Daffadar Bhagat Singh and Sons

Vs

Income-Tax Officer, A Ward, Ferozepure

Civil Appeal No. 962 of 1966

(A. N. Grover, V. Ramaswami – I JJ)

22.08.1968

JUDGMENT

GROVER J. -

This is an appeal by special leave against the judgment of the Punjab High Court dismissing the write petitioner of the appellants herein under articles 226 and 227 of the Constitution by which it was prayed that a writ of prohibition no to proceed with the assessment for the year 1952-53 be issued. A prayer was also made for the issue of a write of certiorari for quashing the notices under section 23(2) and 22(4) of the Income-tax Act, 1922, hereinafter called "the Act", which had been issued by the Income tax officer in that connection. The appellant firm filed a return of the assessment year 1952-53 on March 31, 1953. It also applied that it may registered as a firm under section 26A of the Act, the partners being Bhagat Singh and his two sons, Kartar Singh and Dhian Singh their shares being in the proportion of 4/16, 6/16 and 6/16 respectively. The Income tax officer passed an order on March 26, 1957, holding that the assessee constituted a Hindu undivided family and not a firm. The registration under section 26A was also refused. The appellants approached the Appellate Assistant Commissioner n appeal who made an order on August 11, 1959, allowing registration of the partnership firm under section 26A. He further held that the business belong to the firm and, therefore, its income-tax officer issued fresh notice to the appellants under section 22 (4) and 23 (2) of the Act. The appellants refused to company with these notices and moved the Inspection Assistant Commissioner of Income-tax for giving a direction that the assessment should be not be proceeding with owing to the statutory bar created by section 34 (3) of the Act. As the income-tax authorities did not accede to the request of the request of the appellants, a petition under articles 226 and 227 was filed in the High Court. The High Court dismissed the petition on the ground that, in view of the decision of this court in Income-tax Officer, A-Ward, Sitapur v. Murlidhar Bhagwan Dais, the second proviso to section 34 (3) would be applicable because the members of the appellates firm could not be regarded as strangers to the proceedings which resulted in the assessment order made in respect of them on the basis of their constituting a Hindu undivided family along with other and that the they were intimately connected with the "Person" whose assessment was made by the Income-tax officer and set aside by the Appellate Assistant Commissioner on whose direction fresh assessment proceedings were taken. the second proviso to section 34(3) of the Act reads :

> "Provided further that the nothing contained in this section limiting the time within which any action may be taken, or any over, assessment reassessment may be made, shall apply to a reassessment made under section 27 or to an assessment or reassessment made a on the assessee or any person in the consequence of or to give effect to any finding or direction contained in order under section 31, section 33,

section 33A section 33B, section 66 or section 66A."

In S. C. Prashar v. Vasantsen Dwarkadas this court, by majority, held that the provisions of the second proviso to section 34(3) in so far as they authorised the assessee beyond the period of limitation specified in section 34 in consequence of or to give effect to a finding or direction given in an appeal, revision or reference arising out of proceeding in relation to the assessee, violated the provision of articles 14 of the Constitution and were invalid to that extent. The scope and ambit of the second proviso came up for consideration again in Income-tax Officer, A-Ward, Sitapur v. Murlidhar Bhagwan Das. According to the majority decision the expression "finding" and "direction" in the said proviso mean respectively a finding necessary for giving relief in respect of the assessment for the year in question and a direction which the appellate or revision authority, as the case may be was empowered to given under the section mentioned in that proviso. A "finding", therefore, could only be that which was necessary for the disposal of an appeal in respect of an assessment of a particular year. If the Appellate Assistant Commissioner found that the income shown by the assessee was not the income for the relevant year but was income which belonged to another, could only be that which was necessary for the disposal of the appeal and was only incidental to it. The meaning the words "any person" was also considered and it was it was said at page 346 that a combined reading of section 30(1) and 31(3) indicated the case where person other than the appealing assess might be affected by the orders passed by the Appellate Assistant Commissioner. It was observed :

> "Modification or setting aside of assessment made on a firm joint, Hindu family, association of persons, for a particular year may affect the assessment for the said your on a partner or partner of the firm, members or members of the Hindu undivided family or the individual as the case may be. In such cases though the latter are no or neomycin parts to the appeal, their assessment depend upon the assessment on the former. The said instances are only illustrative. It is not necessary to pursue the matter further. We would therefore hold that the expression 'any person' in the setting in which it appears must be confined to a person intimately connected in the aforesaid sense with the assessments of the year under appeal."

The argument of Mr. Veda Vyasa for the appellant has been two-fold. He contends, firstly, that the finding or direction which the Appellate Assistant Commissioner gave in the present case in his order the dated August 11, 1959, that the business belonged to the partnership and not the Hindu undivided family and the further direction which was given by him that the Income-tax office should assess the income in the hands of the partners ship firm were not necessary for the disposal of the appeal. According to Mr. Veda Vyasa the crux of the matter was that the Hindu undivided family thereby reversing the decision of the Income tax Officer that it was assessable in the hands of the family. It is contended that, in these circumstances, the direction to the Income-tax Officer that he should assess the income in the hands of the firm was neither necessary nor called for and therefore the law laid down in Murlidhar Bhagwan Das's case was clearly applicable. In this connection it may be mentioned that according to Mr. Veda Vyasa two returns had been filed by the appellant for the assessment year 1952-53, one relating to the Hindu undivided family and the other, of the partnership firm. But the statements contained in the writ petition of the appellant do not support this submission. In paragraph 3 of that petition it is stated that the firm and all the three partners filed their returns of profit and loss on March 31, 1953, with the Income-tax officer and also made an application under section 26A of the Act for registration of the firm. It is true the in the assessment order of the Income-tax officer the status of the assessee is shown Hindu undivided family but that has been apparently shown in the order because the Income-tax Officer gave an

express decision about the status of the assessee and held that it constituted Hindu undivided family. It, however, stands proved that the assessee filed the return claiming the status of a firm together with an application under section 26A for its registration which was disallowed by the Income-tax officer but was allowed by the Appellate Assistant Commissioner. The substantial issue before the Appellate Assistant Commissioner was one of status of the assessee and he held it was partnership firm and not a Hindu undivided family. This finding was necessary for deciding the appeal before the Appellate Assistant Commissioner and it is not possible to understand how it can be regarded as having made only incidentally. Once a finding is a given which was necessary for the disposal of the appeal the second proviso to section 34 (3) of the Act would be attracted and the bar of limitation would be lifted. In N. Kt. Sivalingam Chettiar v. Commissioner of Income-tax this court, after referring to the relevant observations In Murlidhar Bhagwan Das's case, reiterated that a finding within the second proviso to section 34(3) must be necessary for giving relief in respect of the assessment of the year in question. It was further observed that this court in an earlier case lent approval to the observation of the Allahabad High Court in Pt. Hazari Lal v. Income-tax officer Kanpur. "that the word 'finding' only covers arterial question which arise in a particular case for decision by the authority hearing the case or the final decision in the appeal, has been the subject o controversy between the intersted parties or on which the parties concerned have been given a hearing." The first submission of Mr. Veda Vyasa, therefore, cannot be accepted.

The second limb of the argument of Mr. Veda Vyasa is based on the Premise that the appellant which was a partnership firm was a distinct legal entity and was thus a total stranger to the Hindu undivided family the assessment of which camp up for consideration before the Appellate Assistant Commissioner in which the orders already referred were made by him. It is suggested that the appellant could not fall within. The meaning of the expression "any person" in the second proviso to section 34 (3) of the Act. If the observations made in Murlidhar Bhagwan Das's case are borne in mind it is gains not possible to understand how he appellant can to be taken out of category of person or person intimately connected with the assessment of the year under appeal. The returns, as stated before, were originally hied by the partnership firm comprising Bhagat Singh and his two sons. The question was to the assessment of the income of the business of the firm. The income-tax officer treated the father and the sons as a Hindu undivided family. On appeal, however, the Appellate Assistant Commissioner accepted their contention that they formed a partnership firm. It is difficult, in the these circumstances, to agree that the appellant was a total stranger to the assessment which was under appeal before the Appellate Assistant Commissioner and had no intimate connection with the person whose assessment was made by the Income-tax officer and was set aside in appeal by the Appellate Assistant Commissioner.

For all these reasons, the appeal fails and is dismissed with costs.

Appeal dismissed.

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