The Keshav Mills Co. Ltd.

Vs

Commissioner of Income-Tax, Bombay North

Civil Appeal No. 1017 of 1963

(CJI P. B. Gajendragadkar, M. Hidyatullah, J. C. Shah, S. M. Sikri, R. S. Bachawat, K. N. Wanchoo, K. Subha Rao JJ)

08.02.1965

JUDGMENT

GAJENDRAGADKAR, C.J. -

When this appeal was argued before a Division Bench of this Court on October 23, 1964, it was urged on behalf of the appellant, the Keshav Mills Co. Ltd., that in view of the present decisions of this Court in The New Jehangir Vakil Mills Ltd. v. Commissioner of Income-tax, Bombay North, Kutch and Saurashtra ([1960] 1 S.C.R. 249.), and Petlad Turkey Red Dye Works Co. Ltd., Petlad v. The Commissioner of Income-tax, the Bombay, Ahmedabad ([1963] Supp. 1 S.C.R. 871.) appeal must be allowed and the case sent back to the Bombay High Court for disposal in accordance with the principles laid down in the latter decision. At that stage, the learned Attorney-General for the respondent, the Commissioner of Income-tax, Bombay North, Ahmedabad, urged that he wanted this Court to reconsider the said two decisions. He fairly conceded that if the said two decisions were to be followed, the appeal would have to be allowed and sent back as suggested by the appellant. The learned Judges constituting the Division Bench took the view that an opportunity should be given to the learned Attorney-General to press his contention, and so, they directed that the appeal be placed before a Bench of five Judges. Thereafter, this appeal came on for hearing before the Constitution Bench on November 5, 1964. On this occasion again, the same contentions were raised on behalf of the appellant and the respondent respectively. Mr. Palkhivala for the appellant urged that it would be inappropriate to reconsider the recent decisions on which he relied, and he argued that on the merits, the view taken by this Court in the said two decisions was sound and correct. On the other hand, the learned Attorney-General contended that he wanted this Court to reconsider the said two decisions, and he pointed out that the matter was of importance, and so, the appeal should be referred to a larger Bench in view of the fact that the decision in the case of the Petlad Co. ([1963] Supp. 1 S.C.R. 871.) was a unanimous decision of a Bench consisting of five Judges of this Court. It was under these circumstances that the Court directed that the appeal should be placed before a Special Bench of seven Judges. That is how it has come on for a final decision before a Bench of seven Judges; and the only point which has been raised for the decision of the Special Bench is whether the two decisions in question should be reviewed and revised.

Let us begin by stating the relevant facts leading up to the main point of controversy between the parties. The appellant is a company registered in the Baroda State as it then was. The assessment year with which the proceedings giving rise to this appeal are concerned is 1942-43 (the accounting year being calendar year 1941). During the said year, the appellant was a 'non-resident'. It carried on business of manufacturing and selling textile goods in the Baroda State. The operations in relation to all sales of goods manufactured by the appellant's mills were completed at the appellant's premises

at Petlad on the footing of ex-Mill delivery in every case.

It appears that on March 22, 1947, the Income-tax Officer, E.P.T. Circle, Ward B, Ahmedabad, passed an order under sections 23(3) and 34 of the Indian Income-tax Act, 1922 (11 of 1922) (hereinafter called 'the Act') and held that sale proceeds in respect of the sales aggregating each of the following three items were received by the appellant in British India. These items were :

> #(i) Sale proceeds actually received inthe accounting Year through M/s. JagmohandasRamanlal & Co. .. .. Rs. 12,68,460(ii) Sale-proceeds through British IndianBanks through Drafts : .. .. Rs. 4,40,878(iii) Sale proceeds collected by collectingcheques on British Indian Banks and Hundis onBritish Indian Shroffs and Merchants .. .. Rs. 6,71,735##

It is with this last item that the present appeal is concerned.

Aggrieved by the order thus passed by the Income-tax Officer, the appellant preferred an appeal before the Appellate Assistant Commissioner of Income-tax, Ahmedabad Range. The Appellate Authority held that the Income-tax Officer was in error in not excluding items (i) and (iii) respectively from computation of the taxable profits of the appellant. Thus, the appellant succeeded before the appellate authority in respect of the item in dispute.

This decision of the appellate authority led to two cross-appeals, one by the Income-tax Officer and the other by the appellant before the Income-tax Appellate Tribunal - hereafter called the Tribunal. The Tribunal dismissed the appellant's appeal in respect of Rs. 4,40,878/- and allowed the Income-tax Officer's appeal in part and held that the item of Rs. 12,68,460/- had been wrongly excluded by the Appellate Authority. In respect of item (iii) relating to Rs. 6,71,735/-, the Tribunal held that in the circumstances of the case the sale proceeds represented by the said item were not received in British India but in the State itself.

This decision of the Tribunal led to two cross-applications by the appellant and the Income-tax Officer for raising the questions of law before it in relation to the items in respect of which they had respectively failed. As a result of these proceedings, the Tribunal drew up the statement of the case on November 5, 1948, and raised the following question to the Bombay High Court :-

> "Whether on the facts and in the circumstances of the case, the sums of Rs. 12,68,460/-, Rs. 4,40,878/- and Rs. 6,71,735/-, or any them, which represents receipts by the assessee company of its sale-proceeds in British India, include any portion of its income in British India ?"

In other words, all the three items in dispute between the appellant and the Income-tax Officer formed the subject-matter of the question raised by the Tribunal before the Bombay High Court. This reference was registered as Income-tax Reference No. 2 of 1949.

By its judgment and order delivered on the 14th/15th September, 1949, in relation to items (i) and (ii) the High Court held that the two sums in question were not debts due from the British Indian Merchants but sale proceeds of the goods sold by the appellant to merchants in British India and that such sale proceeds were received by the appellant in British India. In other words, the answers rendered by the High Court in respect of the said two items were against the appellant. The appellant came to this Court in appeal against the decision of the High Court, but its appeal failed and the view taken by the High Court was affirmed (vide Keshav Mills Ltd. v. Commissioner of

Income-tax, Bombay) ([1953] S.C.R. 950.) In the result, the controversy between the appellant and the Income-tax Officer in respect of the said items has been finally decided against the appellant.

Reverting then to item (iii) with which the present appeal is concerned, the High Court took the view that before it could render an answer to the question in relation to the said item, it would like the Tribunal to furnish to the High Court further facts. Accordingly, the High Court directed that the Tribunal should submit a supplementary statement of case and state therein as to whether there was any arrangement or agreement between the assessee and the merchants that the giving of cheques or hundis by the merchants to the Assessee would result in an unconditional discharge of the liability of the merchants. The High Court also issued some other directions asking the Tribunal to clarify some of its relevant findings which appeared to the High Court to be somewhat confused.

As a result of this order, the case went back to the Tribunal which in turn remanded it to the Income-tax Officer for getting the requisite information. On receiving the report of the Income-tax Officer, the Tribunal submitted its supplementary statement of case to the High Court on August 13, 1954.

Whilst these proceedings were thus pending in the High Court, the decision of this Court in Commissioner of Income-tax Bombay South, Bombay v. Messrs. Ogale Glass Works Ltd., Ogale Wadi ([1955] 1 S.C.R. 185.) was pronounced. In that case, one of the points which arose for decision was whether the post Office which takes the cheque from the sender to the addressee is the agent of the sender or the addressee; and on this point, the Court held that as between the sender and the addressee, it is the request of the addressee that makes the post office, the agent of the addressee and after such request, the addressee cannot be heard to say that the post-office was not his agent. On the other hand, if there is no such request by the addressee, express or implied, then on delivery of the letter or the cheque to the post office by the sender, the post office acts as the agent of the sender. This decision had a significant impact on the further progress of the present dispute.

After receiving the Supplementary Statement of Case from the Tribunal, the matter was argued before the High Court on the 15th February, 1955. On this occasion, the High Court referred the matter back again to the Tribunal with the direction : "that the Tribunal will determine on the evidence led by both parties whether the sum in question was paid by various merchants by sending drafts, hundis or cheques by post and that if the Tribunal found that in some cases the amount was not sent by post, then the Tribunal should determine what amount was sent otherwise than by post and the Tribunal should then submit a Supplementary Statement of the Case". It would be noticed that this direction was given by the High Court obviously because the High Court wanted to deal with the question referred to it in the light of the decision of this Court in the case of Ogale Glass Works Ltd. ([1955] 1 S.C.R. 185.). In fact, in giving this second direction, the High Court observed that when it had called for the first Supplementary Statement of the Case, it did not have the benefit of the decision of this Court in the case of Ogale Glass Works Ltd., ([1955] 1 S.C.R. 185.) and that after the said decision was pronounced, the position with regard to receipt of the cheque by the appellant had been considerably simplified.

Pursuant to the second order of remand made by the High Court, the Tribunal submitted its second Supplementary Statement of the Case on the 26th October, 1959. After receipt of the second Supplementary Statement, the Reference again came up for hearing before the High Court. After hearing the parties, the High Court has rendered its answer against the appellant on the question in relation to the item in dispute. It is against this order passed by the High Court on the 30th and 31st March, 1960, that the appellant has come to this Court with a certificate granted by the High Court;

and on its behalf, Mr. Palkhivala has urged that in view of the decisions of this Court in the New Jehangir Mills ([1960] 1 S.C.R. 249.) case and Petlad Co. ([1963] Supp. 1 S.C.R. 871.) case, the appeal must be allowed and the case remitted to the High Court to be dealt with in accordance with the principles laid down by this Court in the latter case.

It is common ground that as a result of the two orders of remand passed by the High Court in the present Reference proceedings, some material evidence which was not on the record when the question was framed by the Tribunal and sent to the High Court under section 66(1) of the Act has been collected and made a part of the Supplementary Statement of the Case; and basing himself on this fact, Mr. Palkhivala contends that the High Court had no jurisdiction to direct the Tribunal to collect additional material and form it a part of the Supplementary Statement under section 66(4) of the Act. It is in support of this contention that reliance is placed on the two decisions in question. Before addressing ourselves to the problem as to whether the view taken by this Court in the said two decisions needs to be reconsidered and revised, it is necessary that we should refer to the said two decisions as well as other decisions on which both the parties have relied before us in the course of their arguments.

The first decision on which Mr. Palkhivala relies is the New Jehangir Mills ([1960] 1 S.C.R. 249.) case. In that case, the question which was referred by the Tribunal to the High Court was whether the receipt of the cheques in Bhavnagar amounted to receipt of the sale proceeds in Bhavnagar. Before rendering its answer to this question, the High Court had directed the Tribunal to furnish a Supplementary Statement of the Case on the following points :-

> "On the finding of the Tribunal that all the cheques were received in Bhavnagar, the Tribunal should find what portion of these cheques were received by post, whether there was any request by the assessee, express or implied, that the amounts which are the subject-matter of these cheques should be remitted to Bhavnagar by post".

It would be noticed that as a result of this direction, the question which would really have to be considered by the High Court would be whether the posting of the cheques in British India at the request, express or implied, of the appellant, amounted to receipt of sale-proceeds in British India. It was urged by the appellant in that case that as a result of the direction issued by the High Court calling for a supplementary statement of the case, the nature of the question formulated by the Tribunal had been altered, and that was beyond the competence of the High Court under section 66(4). In substance, this plea was upheld by this Court and it was held that in calling for the supplementary statement of the case, the High Court had misconceived it powers under section 66(4) of the Act. According to this decision section 66(4) must be read with section 66(1) and section 66(2), and so read, it did not empower the High Court to raise a new question of law which did not arise out of the Tribunal's order or direct the Tribunal to investigate new and further facts necessary to determine the new question which had not been referred to it under section 66(1) or section 66(2) of the Act and direct the Tribunal to submit supplementary statement of case. The additions and alterations in the statement of case which can be directed under section 66(4) could, in the opinion of this Court, relate only to such facts as already formed part of the record but were not included by the Tribunal in the statement of the case. Mr. Palkhivala contends that in the light of this decision, we ought to hold that in so far as the two orders of remand passed by the High Court in the present Reference proceedings have led to the collection of additional material and evidence and their inclusion in the supplementary statements of the case, the High Court has exceeded its jurisdiction under section 66(4).

The other case which Mr. Palkhivala strongly relies is the decisions of this Court in the Petlad Co., Ltd. ([1963] Supp. 1 S.C.R. 871.). In that case, one of the pints decided by this Court had reference to the extent of the powers and authority of the High Court under section 66(4). It was held that though the High Court had power to direct a supplemental statement to the made, it was beyond its competence to directional evidence to be taken. In other words, this Court took the view that when the High Court makes an order of remand under section 66(4) and directs the Tribunal to furnish a supplemental statement of the case, it can require the Tribunal to include in such supplemental statement material and evidence which may already be on the record, but which had not been included in the statement of the case initially made under section 66(1). The result of this decision is that section 66(4) does not confer on the High Court power to require the Tribunal to take additional evidence before it renders its answers on the questions formulated under section 66(1) or section 66(2). In accordance with the view thus taken by this Court, the direction issued by the High Court to submit a supplemental statement of the case after taking additional evidence was reversed, and following the precedent in the New Jehangir Mills ([1960] 1 S.C.R. 249.) case, an order was passed that the appeals would be allowed and the matter remitted to the High Court to give its decision on the question of law referred to it as required under section 66(5) of the Act.

Before the decision of this Court in the Petlad Co., Ltd. ([1963] Supp. 1 S.C.R. 871.) was pronounced, a similar point had been raised in the case of M/s. Zoraster and Co. v. Commissioner of Income-tax, Delhi, Ajmer, Rajasthan and Madhya Bharat (now Madhya Pradesh) ([1961] 1 S.C.R. 210.). In this latter case, the question referred to the High Court for its decision was whether, on the facts and circumstances of the case, the profits and gains in respect of the sales made to the Government of the India were received by the assessee in the taxable territories ? While dealing with this question, the High Court thought it necessary to remand the case to the Tribunal for a supplemental statement of the case calling for a finding on the question whether the cheques were sent to the assessee firm by post or by hand and what directions, if any, had the assessee firm given to the department in the matter ? The validity and correctness of this direction was challenged by the appellant before this Court in view of the decision of this Court in the case of New Jehangir Mills.([1960] 1 S.C.R. 249.) While dealing with this objection ralised by the appellant, this Court held that the question as it was framed, was wide enough to include an enquiry as to whether there was any request, express or implied, that the amount of the bills be paid by cheques so as to bring the matter within the dicta of this Court in the Ogale Glass Works ([1955] 1 S.C.R. 185.) case or in Shri Jagdish Mills Ltd. v. The Commissioner of Income-tax, Bombay North, Kutch and Saurashtra, Ahmedabad ([1960] 1 S.C.R. 236.) and since it did not appear from the order of remand passed by the High Court that the High Court intended that the Tribunal should admit fresh evidence before submitting its supplemental statement, the impugned direction could not be said to be invalid. This decision shows that when a question is framed for the decision of the High Court in wide terms, and the High Court finds that before rendering its answer on the said question some new aspects have to be considered and it feels that for dealing with the said new aspects of the matter, a supplemental statement of the case should be called for, the High Court is authorised to call such a supplemental statement, provided, of course, the High Court does not require the Tribunal to collect additional material or evidence before submitting its supplemental statement.

The same view has been expressed by this Court in the case of Commissioner of Income-tax, Madras v. M. Ganapathi Mudaliar ([1964] 53 1 I.T.R. 623.). According to this decision, a supplementary statement of case may contain such alterations or additions as the High Court may direct, but the statement must necessarily be based on facts which are already on the record. While exercising its jurisdiction under section 66(4), the High Court has no power to ask for a fresh statement of case with a direction that the Tribunal should go into the matter again and record

further evidence.

There is one more decision to which reference may incidentally be made before we part with the series of decisions on which Mr. Palkhivala relies. In Commissioner of Income-tax, Bombay v. The Scindia Steam Navigation Co. Ltd., ([1962] 1 S.C.R. 788.) this Court had occasion to consider the scope and denotation of the expression "any question of law arising out of the such order" occurring in section 66(1) of the Act. The majority decision has summed up the result of the discussion as to the scope and effect of the provisions of section 66 in these words :

> (1) When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.
>
> (2) when a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with the by it, and is, therefore, one arising out of its order.
>
> (3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order.
>
> (4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be question arising out of its order notwithstanding that it may arise on the findings given by it.

In substance, these propositions mean that it is only a question that has been raised before or decided by the Tribunal that could be held to arise out of its order.

Let us now refer to the decisions on which the learned Attorney-General has relied in support of his contention that the High Court has power under section 66(4) to call for new additional evidence if it takes the view that such additional evidence is necessary to enable it to determine the question raised for its decision satisfactorily. The learned Attorney-General has fairly conceded that he has not been able to find any decision where this question has been answered in favour of the view for which he contends after construing the relevant provisions of section 66(4) of the Act. He, however, urges that there is high authority in support of the practice for which he contends inasmuch as the Privy Council appears to have assumed that the High Court can, in exercise of its powers under section 66(4), call for additional evidence. The first decision of the Privy Council on which he relies is in the case of Sir Sundar Singh Majithia v. Commissioner of Income-tax, C.P. & U.P. ([1942] 10 I.T.R. 457.) In that case, two of the questions which arose were : whether the steps taken by the assessee to vest in his wife and sons an interest in the immovable assets of the business were not legally effective, e.g., for want of a registered instrument of transfer; and if the factory, land and buildings in question were joint family property, whether it was shown that a partition at the hands of the father of the said properties could not be effected without a written instrument ? The question of law formulated for the decision of the High Court was : "In all the circumstances of the case, having regard to the personal law governing the assessee and the requirements of the Transfer of Property Act (IV of 1882) and the Stamp Act (II of 1899), has the deed of partnership dated February 12, 1933, brought into existence a genuine firm entitled to registration under the provisions of section 26-A of the Act ?" While answering this question, one of the points which had to be decided was whether the immovable properties were the self-acquisitions of the father or not. The Privy Council took the view that before a satisfactory answer could be rendered on the question framed, several facts had to be ascertained, and in its judgment the Privy Council has indicated the

nature of these facts. "It is necessary to know", says the judgment, "as regards (a) the business, machinery, plant and other movables; (b) the factory buildings and land whether they were before 1931 the self-acquired property of the father or his ancestral property or joint family property or whether they fall into some other and what category according to the customary law." The judgment also points out that the rights of the members of the family in respect of the said property would have to be ascertained and the conduct of the parties considered. Then, in regard to the agreement in question, the Privy Council pointed out that it would be necessary to enquire what agreement, if any, was made prior to February 12, 1933, and when as a partner shop being constituted to carry on the sugar factory and as to the assets which it was to have as a firm. "None of these essential facts", says the judgment, "have been found and stated by the Commissioner, with the result that question referred cannot be answered until the High Court has exercised its powers under sub-section (4) of section 66 of the Act". Having made these observations, the Privy Council left it to the discretion of the High Court to specify the particular additions and alterations which the Commissioner should be directed to make. In the result, the advice tendered by the Privy Council was "that the case be remanded to the High Court for disposal after taking such action under sub-section (4) of section 66 of the Act as the High Court may think fit in the light of this judgment". The argument is that the facts which the Privy Council though it necessary to ascertain before answering the question, indicate that they could not have been on the record at the time when the question was originally framed by the Commissioner, and so, the suggestion is that inasmuch as the Privy Council indicated that the High Court should call for a supplemental statement in regard to facts which were apparently not already on the record, this decision should taken to support the contention that section 66(4) authorised the High Court to call for new additional material before it renders its answers to the questions formulated under section 66(1) or section 66(2).

A similar argument is based on another decision of the Privy Council in Trustees of the Tribune Press, Lahore v. Commissioner of Income-tax, Punjab, Lahore (66 I.A. 241.). In that case, the questions which were referred to the High Court were : "(1) whether the income of the Tribune Trust was liable to be assessed in the hands of the Trustees under the provisions of the Income-tax Act ?; and (2) if it was, whether it was not exempt under section 4(3) (1) of the Act ?" In the High Court, there was a sharp difference of opinion between the Judges who heard the reference; but ultimately the answers went against the Tribune, and so, the dispute was taken to the Privy Council by the Trustees of the Tribune Trust. At the first hearing of the said appeal before the Privy Council, it was considered by the Board to be desirable that the powers conferred by sub-section 4 of section 66 of the Act should be employed to obtain further information. Accordingly, by an Order in Council, dated July 29, 1937, it was directed in accordance with the advice tendered by the Board that the case ought to be remitted to the High Court of Judicature at Lahore with a direction that the said High Court shall refer the case back to the Commissioner under section 66(4), first for the addition of such facts during the life-time of the testator, Sardar Dayal Singh as may bear upon the proper interpretation of the expression 'keeping up the liberal policy of the said newspaper' in clause XXI of the will of the said testator dated the 15th Day of June, 1895, and secondly, for the addition of such facts as to compromise dated the 1st day of December, 1906, as my show whether the said compromise is binding on all parties interested in the estate of the said testator. Thereafter, a supplementary statement made by the Commissioner was filed and it appears that before he made the said statement, the Commissioner "carefully assembled considerable material explanatory of the direction given by the testator in the phrase 'keeping up the liberal policy of the said newspaper', and showing as their Lordships think, very fairly, the nature and purpose of the trust". After considering the said material, the Privy Council allowed the appeal preferred by the Trustees, because in its opinion the second question framed for the decision of the High Court had to be answered in favour

of the assessee. It is urged that this decision also shows that the Privy Council called for additional material and evidence by requiring the High Court to exercise its powers in that behalf under section 66(4) of the Act.

The learned Attorney-General also stated that there were some other decisions of the High Courts in India where similar additional evidence had been called for by the High Courts under section 66(4), and by way of illustration, he cited before us the decision of the Bombay High Court in Govindam Bros. Ltd. v. Commissioner of Income-tax, Central, Bombay ([1946] 14 I.T.R. 764.). It is, however, clear that in none of the decisions on which the learned Attorney-General relies has the question about the construction of section 66(4) been argued, considered and decided. That, broadly stated, is the position disclosed by the judicial decisions bearing on the point with which we are concerned in the present appeal.

In dealing with the question as to whether the earlier decisions of this Court in the New Jehangir Mills ([1960] 1 S.C.R. 249.) case and the Petlad Co. Ltd. ([1963] Supp. 1 S.C.R. 871.) case should be reconsidered and revised by us, we ought to be clear as to the approach which should be adopted in such cases. Mr. Palkhivala has not disputed the fact that, in proper case, this Court has inherent jurisdiction to reconsider and revise its earlier decisions, and so, the abstract question as to whether such a power vests in this Court or not need not detain us. In exercising this inherent power, however, this would naturally like to impose certain reasonable limitations and would be reluctant to entertain pleas for the reconsideration and revision of its earlier decisions, unless it is satisfied that there are compelling and substantial reasons to do so. It general judicial experience that in matters of law involving question of constructing statutory or constitutional provisions, two views are often reasonably possible and when judicial approach has to make a choice between the two reasonably possible views, the process of decision-making is often very difficult and delicate. When this Court hears appeals against decisions of the High Courts and is required to consider the propriety or correctness of the view taken by the High Courts on any point of law, it would be open to this Court to hold that though the view taken by the High Court is reasonably possible, the alternative view which is also reasonably possible is better and should be preferred. In such a case, the choice is between the view taken by the High Court whose judgment is under appeal, and the alternative view which appears to this Court to be more reasonable; and in accepting it own view in preference to that of the High Court, this Court would be discharging its duty as Court of Appeal. But different considerations must inevitably arise where a previous decision of this Court has taken a particular view as to the construction of a statutory provision as, for instance, section 66(4) of the Act. When it is urged that the view already taken by this Court should be reviewed and revised, it may not necessarily be an adequate reason for such review and revision to hold that though the earlier view is a reasonably possible view, the alternative view which is pressed on the subsequent occasion is more reasonable. In reviewing and revising its earlier decision, this Court should ask itself whether in interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When this Court decides questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not

possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations :- What is the nature of the infirmity or error on which a plea for review and revision of the earlier view is based ? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed ? Is the Court hearing such plea fairly unanimous that there is such an error in the earlier view ? What would be the impact of the error on the general administration of law or on public good ? Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts ? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief ? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and review and revise its earlier decisions. These considerations become still more significant when the earlier decision happens to be a unanimous decision of a Bench of five learned Judges of this Court.

It is true that in the Bengal Immunity Company Ltd. v. The State of Bihar & Ors. ([1955] 2 S.C.R. 603.) this Court by a minority of 4 : 3 reversed its earlier majority decision (4 : 1) in the State of Bombay and Another v. United Motors (India) Ltd. and Ors. ([1953] S.C.R. 1069.); but that course was adopted by the majority of Judges in that case, because they were persuaded to take the view that there were several circumstances which made it necessary to adopt that course. On the other hand, dealing with a similar problem in the case of the Sajjan Singh v. State of Rajasthan, etc. ([1965] 1 S.C.R. 933.) this Court unanimously rejected the request made on behalf of the petitioners that its earlier decision in Sri Sankari Prasad Singh Deo v. The Union of India and State of Bihar ([1952] S.C.R. 89.) should be reviewed and revised. Hidayatullah and Mudholkar JJ., who were somewhat impressed by some of the pleas made in support of the contention that the earlier decision should be revised, in substance agreed with the ultimate decision of the Court that no case had been made out for a review or revision of the said earlier decision. The principle of stare decisis, no doubt, cannot be pressed into service in cases where the jurisdiction of this Court to reconsider and revise its earlier decisions is invoked; but nevertheless, the normal principle that judgments pronounced by this Court would be final, cannot be ignored, and unless considerations of a substantial and compelling character make it necessary to do so, this Court should would be reluctant to review and revise its earlier decisions. That, broadly stated, is the approach which we propose to adopt in dealing with the point made by the learned Attorney-General that the earlier decisions of this Court in the New Jehangir Mills ([1960] 1 S.C.R. 249.) case, and the Petlad Co. Ltd. ([1963] Supp. 1 S.C.R. 871.) case should be reconsidered and revised.

Let us then consider the question of constructing section 66(4) of the Act. Before we do so, it is necessary to read sub-section (1), (2) and (4) of section 66. Section 66(1) reads thus :-

> "Within sixty days of the date upon which he is serves with notice of an order under sub-section (4) of section 33, the assessee or the Commissioner may, be application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court."

There is a proviso to this sub-section which is not relevant for our purpose. Section 66(2) reads thus

:

> "If on any application being made under sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and refer it, and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly".

That takes us to sub-section (4) which reads thus :-

> "If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf'.

Section 66(5) provides that the High Court upon hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

It is clear that when the Tribunal draws up a statement of the case and refers a question of law to the High Court under section 66(1), the said question must arise out of its order, and the statement of the case would necessarily be limited to the statement of facts already brought on the record either before the Income-tax Officer or before the Appellate Assistant Commissioner or before the Tribunal. There is no doubt and indeed no dispute before us that the question of law must arise from the Tribunal's order and the statement of the case must be confined to the facts already brought on the record. The same would be the position where the High Court requires the Tribunal to state the case and refer to it under section 66(2). The position, therefore, is that when the High Court is exercising its advisory jurisdiction under section 66(4), it is dealing with a question of law arising from the order of the Tribunal and has to answer the said question in the light of the statement of the case submitted to it by the Tribunal. In normal course, the statement of the case would refer to facts selected by the Tribunal from out of the material already on the record and it is in the light of the said statement of the case that the question has to be answered by the High Court. Thus far, there is no controversy or dispute.

Section 66(4), however, authorises the High Court to refer the case back to the Tribunal to make such additions to the statement of the case or alterations therein as the Court may direct in that behalf. This power can be exercised by the High Court if it is satisfied that the statement of the case is not sufficient to enable it to determine the question raised by it. If the High Court feels that in order to answer satisfactorily the question referred to it. It is necessary to have additional material included in the statement of the case, the High Court can make an appropriate direction in that behalf. If the High Court is satisfied that some alternations should be made in the statement of the case to enable it to determine the question satisfactorily, it can make an appropriate directions in that behalf. The question is whether is issuing appropriate directions under section 66(4), the High Court can ask the Tribunal to travel outside the record and call for and collect material which is not already produced on the record. If Section 66(4) is read along with section 66(1) and section 66(2),

it may tend to show that the power of the High Court is limited to requiring the Tribunal to add or alter the statement of the case in the light of the material and evidence already on the record. If the question that can be raised under section 66(1) and section 66(2) can arise only out of the order of the Tribunal and if the statement of the case required to be drawn up by the Tribunal under the said two provisions would inevitably be confined to the facts and material already on the record, it seems unlikely that section 66(4) would authorise the High Court to direct the Tribunal to collect additional material or evidence not on the record.

The scheme of the Act appears to be that before the Income-tax Officer all the relevant and material evidence is adduced. When the matter goes before the Appellate Assistant Commissioner, he is authorised under section 31(2) to make such further enquiry as he thinks fit, or cause further enquiry to be made by the Income-tax Officer before the disposes of the appeal filed before him. Section 31(2) means that at the appellate stage additional evidence may be taken and further enquiry may be made in the discretion of the Appellate Assistant Commissioner. When the matter goes before the Appellate Tribunal under section 33, the question about the admission of additional evidence is governed by Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963. This rule provides that the parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the Income-tax Officer has decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by him or not specified by him, the Tribunal may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.

After the Tribunal has passed orders on the appeal before it, the stage is reached to take the matter by way of reference proceedings before the High Court under section 66. This scheme indicates that evidence has to be led primarily before the Income-tax Officer, though additional evidence may be led before the Appellate Assistant Commissioner or even before the Tribunal, subject to the provisions of section 31(2) of the Act and Rule 29 respectively, and that means that when the Tribunal has disposed of the matter and is preparing a statement of the case either under section 66(1) or under section 66(2), there is no scope for any further or additional evidence. When the matter goes to the High Court, it has to be dealt with on the evidence which has already been brought on the record. If the statement of the case does not refer to the relevant and material facts which are already on the record, the High Court may call for a supplementary statement under section 66(4), but the power of the High Court under section 66(4) can be exercised only in respect of material and evidence which has already been brought on the record.

There is another consideration which is relevant in dealing with the question about the scope and effect of the provisions contained in section 66(4). Proceedings taken for the recovery of tax under the provisions of the Act are naturally intended to be over without unnecessary delay, and so, it is the duty of the parties, both the department and the assessee, to lead all their evidence at the stage when the matter is in charge of the Income-tax Officer. Opportunity is, however, given for additional evidence by section 31(2) and Rule 29; but if further evidence is allowed to be taken under the directions of the High Court under section 66(4), it is likely that the tax proceedings may be prolonged interminably, and that could not be the object of the Act as it is evidenced by the relevant provisions to which we have already referred. These mainly are the grounds on which the earlier decisions of this Court in the New Jehangir Mills ([1960] 1 S.C.R. 249.) case and the Petlad Co. Ltd. ([1963] Supp. 1 S.C.R. 871.) case substantially rest.

On the other hand, it must be conceded that the words used in section 66(4) are wide enough and they may, on a liberal construction, include the power to call for additional evidence by directing the Tribunal to file supplementary statement of the case. It is true that section 66(4) in terms does not confer such a power and it may be that having regard to the scheme of section 66(1) and (2), one would have expected specific and express terms conferring such power on the High Court in section 66(4) if the Legislature had intended that the High Court would be competent to call for additional evidence; but there are no terms of limitation in section 66(4), and it would be reasonably possible to construe section 66(4) as enabling the High Court to call for additional evidence if it is satisfied that the material in the statement of the case is not sufficient to answer satisfactorily the question raised by the statement of the case. When the High Court is dealing with the statement of the case under section 66(4), it is its duty to answer the question submitted to it. As has been held by this Court in Rajkumar Mills Ltd. v. Commissioner of Income-tax, Bombay ([1955] 28 I.T.R. 184.) where the question involved is one of law and the High Court finds it difficult to answer the question owing to the unsatisfactory nature of the statement of the case submitted by the Tribunal, the proper procedure is to call for a further statement of the case and then decide the question itself. The High Court would be adjuring its advisory function if it merely gives some directions and orders the Tribunal to dispose of the matter according to law and in the light of the directions given by it without referring the matter again to the High Court; and so, if the High Court finds that, in order to deal with the question referred to it satisfactorily it is necessary to ascertain some relevant and material facts, it should be open to the High Court to direct the Tribunal to make a supplementary statement containing the said material and facts. There is no provision in section 66(4) which prevents the exercise of such a power.

In some cases, the question of law referred to the High Court may have to be considered in several aspects of some of which may not have been appreciated by the Tribunal. There is no doubt that if a question of law is framed in general terms and in dealing with it several aspects fall to be considered, they have to be considered by the High Court even though the Tribunal may not have considered them. In such a case, if in dealing with some aspects of the matter it becomes necessary to ascertain additional facts, it would be unsatisfactory to require the High Court to answer the question without additional facts on the ground that they have not been introduced on the record already. Refusal to recognise the jurisdiction of the High Court to call for such additional evidence may lead to hardship in many cases, and since there are no words expressly limiting the powers of the High Court under section 66(4), there is no reason why the said powers should receive a narrow and limited construction. That is the view for which the learned Attorney-General contends.

It must be conceded that the view for which the learned Attorney-General contends is a reasonably possible view, though we must hasten to add that the view which has been taken by this Court in its earlier decisions is also reasonably possible. The said earlier view has been followed by this Court on several occasions and has regulated the procedure in reference proceedings in the High Courts in this country ever since the decision of this Court in the New Jehangir Mills ([1960] 1 S.C.R. 249.) was pronounced on May 12, 1959. Besides, it is somewhat remarkable that no reported decision has been cited before us where the question about the construction of section 66(4) was considered and decided in favour of the Attorney-General's contention. Having carefully weighed the pros and cons of the controversy which have been pressed before us on the present occasion, we are not satisfied that a case has been made out to review and revise our decisions in the case of the New Jehangir Mills ([1960] 1 S.C.R. 249.) and the case of the Petlad Co. Ltd. ([1963] Supp. 1 S.C.R. 871.) That is why we think that the contention raised by Mr. Palkhivala must be upheld. In the result, the order passed by the High Court is set aside and the matter is sent back to the High Court with a direction that the High Court should deal with it in the light of the two relevant decisions in the New Jehangir

Mills ([1960] 1 S.C.R. 249.) and the Petlad Co., Ltd. ([1963] Supp. 1 S.C.R. 871.).

Before we part with this appeal, however, we would like to add that in the course of the debate in the present appeal, Rule 39 of the Income-tax (Appellate Tribunal) Rules was incidentally referred to, though neither party based any argument on it. That being so, the question as to the true scope and effect of the provisions contained in the said Rule does not fall to be considered in the present proceedings and we express no opinion on it. There would be no order as to costs throughout.

Appeal allowed and remanded.

</html