

Commissioner of Income-Tax Bombay North

Vs

Lakhiram Ramdas

Civil Appeals Nos. 567 and 568 Of 1960

(S. K. Das, M. Hidayatullah, J. C. Shah JJ)

17.01.1962

JUDGMENT

S. K. DAS J. –

These are two appeals by special leave of this court. One appeal is from the judgment and order of the Income-tax Appellate Tribunal, Bombay Bench "C" (hereinafter referred to as the Tribunal) dated November 7, 1955, by which the Tribunal held that section 34 (1) (a) of the Indian Income-tax Act, 1922, was not applicable in the case, as there was no omission or failure on the part of the assessee to make a return of his income under section 22 for the assessment year 1945-46, or to disclose fully and truly all the material facts necessary for his assessment for that year. The second appeal is from the order of the High Court of Bombay dated December 14, 1956, by which the said High Court rejected an application made by the present appellant under section 66 (2) of the Income-tax Act. By that order the High Court refused to ask the Tribunal to state a case for its consideration of a question of law which the appellant said arose from the order of the Tribunal dated November 7, 1955.

A preliminary objection as to limitation was raised before us on behalf of the respondent with regard to the appeal from the order of the Tribunal. It is not necessary to deal with that preliminary objection, because learned advocate for the appellant has conceded that the appeal direct from the order of the Tribunal must be dismissed in view of the decision of this court in Chandi Prasad Chokhani v. State of Bihar, which laid down that save in exceptional and special circumstances, this court would not exercise its power under article 136 of the Constitution in such a way as to by-pass the High Court by entertaining an appeal direct from the order of the Tribunal and thereby ignore the decision given by the High Court. Therefore, the appeal from the order of the Tribunal dated November 7, 1955, must be dismissed.

Now, we proceed to consider the appeal from the order of the Bombay High Court dated December 14, 1956. The short facts are these. The present respondent, who was the assessee in the case, carried on a cloth business at Ahmedabad. Later he opened branches at Karachi and Bombay. He was assessee to income-tax in the status of a Hindu undivided family. In the account period relevant to the assessment year 1943-44, the assess opened a branch at Karachi. The total income for the assessment year was determined at Rs. 38,400. For the assessment years 1944-45 and 1945-46 the assessee maintained joint accounts for the whole period of two years. In the assessment year 1945-46 he opened a branch office at Bombay. In original assessment for the aforesaid two years was completed under the provisions of section 23 (3) of the Income-tax Act on September 13, 1946. In the assessment for the year 1945-46 (Samvat year 2000) the assessee's income was derived from his cloth business carried on at Ahmedabad, Karachi and Bombay an

"Whether on the facts and in the circumstances of the case, and having particular regard to the fact that the return and the statements accompanying the return furnished by the assessee during the course of the assessment proceedings for 1945-46 did not indicate such a large transaction as Rs. 1,10,000 by a single bank draft, the Income-tax Officer was right in starting proceedings under section 34 (1) (a) on the receipt of the information about the above transaction, to make a reassessment for 1945-46 ?"

The Tribunal rejected the application under section 66 (1) on two grounds : firstly, that the question which the appellant said arose out of the Tribunal's order was a question of fact and not a question of law; and secondly, that the question suggested by the appellant was misconceived, because the question before the Tribunal at the time of the hearing of the appeal was not whether the assessee had failed to disclose the transaction of Rs. 1,10,000 in his return and the statements accompanying it, but whether there was any omission or failure on the part of the assess to disclose fully and truly all material facts necessary for his assessment for the year in question. The appellant then moved the High Court of Bombay under section 66 (2) of the Income-tax Act. That application, as we have stated already, was summarily dismissed by the High Court by its order dated December 14, 1956.

The learned advocate for the appellant has contended before us that the finding of the Tribunal that there was no omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment was based on surmises and conjectures and there were no materials on which the Tribunal could come to such a conclusion; therefore, it has been argued that a question of law arose out of the Tribunal's order and the High Court was wrong in summarily rejecting the petition made by the appellant under section 66 (2) of the Income-tax Act. We are unable to accept this argument as correct. First of all, it must be pointed out that the question which the appellant suggested should be referred to the High Court in his petitions under section 66 (1) and section 66 (2) of the Income-tax Act is different from the question which is now raised by the learned advocate for the appellant. The question now raised for the first time before us by the learned advocate for the appellant is tha

In the result we hold that no question of law arose in this case and the High Court of Bombay rightly rejected the petition under section 66 (2) of the Income-tax Act. Both the appeals, therefore, fail and are dismissed. In the circumstances of the case there will be no order as to costs.

Appeals dismissed.

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