

The C. I. T., West Bengal II, Calcutta

Vs

M/s. Electro House

Civil Appeals Nos. 2376-2379 of 1968 and 1168-1171 of 1971

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

02.09.1971

JUDGMENT

HEGDE, J. -

1. Civil Appeals Nos. 1168-1171 of 1971 are by special leave and Civil Appeals Nos. 2376-2379 of 1968 are by certificate. These appeals arise from the decision of the Calcutta High Court in certain tax references. In those references the High Court was considering the one question referred to it by the Tribunal under Section 66(1) of the Indian Income-tax Act, 1922 in brief 'the Act') and two other question referred to it by the Tribunal in accordance with the directions given by that Court under Section 66(2) of the Act. The High Court has only answered the question referred to it by the Tribunal under Section 66(1) of the act and it has not answered the other two questions as being unnecessary. The question referred under Section 66(1) is :

"Whether on the facts and in the circumstances of the case, the notice issued under Section 33-B of the Indian Income-tax Act, 1922, met the requirements of the law and whether the Commissioner of Income-tax validly exercised jurisdiction under Section 33-B of the Indian Income-tax Act, 1922 ?"

2. The facts of the case lie within a narrow compass. The concerned statement years are 1959-60 and 1960-61, the corresponding accounting years having ended on December 31 of each of the years 1958 and 1959. The assessee M/s. Electro House claimed to be a firm constituted under a deed of partnership, dated January 2, 1958. The business of that firm was stated by Baidyanath Gorai sometimes in the year 1949 and upto the assessment year 1958-59, he was assessed as the sole proprietor thereof. On January 2, 1958, he purported to enter into a partnership with his mother-in-law and son-in-law. Under that partnership he had 40% share and his mother-in-law and son-in-law had 30% share each in the profits and losses of the firm. The Income-tax Officer accorded registration of the partnership in question under Section 26-A of the Act for the two assessment years with which we are concerned in these appeals. The Commissioner of Income-tax, West Bengal, however appears to have found on the examination of the records that the orders of the Income-tax Officer granting registration to the assessee firm the assessment year 1959-60 and renewal of registration for the assessment year 1960-61 were erroneous and prejudicial to the interests of the revenue. He therefore proceeded against the assessee under Section 33-B of the Act. Before doing so, he issued a notice to the firm on July 18, 1962 which read thus :

#"From Shri F. H. Vallibhoj Commissioner of Income-tax, West Bengal. To M/s. Electro House, G. T. Road, Asansol. Gentlemen, Subject - Income-tax Assessment - 1959-60 and 1960-61, M/s. Electro House - Registration under Section 26-A of the

Income-tax Act - Wrongly granted - Proposal under Section 33-B to cancel orders under Section 26-a - Notice regarding : On a perusal of the orders under Section 26-A passed by Income-tax Officer, "A" Ward, Asansol on October 5, 1960, and February 25, 1961, for the assessment year 1959-60 and 1960-61 respectively in the above case and the connected records, I consider that the said orders are erroneous and prejudicial to revenue, inasmuch as registration under Section 26-A of Income-tax Act, 1922, for the assessment year 1959-60 and renewal of registration under Section 26-A of the said Act for the assessment year 1960-61 should not have been granted as there are prima facie reasons and grounds to hold that the partnership brought into existence by the partnership deed, dated January 2, 1958, is not a genuine one. I, therefore, propose to cancel the orders under Section 26-A of the Income-tax Act, 1922, for the assessment years 1959-60 and 1960-61 under powers vested in me under Section 33-B of the Income-tax Act, 1922, unless you show cause why the orders should not be so cancelled. I am prepared to hear your objections, if any, at 11 a.m. on August 3, 1962, at my office as noted above. Objections in writing, if any submitted on or before the above date will also be duly considered. Yours faithfully, (Sd.) F. H. Vallibhoy, Commissioner of Income-tax West Bengal. "###

3. The question for consideration is whether this notice is an invalid notice and consequently the Commissioner had no jurisdiction to proceed under Section 33-B. The Tribunal came to the conclusion that the notice issued was not one required to be issued by the Act and hence its validity or invalidity did not affect the jurisdiction of the Commissioner. It also held that it was a valid notice. But the High Court differing from the conclusions reached by the Tribunal opined that the notice issued was not valid and therefore the Commissioner had no jurisdiction to proceed with the enquiry. In that view it thought it unnecessary to consider the remaining questions.

Section 33-B (1) reads :

"The Commissioner may call for and examine the record of any proceeding under this Act and if he consider 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 orders thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

4. The section unlike Section 34 does not prescribe any notice to be given. It only requires the Commissioner to give an opportunity to the assessee of being heard. The section does not speak of any notice. It is unfortunate that the High Court failed to notice the difference in language between section 33-B and 34. For the assumption of jurisdiction to proceed under Section 34, the notice as prescribed in that section is a condition precedent. But no such notice is contemplated by Section 33-B. The jurisdiction of the Commissioner to proceed under Section 33-B is not dependent on the fulfillment of any condition precedent. All that he is required to do before reaching his decision and not before commencing the enquiry, he must give the assessee an opportunity of being heard and make or cause to make such enquiry as he deems necessary. Those requirements have nothing to do with the jurisdiction of the Commissioner. They pertain to the region of natural justice. Breach of the principles of natural justice may affect the legality of the order made but that does not affect the jurisdiction of the Commissioner. At present we are not called upon to consider whether the order made by Commissioner is vitiated because of the contravention of any of the principles of natural

justice. The scope of these appeals is very narrow. All that we have to see is whether before assuming jurisdiction the Commissioner was required to issue a notice and if he was so required what that notice should have contained ? Our answer to that question has already been made clear. In our judgment no notice was required to be issued by the Commissioner before assuming jurisdiction to proceed under Section 33-B. Therefore the question what that notice should contain does not arise for consideration. It is not necessary nor proper for us in this case to consider as to the nature of the enquiry to be held under Section 33-B. Therefore, we refrain from spelling out what principles of natural Justice should be observed in an enquiry under Section 33-B. This Court in Gita Devi Aggarwal v. Commissioner of Income-tax, West Bengal and Others, (76 ITR 496) ruled that Section 33-B does not in express terms require a notice to be served on the assessee as in the case of Section 34. Section 33-B merely requires that an opportunity of being heard should be given to the assessee and the stringent requirement of service of notice under Section 34 cannot therefore, be applied to a proceeding under Section 33-B.

5. For the reasons mentioned above, we allow Civil Appeals Nos. 1161 to 1171 of 1971, discharge the answer given by the High Court to the question set out earlier and answer that question as follows :

"The notice issued did not contravene Section 33-B and the Commissioner validly exercised his jurisdiction under Section 33-B. But as the High Court has not considered the other questions referred to it, these cases will now go back to the High Court for considering those questions."

6. Civil Appeals Nos. 2376 to 2379 of 1968, are dismissed as being not maintainable, as the certificates on the basis of which those appeals were brought to this court are not in accordance with law. But in these appeals there will be no order as to costs.

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