

India Machinery Stores (P) Ltd.

Vs

C. I. T., Bihar and Others

Civil Appeal No. 376 of 1967

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

06.05.1970

JUDGMENT

SHAH, J. -

1. This appeal is filed with certificate granted by the High Court of Patna under section 66-A(2) of the Indian Income-tax Act, 1922.

2. The India Machinery Stores (P) Ltd. is a private company incorporated with the object of taking over the business carried on by the India Machinery and Mills Stores - hereinafter called 'the vendors.' By an agreement dated August 2, 1956 the Company agreed to purchase all the assets of the vendors, goodwill, and the "book-debts and other liabilities and claims against the Company" as on the date of transfer in consideration of allotment 260 fully paid-up shares of the Company of the nominal value of Rs. 2,60,000/-. It was provided by Clause 4 of the agreement :

"That all assets of the vendors in respect of all its business shall be taken over at the book value standing in the books accounts of the vendors as on the 1st August. One thousand Nine Hundred and Fifty-six."

3. In a proceedings for assessment to tax for 1958-59, the Income-tax Officer found that in the books of the vendors the "value of stock" as on August 1, 1956 was Rs. 1,77,285/- while in the books of the Company the opening stock taken over by the Company was valued on the same day at Rs. 2,10,285/-. The Income-tax Officer held that the valuation by the Company of the opening stock was in "clear violation of the terms of agreement between the vendors and the Company" and added a sum of Rs. 33,000/- representing the difference between the value of the closing stock in the books of account of the vendors and the opening stock in the of account of the Company. The order was confirmed in appeal by the Appellate Assistant Commissioner and by the Income-tax Appellate Tribunal.

4. The High Court of Patna recorded their answer in the affirmative on the following question referred by the Tribunal :

"Whether, on the facts and circumstances, of the case and upon a construction of the agreement of 2nd August, 1956, the Tribunal was justified in holding that the sum of Rs. 33,000/- forms part of the assessable profits of the assessee-company ?"

5. A Division Bench of the High Court certified the case under Section 66-A(2) of the Act as fit for appeal to this Court, observing :

"That the case fulfils all the requirements of Section 66-A(2) of the Indian Income-tax Act, 1922, and is a fit case for appeal to the Supreme Court."

6. At the hearing of the appeal, on behalf of the Commissioner of Income-tax, it is contended that the appeal is incompetent, since the High Court in certifying the case as fit for appeal to this Court did not set out the question of law which this Court has to decide. It was urged that the certificate or the order certifying the case must disclose that some substantial question of public or private importance arises in the case, and on that account the case is certified to be fit for appeal. In our Judgment, the contention must be accepted.

7. Section 66-A of the Indian Income-tax Act, 1922, which was added by the Indian Income-tax (Amendment) Act 24 of 1926 by sub-section (2) provides :

"An appeal shall lie to the Supreme Court from any Judgment of the High Court delivered on a reference made under Section 66 in any case which the High Court certifies to be fit one for appeal to the Supreme Court."

The phraseology of sub-section (2) of Section 66-A of the Income-tax Act is substantially the same as used in section 109(c) of the Code of Civil Procedure, 1908, Article 133(1)(c) and article 134(1)(c) of the Constitution. The Judicial Committee in *Delhi Cloth and General Mills Co. Ltd. v. Income-Tax Commissioner of Delhi* (LR 54 IA 421) observed :

"..... it will be noticed that the appeal thereby given is by sub-section (2) confined to a case which the High Court certifies "to be a fit one for appeal to His Majesty in Council". These words are textually the same as the concluding words of section 109(c) of the Code of Civil Procedure, and coupled with the carefully limited referential words to the Code of Civil Procedure in sub-section (3), suffice, in their Lordships' judgment, to exclude from any right of appeal cases which fall within the requirements of Section 110 of the Code, and are operative to confine that right to cases which are certified to be otherwise fit for appeal to His Majesty in Council."

8. In *Banarsi Parshad v. Kashi Krishna Narain and Another* (LR 28 IA 11), the Judicial Committee explained that the expression "certifies to be a fit one for appeal" in the Code of Civil Procedure is clearly intended to meet special cases - such, for example, as those in which the point in dispute is not measurable by money, though it may be of great public or private importance. To certify that a case is of that kind, though it is left entirely in the discretion of the Court, is a judicial process, which could not be performed without special exercise of that discretion, evinced by a fitting certificate.

9. In *Radha Krishn Das v. Rai Krishn Chand* (LR 28 IA 182) a Division Bench of the Allahabad High Court had issued a certificate stating that "though the valuation of the case was below Rs. 10,000/- yet as regards the value and nature of the case it fulfilled the requirements of Section 596 of Act No. XIV of 1882 (Code of Civil Procedure)." In that case the value of the subject-matter was less than Rs. 10,000/- and the Judicial Committee observed that even though Section 596 was referred to there was nothing to show that the judges who had issued the certificate "had exercised their judicial discretion upon the matter in deciding whether, in order to comply with section 595(c) and Section 600 the case was a fit one for appeal to Her Majesty in Council". On that ground the appeal was dismissed as incompetent.

10. In *Radha Krishna Ayyar v. Swaminatha Ayyar* (LR 48 IA 31) the High Court granted a certificate in case in which the claim was Rs. 4,560/- due as rent. The certificate recited :

"It is hereby certified that, as regards the value of other subject-matter and the nature of the question involved, the case fulfils the requirements of Sections 109 and 110 of the Code of Civil Procedure, and that the case is a fit one for appeal to His Majesty in Council."

The Judicial Committee observed that where any certificate is granted certifying a case, it is of the utmost importance the certificate should show clearly upon which ground it is granted. In dealing with the argument that the case was covered by section 109(c) of the Code of Civil Procedure, 1908, their Lordships observed :

"There is no indication in the certificate of what the nature the question is that it is thought was involved in the hearing of this appeal, nor is there anything to show that the discretion conferred by section 109(c) was invoked or was exercised. Their Lordships think X X X that these certificates are of great consequences, that they seriously affect the rights of litigant parties, and that they ought to be given in such a form that it is impossible to mistake their meaning upon their face."

11. Again, the Judicial Committee observed in *Commissioner of Income-tax, Central Provinces and Berar v. Sir S. M. Chitnavis* (LR 59 IA 290) that when a certificate is granted under Section 66-A of the Income-tax Act it must be on a question affecting not only a particular assessee and depending upon the state of the evidence in a particular case, but a question of great public importance affecting assessee generally and depending upon general principles.

12. In granting the certificate the High Court merely observed that it was "a fit case for appeal to the Supreme Court" : they did not indicate the grounds which persuaded them to hold that it was a fit case for appeal to this Court. It would be conducive to better administration of justice if in certifying a case under section 66-A(2) of the Indian Income-tax Act as a fit case for appeal, the High Court sets out the question of law which they regard as of great public or private importance which falls to be decided by this Court.

13. Mr. Chagla contended that the rules laid down by the Judicial Committee applicable to a certificate issued under Section 109(c) of the Code of Civil Procedure, 1908, and under section 596 of the Code of 1882, in regard to appeals in Civil matters have no bearing in determining the meaning of Section 66-A(2), for the High Court exercises advisory jurisdiction on a reference on questions of law and on that account even if the question of law which in the view of the High Court arises is not stated in the certificate, it may be presumed when the High Court has certified a case to be fit for appeal, that a substantial question of law is involved, and the technical defect in the certificate may be ignored. We are unable to accept that argument. It is true that under section 66(1) and (2) of the Indian Income-tax Act, 1922, only a question of law may be referred to the High Court for opinion, but the right to obtain a certificate under section 66-A(2) arises only when in the proposed appeal a question of great public or private importance arises. It cannot be held that because a question of law alone may be referred to the High Court under Section 66 of the Indian Income-tax Act, in the proposed appeal a question of law of great public or private importance necessarily arises. Any other view, would make every opinion of the High Court in a reference under Section 66 appealable to this Court. In our view, the certificate granted by the High Court was defective.

14. It was also urged that a practice is fairly common in some of the High Courts to certify a case under section 66-A(2) without recording any reasons or the grounds for certifying the case, and we may not penalize the Company when we are enunciating the true rule for the first time. But the practice, in our Judgment, was laid down many years ago by the decisions of the Judicial Committee that a certificate under Section 66-A(2) which does not set out precisely the grounds or raise a question of great public or private importance does not comply with the requirements of the Act. The jurisdiction of this Court to entertain an appeal from the opinion recorded under the Indian Income-tax Act arises only when a certificate is properly issued by the High Court or when this Court grants special leave under Article 136 of the Constitution.

15. In our judgment, there is again no merit in the appeal. By Clause 4 of the agreement, dated August 2, 1956, it was expressly provided :

"That all assets of the vendors in respect of all its business shall be taken over at the book value standing in the books of accounts of the vendors as on the 1st August One Thousand Nine Hundred Fifty-six."

It is undisputed that the stock-in-trade was entered in the books of account of the vendors on the date of transfer of the undertaking at Rs. 1,77,285/- and the Company valued the stock-in-trade at Rs. 2,10,285/-. It is true that to the deed of transfer is annexed a Schedule of the assets and liabilities taken over by the Company and in the Schedule the value of stocks at Patna, Muzaffarpur and Purnea is shown at Rs. 2,10,285-87. No attempt was made to explain the discrepancy between the operative part of the agreement and the valuation shown in the Schedule. The Income-tax Officer was of the view that the Company had inflated the opening stock so as to reduce the ultimate profits. That view was confirmed by the Appellate Assistant Commissioner and by the Tribunal. No question of law arose out of the order of the Tribunal. The reference itself was incompetent.

16. The appeal fails and is dismissed with costs.

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