Champalal Binani

Vs

Commissioner of Income-Tax, West Bengal, and Others

Civil Appeal No. 2379 of 1966

(J. C. Shah, K. S. Hegde JJ)

04.12.1969

JUDGMENT

SHAH J. –

The appellant, Champalal Binani, was assessed by the Income- tax Officer, B Ward, District 24-Paragons, to pay tax for the assessment years 1953-54 to 1960-61. The Commissioner of Income-tax, West Bengal, issued a notice on October 28, 1963, under section 33B of the Income-tax Act, 1922, requiring the assessee to show cause why the orders of assessment be not revised. three copies of the notices were sent to the assessee-one was addressed at Basanbtial Shah Road, Tollygunje, Calcutta (which was the address disclosed by the assessee in his return for the assessment years 1953-54 to 1960-61); another was addressed at No. 18/C, Mathur Sen Garden Lane, Calcutta-6 (which was the address given by the assessee in his return for the assessment year 1962-63); and the third was addressed at No. 216, Mahatma Gandhi Road, Calcutta, "care of" Janaki Lal Bajaj, brother-in-law of the assessee. By the notice, October 31, 1963, was fixed as the date for hearing. On October 31, 1963, the date fixed or hearing, the assessee was not present and the Commissioner set aside the order and directed the Income-tax officer to make fresh assessments according to law after making proper enquiries and investigation. Against this order an appeal lay to the Income-tax Appellate Tribunal within 60 days from the date on which the order was communicated to the assessee : section 33B(3), But the assessee did not prefer an appeal; instead he moved a petition in the High Court of Calcutta for a writ quashing the order of the Commissioner and for directing him to forbear from acting upon the order in any manner whatever. His principal contention was that in passing the order the Commissioner had "violated the principles of natural justice" and the "express provisions of the law". Holding that the notice under section 33B was not served on the assessee a single judge of the High Court set aside the order of the Commissioner. In appeal against that order by the Commissioner under the Letters Patent the High Court of Calcutta held that the notice addressed to the appellant at No. 18/C, Mathur Sen Garden Lane, Calcutta-6, was properly served by affixing it at his place of business and that the assessee had opportunity of being heard as required by section 33B of the Income-tax Act.

In this appeal with sepcial leave, counsel for the assessee contended that the Commissioner violated the rules of natural justice because he did not give adequate opportunity to the assessee to appear and contest the notice. Section 33B of the Income-tax Act, 1922, in so far as it is relevant. provides :

> "(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be

made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify,...

(2) No order shall be made under sub-section (1) - .....

(b) after the expiry of two years from the date of the order sought to be revised....."

The period of two years prescribed by sub-section (2)(b) of section 33B within which power had to be exercised by the commissioner was expiring on November 15, 1963. The Commissioner had, therefore, to take early steps to serve the notice upon the assessee. With that end in view he sent three copies of the notice at three different places. It is not suggested that the assessee was not carrying on his business at the two places, addresses of which had been furnished by him in the returns filed. A notice to an assessee may be served as if it were a summons issued by the court under the Code of Civil producer, 1908 : section 63 (1) of the Income-tax Act, 1922. The notice was affixed at the two places of which addresses were furnished by the assessee, and, therefore, there was proper service of the notice.

Counsel for the assessee, however, contended that he had not sufficient opportunity of representing his case, for the hearing was fixed on October 31, 1963, and the assessee was unable to appear before the Commissioner on that day. The grievance is not that notice was not served, but that he should have been given more time to make his representation. But the assessee never attempted to get into touch with the Commissioner and did not ask for an opporunity for filing his objection to the proposed revision. The conduct of the assessee leaves little room for doubt that he was anxious to ensured that the period of two years within which the Commissioner was competent to make an order under section 33B should expire. If the assessee had any grievance about the sufficiency of the opportunity given to him to make his representation, his obvious remedy was to appeal against the order to the Income-tax Appellate Tribunal and that the Tribunal would have considered the Appeal on merits and given him an opportunity of tendering evidence. But such a course would not have served the object of the assessee. that is why he avoided approaching the Tribunal. In our view the High Court was right in holding that the order under section 33B of the Income-tax Act was properly passed.

Before parting with he case we deem it necessary once more to emphasize that the Income-tax Act provides a complete and self- contained machinery for obtaining relief against improper action taken by the departmental authorities, and normally the party feeling himself aggrieved by such action cannot be permitted to refuse to have recourse to that machinery and to approach the High Court directly against the action. The assessee had an adequate remedy under the Income-tax Act which he could have availed of. He, however, did not move the Income-tax Appellate Tribunal which was competent to decided all questions of fact and law which the assessee could have raised in the appeal including the grievance that he had not adequate opportunity of making his representation and invoked the extraordinary jurisdiction of the High Court. In our judgment no adequate ground was made out for entertaining the petition. A writ of certiorari is discretionary; it is not issued merely because it is lawful to do so. Where the party feeling aggrieved by an order of an authority under the Income-tax Act has an adequate alternative remedy which he may resort to against the improper action of the authority and which he may resort to against the improper action of the authority and he does not avail himself of that remedy the High Court will require a strong case to be made out for entertaining a petition for a writ. Where the aggrieved party has an alternative remedy the High Court would be slow to entertain a petition challenging an order of a taxing authority which is, ex facie, with jurisdiction. A petition for a writ of certiorari may lie to the

High Court, where the order is on the face of it errromeous or raises the question of jurisdiction or of infringement of fundamental rights of the petitioner. The present case was one in which the jurisdiction of the High Court could not be invoked.

The appeal fails and is dismissed with costs.

Appeal dismissed.

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