The Commissioner of Income-Tax

Vs

Shapoorji Pallonji Mistry

Civil Appeal No. 420 of 1961

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

14.02.1962

JUDGMENT

HIDAYATULLAH, J :-

The assessee, who is the respondent here, had received on July 20, 1946 a sum of Rs. 40,000/-. In the proceedings for a assessment for the assessment year, 1946-47, this came to the notice of the Income-tax Officer. Since the receipt fell within the accounting year relative to the assessment year, 1947-48, the Income-tax Officer did not assess the amount making a note, "The question will however be considered again at the time of 1947-48 assessment". In the return filed for the assessment year, 1947-48, this amount was not shown by the assessee. The Income-tax Officer also overlooked the note at the end of his order in the back year's assessment, with the result that this item was omitted. The assessee appealed to Appellate Assistant Commissioner against his assessment for the year, 1947-48. While the appeal was pending, the Income-tax Officer wrote a letter to the Appellate Assistant Commissioner intimating him that he would like to be present, and also requesting him to assess the amount of Rs. 40,000/-. The Appellate Assistant Commissioner, after issuing notice, assessed the amount and included it in the original assessment. The contention of the assessee was that the amount of Rs. 40,000/- represented a receipt of a capital nature, while it was held to be a receipt on the revenue account. With this controversy, we are not concerned. The Tribunal agreed with the Appellate Assistant Commissioner, but on the application of the assessee, referred two questions to the High Court under s. 66(1). These question were :

> "(1) Whether on the facts and in the circumstances of the case, the Appellate Assistant Commissioner was competent to enhance the assessment of the Appellant for the assessment year 1947-48 by a sum of Rs. 40,000/- ?
>
> (2) Whether on the facts and circumstances of the case the said sum of Rs. 40,000/- is a revenue receipt and assessable to tax in the assessment year 1947-48 ?"

The High Court answered the first question against the Department, and declined to answer the second, in a much as it become academic. This appeal has been filed with special leave, against the judgment of the High Court of Bombay.

The question which arises in this appeal may be formulated thus : whether in an appeal filed by assessee, the Appellate Assistance Commissioner can find a new source of income not considered by the Income-tax Officer and assess it under his powers granted by s. 31 of the Income-tax Act ? Section 31 reads as follows :

> "31. (1) The Appellate Assistant Commissioner shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing.
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> (2) The Appellate Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.
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> (3) in disposing of an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment, -
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> (a) confirm, reduce, enhance or annul the assessment,
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> (b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Appellate Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine where necessary the amount of tax payable on the basis of such fresh assessment...."

There is no doubt that the Appellate Assistant Commissioner can "enhance the assessment". It is admitted also by the assessee that within the four corners of the sources processed by the Income-tax Officer, the Appellate Assistant Commissioner can enhance the assessment. This power must, at least, fall within the words "enhance the assessment", if they are not to be rendered wholly nugatory. The controversy in this case is about his discovering new sources, not mentioned in the return and not considered by the Income-tax Officer. The High Court held, following its earlier view in Narrondas Manordass v. Commissioner of Income-tax ((1957) 31 I.T.R. 909.), that the Appellate Assistant Commissioner has revisional powers, but that they are confined to what was before the Income-tax Officer and considered by the latter. The correctness of this view is challenged in this appeal by the Commissioner of Income-tax, Bombay.

The earliest case, which considered the meaning of s. 31(3), was Jagarnath Therani v. Commissioner of Income-tax ((1925) I.I.R. 4 Pat. 385.) decided by the Patna High Court. In that case, the assessee had three businesses at Purnea, Jalpaiguri and Calcutta. His income from Purnea only was assessed by the Income-tax Officer. On appeal by the assessee, the Appellate Assistant Commissioner assessed him with regard to the income from the other two businesses. The head of income was the same with s. 6 of the Income-tax Act, but the sources of income were different. The Patna High Court observed :

> "Now this section relating to appeals is enacted for the benefit of the subject and also to the limited extent therein stated, for the benefit of the Crown. But the subject-matter of the appeal is the assessment and the scope of the appeal must in my opinion be limited by the "subject-matter". The appellate authority has no power to travel beyond the subject-matter of the assessment and, for all the reasons advanced by the appellant, is in my opinion not entitled to assess new sources of income."

The view of the Patna High Court receives support from a decision of the Madras High Court in Gajalakshmi Ginninq Factory v. Commissioner of Income-tax ((1942) 22 I.T.R. 502, 510.) where the Divisional Bench observed as follows :

> "Of course, it would not be open to the Appellate Assistant Commissioner to introduce into the assessment new sources, as his power of enhancement should be restricted only to the income which was the subject-matter of consideration for purposes of assessment by the Income-tax Officer."

In Bishwanath Prasad Bhagwat Prasad v. Commissioner of Income-tax ((1957) 31 I.T.R. 909), the Appellate Assistant Commissioner had actually remanded the case, but while considering the powers of the Appellate Assistant Commissioner, the Divisional Bench appears to have approved of the above-quoted passage from Madras case. The observations in that case may be treated as obiter. In Narrondas Manordass v. Commissioner of Income-tax ((1925) I.L.R. 4 Pat. 335.) is to be found the earlier case of the Bombay High Court which was followed in the judgment under appeal. In that case, the assessee was carrying on business in Bombay and also in Rajkot. The profits from the Rajkot business were assessed by the Income-tax Officer at Rs. 1,17,643/-. The Income-tax Officer also found remittances to the extent of Rs. 4 lakhs from Rajkot to Bombay, but did not include that amount in the assessment in view of the concession allowed by the Part B States Taxation Concession Order. The assessee appealed with respect to the sum of Rs. 1,17,643/-, contending that the Rajkot business had no profits but only loss. The Appellate Assistant Commissioner accepted this contention, but set aside the assessment and remanded the case to the Income-tax Officer for reassessment with a view of assessing the sum of Rs. 4 lakhs. In dealing with the case, the High Court held that the powers of remand were extremely wide, but it quoted with approval the decision of the Patna High Court in Jagarnath Therani v. Commissioner of Income-tax ((1952) 22 I.T.R. 502, 510.) and also the above observation of the Madras High Court. The learned Chief Justice on the occasion added that there was a distinction between the subject-matter of the appeal and the subject-matter of the assessment, and that the Appellant Assistant Commissioner's powers under s. 31 were not confined to the subject-matter of the appeal but extended to the subject-matter of the assessment. Those powers included a power of remand to include in the assessment something which ought to have been so included by the Income-tax Officer, and a remand in that case was, therefore, proper.

The matter also came before this Court in The Commissioner of Income-tax v. M/s. McMillan & Co. ((1958) S.C.R. 689, 701.); but the question, with which we are concerned, was left open. There is, however, a passage in the judgment, approving of the observations of Chagla, C.J., in Narrondas Manordass v. Commissioner of Income-tax ((1925) I.L.R. 4 Pat. 385.) to the following effect :

> "It is clear that the Appellate Assistant Commissioner has been constituted a revising authority against the decisions of the Income-tax Officer; a revising authority not in the narrow sense of revising what is the subject-matter of the appeal, not in the sense of revising those matters about which the assessee makes a grievance, but a revising authority in the sense that once the appeal is before him he can revise not only the ultimate computation arrived at by the Income-tax Officer but he can revise every process which led to the ultimate computation or assessment. In other words, what he can revise is not merely the ultimate amount which is liable to tax, but he is entitled to revise the various decisions given by the Income-tax Officer in the course of the assessment and also the various incomes or deductions which came in for consideration of the Income-tax Officer."

The learned Chief Justice in the judgment under appeal considers that this Court has thus given approval to his view and also the view of the Patna High Court in the earlier case.

In our opinion, this Court must be held not to have expressed its final opinion on the point arising

here, in view of what was stated at pp. 709 and 710 of the Report. This Court, however, gave approval to the opinion of the learned Chief Justice of the Bombay High Court that s. 31 of the Income-tax Act confers not only appellate powers upon the Appellate Assistant Commissioner in so far as he is moved by an assessee but also a revisional jurisdiction to revise the assessment with power to enhance the assessment. So much, of course, follows from the language of the section itself. The only question is whether in enhancing the assessment for any year he can travel outside the record, that is to say, the return made by the assessee and the assessment order passed by the Income-tax Officer with a view of finding out new sources of income, not disclosed in either. It is contended by the Commissioner of Income-tax that the word "assessment" here means the ultimate amount which an assessee must pay, regard being had to the charging section and his total income. In this view, it is said that the words "enhance the assessment" are not confined to the assessment reached through a particular process but the amount which ought to have been computed if the true total income had been found. There is no doubt that this view is also possible. On the other hand, it must not be overlooked that there are other provisions like s. 34 and 33B which enable escaped income from new sources to be brought to tax after following a special procedure. The assessee contends that the powers of the Appellate Assistant Commissioner extend to matters considered by the Income-tax Officer, and if a new source is to considered, then the power of remand should be exercised. By the exercise of the power to assess fresh sources of income, the assessee is deprived of a finding by two tribunals and one right of appeal.

The question is whether we should accept the interpretation suggested by the Commissioner in preference to the one, which has held the field for nearly 37 years. In view of the provisions of ss. 34 and 33B by which escaped income can be brought to tax, there is reason to think that the view expressed uniformly about the limits of the powers of the Appellate Assistant Commissioner to enhance the assessment has been accepted by the legislature as the true exposition of the words of the section. If it were not, one would expect that the legislature would have amended s. 31 and specified the other intention in express words. The Income-tax Act was amended several times in the last 37 years, but no amendment of s. 31(3) was undertaken to nullify the rulings, to which we have referred. In view of this, we do not think that we should interpret s. 31 differently from what has been accepted in India as its true import, particularly as that view is also reasonably possible.

The appeal is, therefore, dismissed; but in the circumstances of the case we, make no order about costs.

Appeal dismissed.

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