal from the orders of the Board dated August 20, 1953, and September 3, 1953, passed on the two applications in revision. No application was made for leave to appeal nor was any leave granted with regard to the subsequent orders made by the Board refusing to state a case or the orders of the High Court refusing the application of the appellant to direct the Board to state a case. With regard to the third period of assessment regarding which the High Court had directed the Board to state a case on a particular question of law for special leave to appeal on April 12, 1955, and this court granted leave to the appellant by an order dated December

On the facts stated above the question which has arisen is whether as a matter of practice of this court the appellant is entitled to be heard on merits in the three appeals when special leave was neither asked for nor granted in respect of the subsequent orders of the High Court relating to the assessments in question which have now become final between the parties thereto. In other words, the question is - whether the High Court should be allowed to be by-passed in the manner sought to be done by the appeallant in these three appeals ? The position is quite clear. With regard to two of the assessment orders the High Court held that no questions of law arose at all; with regard to the third assessment order the High Court held that only one question of law arose and it answered that question against the appellant. Can the appellant now ignore these orders of the High Court and ask us to consider on merits the orders of the Board of Revenue passed on the two revision applications for the first two periods an

It is necessary at this stage to dispose of an initial point taken on behalf of the appellant before we go to a consideration of the main question. The point is this. On behalf of the appellant it has been submitted that leave having been granted by this court the preliminary objection taken to the hearing of the appeals should not be entertained now and the appeals should be heard on merits. We are unable to accept this as correct. In these cases leave was granted without hearing the respondents and full materials in the record were not available nor placed before the court when leave was

granted. In Baldota Brothers v. Libra Mining Works this court has pointed out that there is no distinction in the scope of the exercise of the power under article 136 at the stage of application for special leave and at the stage when the appeal is finally disposed of and it is open to the court to question the propriety of the leave granted even at the time of the hearing of the appeal. This view is in accord with some of

We proceed now to a consideration of the main question. As a preface to that discussion it is advisable to refer here some of the provisions of the Act in order to bring out clearly the scheme and object of the Act. The charging section is section 4 which says in effect that every dealer whose gross turnover exceeds a particular amount in a year shall be liable to pay tax under the Act on sales taking place in Bihar. Section 5 lays down the rate of tax. The assessment section is section 13 which states the various circumstances in which the assessing authority may make the assessment. Section 24 of the Act provides for an appeal revision or review of the assessment. Then comes section 25, the scheme of which is analogous to that of section 66 of the Indian Income-tax Act, 1922. Under sub-section (1) of section 25, the dealer or Commissioner who is aggrieved by an order made by the Board under sub-section (4) of section 24 may by application in writing require the Board to refer to the High Court any question

> "136. (1) Notwithstanding anything in this Chapter the Supreme Court may in its discretion grant special leave to appeal from any judgment decree determination sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India."

The words of the article are very general and it stated in express terms that this court may in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. The question before us is not whether we have the power; undoubtedly we have the power but the question is whether in the circumstances under present consideration it is a proper exercise of discretion to allow the appeallant to have resort to the power of this court under article 136. That question must be decided on the facts of of each case, having regard to the practice of this court and the limitations which this court itself has laid down with regard to the exercise of its discretion under article 136.

What are these limitations ? In Pritam Singh v. The State this court indicated the nature of these limitations in the following observations :

> "On a careful examination of article 136 along with the preceding article it seems clear that the wide discretionary power with which this court is invested under it is to be exercised sparingly and in exceptional cases only and as far as possible a more or less uniform standard should be adopted in granting special leave in the wide range of matters which can come up before it under this article. By virtue of this article we can grant special leave in civil cases in criminal cases, in income-tax cases in cases which come up before different kinds of tribunals and in a variety of other cases. The only uniform standard which in our opinion can be laid down in the circumstances is that the court should grant special leave to appeal only in those cases where special circumstances are shown to exist.... Generally speaking this court will not grant special leave unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and that the case in question pres

Pritam Singh's case was a case of criminal appeal but the same view was reiterated in Dhakeswari

Cotton Mills Ltd. v. Commissioner of Income-tax, which was an income-tax case. It was there observed :

> "The limitations whatever they be, are implicit in the nature and a character of the power itself. It being an exceptional and overriding power naturally it has to be exercised sparingly and with caution and only in special and extraordinary situations. Beyond that it is not possible to fetter the exercise of this power by any set formula or rule."

We shall deal with this decision in grater detail a little later when considering the question of the practice of this court. It is enough to state here that this court has uniformly held that there must be exceptional and special circumstances to justify the exercise of the discretion under article 136.

Are there any such circumstances in the appeals before us ? The answer must clearly be in the negative. Under the scheme of the Act which we had adverted to earlier it is not open to the appellant to contest now the findings of fact arrived at by the assessing authorities. As to questions of law the appellant had gone up to the High Court which held that in respect of two of the assessment orders no questions of law arose and in respect of the third assessment order only one question of law arose and this question the High Court answered against the appellant. As we have pointed out earlier the decision of the High Court in respect of all the three assessment orders was no doubt subject to an appeal to this court if this court gave special leave under article 136. The appellant did not however move this court for special leave in respect of any of the orders passed by the High Court; those orders have now become final and binding on the parties thereto. What the appellant is seeking to do now is to bypass th

The practice of this court is also against the appellant. The earliest decision on this point is that of Dhakeswari Cotton Mills Ltd., and learned counsel for the appellant has relied on it in support of his argument that this court had in some previous case interfered with an order of the Tribunal in exercise of its power under article 136 even though the assessee had not moved against the order of the High Court. In Dhakeswari's case what happened was this. The assessee having exhausted all his remedies under the Income-tax Act, 1922 including that under section 66(2) for the issue of a mandamus to the Tribunal made an application to this court for special leave to appeal against the order of the Tribunal; this court granted special leave and in the appeal filed in pursuance thereof quashed the order of the Tribunal. But the decision in Dhakeswari case, must be read in the light of the special circumstances which existed there. It was found by this court that the Tribunal had violated certain fundamental r

In Moti Ram v. Commissioner of Income-tax the appellant did not make any application under section 66(2) of the Income-tax Act, 1922, but obtained special leave of this court in respect of the order of the Tribunal in the special circumstance that his properly was attached and proceeded against for the recovery of the tax. The question of the propriety of the grant of special leave was not considered but the appeal was dismissed on merits.

The decision in Jogta Coal Co. Ltd. v. Commissioner of Income-tax, which is a decision on its own facts, had been open to much debate. The question which fell for consideration there related to depreciation under section 10(2)(vi) of the Indian Income-tax Act, 1922, namely the amount on which the appellant was entitled to calculate deduction allowance for purposes of depreciation. The Income-tax Officer made an estimate which was accepted by the Appellate Assistant Commissioner. The matter was taken to the Appellate Tribunal which made its own estimate. An application under

section 66(1) was rejected and an attempt to move the High Court under section 66(2) also proved unsuccessful. Then this court was moved for special leave to appeal from the orders of the Tribunal and the appeals were brought with special leave granted by this court. This court remitted the case to the Tribunal and directed the latter to refer two questions of law to the High Court under section 66(2). It is a little difficult to see how

In Omar Salay Mohammed Sait v. Commissioner of Income-tax the Tribunal based its findings on suspicions, conjectures or surmised and the principle laid down in Dhakeswaris case was followed. The decision in Sardar Baldev Singh v. Commissioner of Income-tax was also a decision special to its own facts. There the application to the Tribunal was barred by time - in circumstances which were beyond the control of the appellant. The Tribunal dismissed the application for a reference on the ground of limitation and the High Court had no power to extend the time. In these circumstances the appellant asked for special leave and condonation of delay. Special leave was granted by condoning the delay.

More in point is the decision in Govindarajulu Mudaliar v. Commissioner of income-tax, which was concerned with appeals from the decision of the Tribunal by special leave after an application under section 66(2) had been dismissed by the High Court. This court then observed :

> "We must mention that against the order of the Tribunal the appellant applied for reference to the High Court under section 66(2) of the Indian Income-tax Act, and the learned judges of the High Court dismissed that application. No appeal has been preferred against that at all. The present appeal is against the decision of the Tribunal itself. It is no doubt true that this court has decided in Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax that an appeal lies under article 136 of the Constitution of India to this court against a decision of the Appellate Tribunal under the Indian Income-tax Act. But seeing that in this case the appellant had moved the High Court and a decision has been pronounced adverse to his and this had become final obviously it would not be open to his to question the correctness of the decision of the Tribunal on grounds which might have been taken in an appeal against the judgment of the High Court."

In Chimmonlall Rameshwarlall v. Commissioner of Income-tax the facts were these. Four appeals were filed with special leave granted by this court under article 136 which were directed against the orders of the Appellate Tribunal refusing to state a case on an application made to it under section 66(1). No appeals were filed against the orders of the Appellate Tribunal under section 33(4), nor against the orders of the High Court under section 66(2) - a position which is similar to the one in the appeal before us relating to the assessment for the third period. In these circumstances this court observed :

> "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 out going into these appeals before us on the merits would be either to confirm the judgment which has been pronounced by the High Court was wrong in not granting the applications of the appellants under section 66(2) of the Act there would be two

> contrary appellants under section 66(2) of the Act there would be two contrary decisions one by the High Court and the other by us and we would be in effect though not by the proper procedure to the adopted by the appellants in that behalf setting aside the judgment of

We think that these observations apply with equal force, here.

A careful examination of the previous decisions of this court shows that whenever the question was considered this court said that save in exceptional and special circumstances such as were found in Dhakeswari's case or Baldev Singh's case it would not exercise its power under article 136 in such a way as to bypass the High Court and ignore the latter decision a decision which has become final and banning on the parties thereto, by entertaining appeals directly from the orders of a Tribunal. Such exercise of power would be particularly inadvisable in a case where the result may be conflict of decisions of two courts of competent jurisdiction a conflict which is not contemplated by section 23, 24 and 25 of the Act. On the contrary the object of these sections is to avoid a conflict by making the decision of the assessing authorities final on questions of fact subject to appeal revision or review as provided for by section 24 and the decision of the High Court subject an appeal to this court final on questions

It remains now to consider one last argument urged on behalf of the appellant. Learned counsel for the appellant has drawn out attention to article 133, of the Constitution and has pointed out that when the High Court refuses a certificate under article 133 it is open to this court to grant special leave to appeal (and this court has often granted such special leave) from the main decision of the High Court irrespective of the orders of the High Court refusing such a certificate. It is argued that the same analogy should apply and in spite of the orders of the High Court under section 25 of the Act, this court may and should grant special leave to appeal from the orders of the Tribunal. We do not think that the analogy is apposite. Firstly, in dealing with an application under article 133 the High court merely considers whether a certificate of fitness should be given in respect of its own decision; in such a case it does not itself decide any question of law such as is contemplated by section 25 of the Act.

In these appeals we have reached the conclusion, for reasons already stated, that the appellant is not entitled to ask us to exercise out power under article 136. There are no special circumstances justifying the exercise of such power on the contrary the circumstances are such that it would be wrong both on principle and authority to allow the appellant to bypass the High Court by ignoring its orders. In our view special leave was not properly given in these cases and we would accordingly dismiss the appeals with costs, without going into merits there will be one hearing fee.

Appeals dismissed.

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