

SUPREME COURT OF INDIA

R.B. Seth Gujar Mal Modi

Vs.

The C.I.T., Punjab

(A Grover and K Hegde JJ.)

07.09.1971

JUDGMENT

K.S. HEGDE, J.

1. This is an appeal by special leave from the decision of High Court dismissed the Writ Petition filed by the appellants primarily on the ground that they had adequate alternative remedy under the Income-tax law.

2. The father of the appellants Seth Multani Mal Modi was a shareholder in the Modi Spinning & Weaving Mills Co. Ltd. On March 5, 1956 that company declared interim dividends to its shareholders. Under that declaration Seth Multani Mal Modi was entitled to Rs. 60,265/- as interim dividends. The dividend warrants were despatched on June 21, 1956 and the interim dividends declared were confirmed by the General Meeting of the company on January 17, 1957. Seth Multani Mal Modi died on October 22, 1957. Thereafter the assessment of Seth Multani Mal Modi for the assessment years 1956-57 and 1957-58 was taken up. There it was contended that the dividends referred to earlier must be considered as the income of Multani Mai Modi during the assessment year 1957-58. The Income-tax Officer rejected that contention and considered that income as having been received during the assessment year 1956-57. The assessments orders for the years 1956-57 and 1957-58 were passed by the Income-tax Officer on February 10, 1958. In appeal the Assistant Appellate Commissioner held that income was not taxable in the assessment year 1956-57, but it was taxable in the assessment year 1957-58. The Tribunal upheld that decision. The resulting position was that dividend income stood excluded from the income for assessment for the year 1956-57 but at the same time it had not been taken into consideration in the assessment for the year 1957-58. On November 7, 1958 the Income-tax Officer issued a notice under Section 34(1) b) of the Indian Income-tax Act, 1922 to appellant No. 2 seeking to re-assess the said dividend income in the

year 1957-58. He also issued a notice under Section 22(2) of the 1922 Act calling for a fresh return within the time stipulated in the notice. No return was filed in response to that notice. On October 28, 1960 appellant No. 2 sent a telegram requesting for an adjournment. The adjournment asked for was refused and the assessment was completed under Section 23(4) of the 1922 Act on October 29, 1960. Thereafter appellant No. 2 made an application under Section 27 of the Act, 1922 on Dec. 5, 1960 for setting aside that order but that was rejected. On appeal the A.A.C. set aside the assessment made, by his order dated June 15, 1963 on the ground that the notice issued under Section 34(1)(b) had not been served on appellant No. 2 and that it was necessary to issue notices to all the legal representatives of Multani Mal Modi. He directed that the Income-tax Officer may proceed to assess the assessee in accordance with law.

3. On April 1, 1962 the Indian Income Tax Act, 1961 came into force. On January 7, 1964 the Income Tax Officer issued notices to the appellants under Section 148 of that Act. Aggrieved by those notices the appellants moved the High Court under Article 226(1) the Constitution praying that those notices be quashed, as according to them the Income-tax Officer was not competent to issue those notices. That petition came up for consideration before a single Judge of the High Court. The learned Judge feeling that an important question of law arose for decision, referred the writ petition to a Division Bench. The Division Bench dismissed the writ petition mainly on the ground that the assessee had other adequate alternative remedy. Thereafter this appeal was brought after obtaining special leave for this Court.

4. There is no dispute that when the 1961 Act came into force, the proceedings initiated under Section 34(1)(b) of 1922 Act were pending. That being so, it was not open to the Income-tax Officer to issue notices under Section 148 of the 1961 Act: See our decision in Civil Appeal No. 1981 of 68 delivered today.

5. Mr. B. Sen, learned Counsel for the department contended that in view of Section 150(1) of the 1961 Act it was open to the Income-tax Office to issue the impugned notices. That section reads:

Notwithstanding anything contained in Section 149, the notice under Section 148 may be issued at any time for the purpose of making an assessment or re-assessment or re-computation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceedings under this Act by way of appeal, reference or revision.

(Emphasis supplied).

Quite clearly Mr. Sen's contention is unsustainable because the A.A.C order was not passed under the 1961 Act. Therefore the department cannot take any support from Section 150(1) of Act, 1961.

6. Mr. Sen next relied on proviso (iii) of Section 34 of the 1922 Act. That proviso cannot lend any support for the notices under Section 148 of the 1961 Act. It is unnecessary for us to decide in this appeal whether the department could have initiated proceedings under the proviso, as no such proceedings had been initiated. All that we have to consider in this appeal is whether the impugned notices issued under the 1961 Act are valid notices. We have no hesitation that those notices are invalid for the reasons already mentioned.

7. In the result this appeal is allowed. The order of the High Court is set aside. The writ petition is allowed and the impugned notices quashed. The appellants are entitled to their costs of this appeal

from the respondents.