

Commissioner of Income-Tax, Patiala

Vs

The Ambala Flour Mills and Others and Vice Versa

Civil Appeals Nos. 1277-1279 of 1966 and Nos. 1280 and 1282 of 1966

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

27.04.1970

JUDGMENT

SHAH, J. -

1. Balkishan Das, Debi Parshad and Jai Ram Das were partners in a trading venture conducted in the name of the Ambala Flour Mills, Ambala. On April 29, 1948, Jai Ram Das commenced an action for dissolution and for account of the partnership. The Trial Court decreed the suit. In appeal to the District Court, the decree was reversed. On appeal under the Letter Patent from the judgment of a single Judge, the High Court of Punjab by order dated September 26, 1951 resorted the decree of the Trial Court and declared that the partnership stood dissolved on April 29, 1948. The High Court observed :

"..... notwithstanding the dissolution of the firm Debi Parshad and Balkishan Das carried on the business of the firm with the property of the firm. On these facts, Jai Ram Das plaintiff is entitled at the option of himself to such share of the profits made since he ceased to be partner as may be attributable to the use of his share of the property of the firm or interest at the rate of six per cent. Per annum on the amount of his shares in the property of the firm."

2. During the pendency of the suit Balkishan Dass served his connection with the business and the business was carried on thereafter by Debi Parshad alone.

3. In the assessment year 1950-51, Debi Parshad filed three returns of income : (i) on 4-10-50 in the status of a firm, (ii) on 14-4-51 in the status of an individual and (iii) on 1-7-51 in the status of firm consisting of Jai Ram Das and Debi Parshad, partners. For the assessment year 1951-52, Debi Parshad filed in a return the status of an unregistered firm. For the assessment year 1952-53 Debi Parshad submitted a return in the status of a Hindu Undivided Family. The Income-tax Officer assessed the Ambala Four Mills in the three years of assessment in the status of "an association of persons". In appeals by Debi Parshad, the Appellate Assistant Commissioner, "annulled" the order of assessment of the assessee in the status of association of persons be set aside and that the case be remanded to the Income-tax Officer to assess the income as "the income of the family of Debi Parshad". In appeals by Debi Parshad, the Income-tax Appellate Tribunal confirmed the order of the Appellate Assistant Commissioner annulling the assessment made by the Income-tax Officer and directed that the direction for assessing the income in the hands of Debi Parshad be deleted.

4. The Tribunal referred the following three questions at the instance of the Commissioner of Income-tax.

"1. Whether L. Debi Parshad was a stranger in respect of the income-tax proceedings against Ambala Flour Mills ?

2. Whether the Appellate Assistant Commissioner could give a direction in the case of Ambala Flour Mills to the effect that the income should be assessed in the hands of L. Debi Parshad after annulling the assessment in the case of the Ambala Flour Mills ?

3. Whether on the facts and in the circumstances of the case the appeals filed by Shri Debi Parshad were maintainable in law ?"

5. The High Court answered the first question in the negative, the second in the affirmative with the rider that the assessment against Debi Parshad "could only be in individual capacity"; and the third question in the affirmative.

6. Debi Parshad was competent to maintain the appeals filed by him to the Tribunal because by the order of the Appellate Assistant Commissioner, it was directed that he may be personally assessed by the Income-tax Officer in respect of the income of the Ambala Flour Mills.

7. Counsel for Debi Parshad, however, contended that Debi Parshad was a stranger to the assessment proceedings and the Appellate Assistant Commissioner had no jurisdiction to direct after setting aside the order of assessment that Debi Parshad be assessed personally in respect of the income of the Ambala Flour Mills. The relevant provisions of the Income Tax Act may be noticed.

The relevant provisions of Section 31 of the Income Tax Act, 1922, are these :

"In disposing of an appeal, the Appellate Assistant Commissioner may, in the case of an order of assessment,

(a) confirm, reduce, enhance or annul the assessment;

(b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further enquiry 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. Whereas the result of an appeal, any change in the assessment of a firm or association of persons or new assessment of a firm or association of persons is ordered to be made, the Appellate Assistant Commissioner may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association."

8. All the returns have been filed by Debi Parshad but in different capacities. The Income-tax Officer was of the view that the business was carried on by an association of persons and the income from the business was liable to be brought to tax on that footing. The Appellate Assistant Commissioner was of the view that the income belonged to Debi Parshad and he was liable to be assessed, personally in respect of the income. Evidently the Income-tax Officer held that Debi Parshad was a member of an association of persons. Since the Appellate Assistant Commissioner set aside the order assessing the income in the status of "association of individuals", he had to give direction with regard to the assessment of the income, provided the assessment was not barred by the law of limitation.

9. Section 34, sub-section (3) prescribes for the period in which assessment proceedings shall be

completed. The section at the date of assessment by the Income-tax Officer read as follows :

"No order of assessment or re-assessment, other than an order of assessment under Section under Section 23 to which clause (c) of sub-section (1) of Section 28 applies or an order of assessment or re-assessment in cases falling within clause (a) of sub-section (1) or sub-section (I-A) of this section shall be made after the expiry of four years from the end of the year in which the income, profits or gains were first assessable :

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Provided further that nothing contained in this section limiting the time within which any action may be taken or any order, assessment or re-assessment may be made, shall apply to a re-assessment made under Section 27 or to an assessment or re-assessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under Section 31, Section 33, Section 33-A, Section 33-B, Section 66 or Section 66-A."

10. The assessment of tax had according to the law at the relevant time of force, ordinarily, to be completed by the Income-tax Officer within the four years from the last date of the year of assessment in which the income was first assessable. But to this rule there were several exceptions. If the assessment had to be made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order of the Appellate Assistant Commissioner or of the Appellate Tribunal or of the Commissioner in revision or of an order made in a reference, the assessment could be made even after the expiry of the four years. The exception applied to an assessment made against the assessee or any person in consequence of, or to give effect to any finding or direction contained in the order of any superior tribunal, or the High Court or this Court. This Court in *S. C. Prashar and Another v. Vasantsen Dwarkadas and Others* (49 ITR 1) held that the second proviso to Section 34(3) of the Income-tax Act, 1922, in so far as it authorised the assessment or re-assessment of any person other than the assessee after the expiry of 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 the proceeding in relation to the assessee violated the provisions of Article 14 of the Constitution and was invalid to that extent.

11. In a later case *Income-tax Officer, A-Ward, Sitapur v. Murlidhar Bhagwan Das* (52 ITR 335) this Court explained the connotation of the expression "any person" as used in Section 34, sub-section (3), Proviso 2 at page 346 :

"The expression 'any person' in its widest connotation may take in any person, whether connected or not with the assessee, whose income for any year has escaped assessment, but this construction cannot be accepted, for the said expression is necessarily circumscribed by the scope of the subject-matter of the appeal or revision as the case may be. That is to say, that person must be one who would be liable to be assessed for the whole or a part of the income that went into the assessment of the year under appeal or revision. If so construed, we must turn to Section 31 to ascertain who is that person other than the appealing assessee who can be liable to be assessed for the income of the said assessment year. A combined reading of Section 30(1) and Section 31(3) of the Act indicates the cases where persons other than the appealing assessee might be affected by orders passed by the Appellate Commissioner.

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 year on a partner of partners of the firm, member or member of the Hindu Undivided Family or the individual, as the case may be. In such cases, though the latter are not to nominee parties to the appeal, their assessments depend upon the assessment of 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."

12. In Commissioner of Income-tax, U. P. v. Kanpur Coal Syndicate (53 ITR 225) this Court held that where the Income-tax Officer assessed the income of an association of persons under Section 31(3)(b), the Appellate Assistant Commissioner was competent to set aside the assessment and to direct the Income-tax Officer to assess the members individually. The Court observed that the Appellate Assistant Commissioner had under the Act plenary powers in disposing of an appeal, the scope of his powers being conterminous with that of the Income-tax Officer he can do that the Income-tax Officer can do and can also direct the Income-tax Officer to do what he has failed to do.

13. Debi Parshad had submitted the returns, and Debi Parshad appealed against the order of assessment. He could, in the circumstances of the case, not be called a stranger to the assessment. The income earned by the assessee was assessed to tax as income of an association of persons, of which on the finding of the Income-tax Officer, Debi Parshad was a member. In making a direction against Debi Parshad the Tribunal did not exercise his powers qua a stranger to the assessment proceeding. Civil Appeal Nos. 1280-1282 of 1966 must therefore fail.

14. The Appellate Assistant Commissioner had directed that the income in the three assessment years be assessed in the hands of the family of Debi Parshad, apparently on the view that Debi Parshad represented the Hindu Undivided family of which he was a member. The Tribunal set aside the direction to assess the income of the Ambala Flour Mills in the hands of Debi Parshad personally for in their Debi Parshad was a stranger to the proceeding for assessment. The High Court held that the order of the Appellate Assistant Commissioner directing assessment of "the family of Debi Parshad" was "clearly unwarranted and could relate only to Debi Parshad in his individual capacity."

15. Appeals Nos. 1277 to 1279 of 1966 were filed against that part of the order of the High Court by which they sought to modify the order of the Appellate Assistant Commissioner. The High Court in exercising advisory jurisdiction was incompetent to amend the order of the Appellate Assistant Commissioner. But on the question referred to the High Court, no inquiry into the power of the Appellate Assistant Commissioner to make the impugned direction was competent. The second question only related to the assessment of the income in the hands of Debi Parshad after annulling the assessment of the Ambala Flour Mills. It was not contended before the Tribunal that the income of the Ambala Flour Mills could not be assessed in the hands of the family of Debi Parshad. The competence of the Appellate Assistant Commissioner to make the direction was not and could be referred to the High Court.

16. Appeals Nos. 1277 to 1279 of 1966 filed by the Commissioner therefore fail. There will be no order as to costs in all the appeals.

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