T. S. Balaram, Income-Tax Officer, Company Circle IV, Bombay

Vs

M/s. Volkart Brothers, Bombay

Civil Appeal No. 1170 of 1968

(K.S. Hegde, A.N. Grover JJ)

05.08.1971

JUDGMENT

HEGDE, J. -

1. This appeal by certificate arises from the decision of the High Court of Bombay in Miscellaneous Petition No. 104 of 1968 on its file. That was a petition under Article 226 of the Constitution. Therein the respondents challenged the validity of the orders of rectification made by the Income-tax Officer, Company Circle, Bombay in the assessment of the respondents for the assessment years 1958-59, 1960-61, 1961-62 and 1962-63, under Section 154 of the Income-tax Act, 1961. Respondents Nos. 2 and 3 are the partners in the first respondent firm. The first respondent firm was duly registered under the Income-tax Act, 1922, as well as under the Income-tax Act, 1961. In the original assessments of the firm for the concerned assessment years, assessments were made on the help rates prescribed under the respective Finances Act applicable to registered firms. In the individual assessments of the partners for their respective share in the income of the firm was included and assessed at the maximum rates of income since their assessments were made in the status of non-resident. On February 1, 1965, the first respondent firm was served with notices, dated January 29, 1965, by the Income-tax Officer intimating to it that in its assessments for the assessment years 1958-59, 1960-61, 1961-62 and 1962-63, there are mistakes apparent from the record inasmuch as the firm had not been charged at the maximum rates of the income-tax under Section 17(1) of the Indian Income-tax Act, 1922 and therefore he proposes to rectify those assessments under Section 154 of the Income-tax Act, 1961. The respondent in their reply to those notices denied that there was any mistake apparent or otherwise in those orders of assessment. They disputed the Income-tax Officer's authority to make any correction. The Income-tax Officer did not accept the contention of the respondents and assessed them by applying the provisions of Section 17(1) of the 1922 Act. The respondents challenged the validity of the orders rectifying the assessments, before the High Court of Bombay as mentioned earlier. The High Court took the view that the original assessments made on the respondents were prima face in accordance with law and at any rate as there was no obvious or patent mistake in those orders of assessment, the Income-tax Officers was incompetent to pass the impugned orders.

2. The first question that we have to decide is whether on the facts and in the circumstances of the case, the Income-tax Officer was within his powers in making the impugned rectifications. He purported to make those rectifications under Section 154 of the Income-tax Act, 1961. That section to the extent material for our present purpose read :

"154(1) With a view to rectifying any mistake apparent from the record -

(a) the Income-tax Officer may amend any order of assessment or of refund or any other order passed by him :

#X X X."##

The corresponding section in the Indian Income-tax Act, 1922 is Section 35.

3. We have now to see whether the Income-tax Officer was justified in opining that in the original orders of assessment, there was any apparent mistake. As seen earlier in the original assessment of the firm for the relevant assessment years, the Income-tax Officer adopted the slab rates applicable to registered firms. The question for decision is whether the first respondent's firm came with the mischief of Section 17(1) of the Indian Income-tax Act, 1922. Section 17(1) reads :

"Where a person is not resident in the taxable territories and is not a company, the tax, including super-tax, payable by him or on his behalf on his total income shall be an amount equal to -

(a) the income-tax which would be payable on his total income at the maximum rate, plus

(b) either the super-tax which would be payable on his total income at the rate of nineteen per cent, or the super-tax which would be payable on his total income if it were the total income of a person resident in the taxable territories whichever is greater ....."

(Proviso to the section is not relevant for our present purpose.)

Section 17(1) can apply to a "person." The expression "person" is defined in Section 2(9) of the Indian Income-tax Act, 1922 thus :

"'person' includes a Hindu undivided family and a local authority."

Unless a firm can be considered as a "person", Section 17(1) cannot govern the assessment of the first respondent. In the Income-tax Act, 1961 [Section 2(31)], the expression "person" is defined differently. That definition reads :

"'person' includes -

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of person or a body of individuals, whether incorporated or not,

(vi) a local authority, and

(vii) every artificial juridical person, not falling within any of the preceding sub-

clauses."

4. It is matter for consideration whether the definition contained in Section 2(31) of the Income-tax Act, 1961 is an amendment of the law or is merely declaratory of the law that was in force earlier. To pronounce upon this question, it may be necessary to examine various provisions in the act as well as its scheme.

5. Section 113 of the Income-tax Act, 1961 corresponded to Section 17(1) of the Indian Income-tax Act, 1922, but that section has now been omitted with effect from April 1, 1965 as a result of the Finance Act, 1965. From what has been said above, it is clear that the question whether Section 17(1) of the Indian Income-tax Act, 1922, was applicable to the case of the first respondent is not free from doubt. Therefore the Income-tax Officer was not justified in thinking that on that question there can be no two opinions. It was not open to the Income-tax Officer to go into the true scope of the relevant provisions of the Act in a proceeding under Section 154 of the Income-tax Act, 1961. A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. As seen earlier, the High Court of Bombay opined that the original assessments were in accordance with law though in our opinion the High Court was not justified in going into that question. In Satyanarayan Laxminarayan Hedge and Others v. Millikarjun Bhavanappa Tirumale ((1960) 1 SCR 890 : AIR 1960 SC 137 : 1960 SCJ 1065) this Court while spelling out the scope of the power of a High Court under Article 226 of the Constitution ruled that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on a debatable point of law is not a mistake apparent from the record-see Sidhramappa v. Commissioner of Income-tax, Bombay. (21 ITR 333) The power of the officers mentioned in Section 154 of the Income-tax Act, 1961 to correct "any mistake apparent from the record" is undoubtedly not more than of the High Court to entertain a writ petition on the basis of an "error apparent on the face of the record." In this case it is not necessary for us to spell out the distinction between the expressions "error apparent on the face of the record" and "mistake apparent from the record." But suffice it to say that the Income-tax Officer was wholly wrong in holding that there was a mistake apparent from the record of the assessments of the first respondent.

6. For the reasons mentioned above we dismiss this appeal with costs.

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