

Soorajmull Nagarmull

Vs

Commissioner of Income-Tax (Central), Calcutta

I.T.A. Nos. 7225 and 7341 of 1954-55

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

19.02.1962

JUDGMENT

SHAH J. –

The assessee and the Commissioner have preferred appeals against the order of the Tribunal passed under section 33(4) of the Indian Income-tax Act, after their applications to the High Court of Calcutta for orders requiring the Tribunal to state a case under section 66(2) were dismissed.

Counsel for the assessee contends that even if his appeal against the order of the High Court under section 66(2) fails on the merits, this court has power to consider their appeal against the order of the Tribunal. This court in *Chandi Prasad Chokhani v. State of Bihar*, in dealing with cases where against the order passed by a tax Tribunal, without appealing against the order of the High Court refusing to call for the statement of the case set out the practice as follows :

"(a) Where the aggrieved party approaches the High Court under a taxing statute for an order calling for a statement of the case and the High Court rejects the application, this court in exercise of its powers under article 136 will not ordinarily allow the order of the High Court to be by-passed by entertaining an appeal directly against the order of the Tribunal. Such exercise of power would be particularly inadvisable where the result may be conflict of decisions of two courts of competent jurisdiction. The scheme of the taxing statutes is to avoid such a conflict by making the decision of the taxing authorities on questions of fact final subject to appeal, revision or review as provided by the statutes and the decision of the High Court subject to appeal to this court final on questions of law.

(b) This rule does not bar the court from granting special leave where circumstances are exceptional, such as, in *Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax*, where the Tribunal has violated fundamental rules of justice or as in *Baldev Singh's case*, where on account of special circumstances over which the aggrieved party has no control the High Court was unable to consider the application for calling for a statement of the case on the merits, and the right of the party to approach the High Court was thereby lost."

Counsel for the assessee contended that in *Chokhani*; case no appeal at all was filed by the assessee against the order of the High Court and the principle of that case is inapplicable in a case where the aggrieved party has appealed against the order of the High Court as well as against the order of the Tribunal. It is true that in the case before us appeals have been filed against the order of the Tribunal

deciding the appeal under section 33(4) of the Indian Income-tax Act as well as the order of the High Court under section 66(2) refusing to require the Tribunal to state a case; but we fail to see any distinction in principle between a case in which in appealing against the order of the Tribunal no appeal is filed against the order of the High Court, and a case in which an appeal is filed against the order of the Tribunal as well as against the order of the High Court and the latter appeal is dismissed because it has no merit.

Counsel has not invited our attention to any special or exceptional circumstances in this case. We have heard elaborate arguments on behalf of the assesses and the Commissioner on their respective contentions and for reasons already set out are of opinion that no case is made out for calling for a statement of the case from the Tribunal. If we proceed to hear the appeal against the order of the Tribunal after upholding the order of the High Court that no question of law arose out of the order of the Tribunal, it would be a departure from the well settled rule that was ordinarily do not in exercise of our jurisdiction under article 136, enter upon a reappraisal of the evidence on which the order of the court or Tribunal is founded. The legislature has expressly entrusted the power of appraisal of evidence to the taxing authorities, and the decision of those authorities would ordinarily be regarded as final. This is not to say that in a proper case this court may not, in the interest of justice when occasion d

On this ground the Appeals Nos. 238 and 239 of 1961 filed by the assesseees and the Commissioner against the order of the Tribunal must fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

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