SUPREME COURT OF INDIA

Bankipur Club Ltd., Patna

Vs.

The C.I.T., Bihar

(K.S.Hegde J.)

08.09.1971

JUDGMENT

K.S. HEGDE, J.

1. There are two sets of appeals in this case both arising from the same judgment. The first set of appeals came to be filed under the following circumstances :

2. Civil Appeals Nos. 2157-2160 of 68 were brought to this Court on the strength of certificates issued by the High Court of Patna. The High Court while granting those certificates did not give any reason in support of them. That being so, those certificates cannot be considered as having been given according to law. Hence the appeals brought on the strength of those certificates must be held to be non-maintainable. It is under those circumstances the assessee-appellant applied to this Court to grant special leave against the judgment of the High Court. We granted the special leave asked for. On the basis of the special leave granted by this Court Civil Appeals Nos. 1304-1307 of 71 have been filed.

3. The assessee is a Members' Club incorporated under the Indian Companies Act. We are concerned with its assessment for the assessment year 1956-57, 1957-58, 1958-59 and 1959-60 the corresponding accounting years being the calender years 1955, 1956, 1957 and 19.58.

4. In response to a notice issued by the Income-tax Officer under Section 22(2) of the Indian Income Tax Act, 1922 to be hereinafter referred to as 8th Act' the assessee filed Nil returns for all the four years. It claimed that it was not liable to pay income-tax as it was a Members' Club. Before the Income-tax Officer the Balance sheets and Profits and Loss Accounts of the assessee for the relevant accounting years were produced. After perusing those records, the Income-tax Officer came to the

conclusion that the assessee was not liable to pay any tax in respect of the amounts realised by it from its Members. Sometime thereafter the Income-tax Officer issued notices to the assessee under Section 34(1)(b). In response to those notices the assessee again filed Nil returns but the Income-tax Officer did not accept those returns. He assessed 140 Bankipur Club Ltd. Patna v. The C.I.T., Bihar & Orissa, Patna U.J. (S.C.) 1972 the assessee for the assessment years 1956-57, 1957-58, 1958-59 and 1959-60 on Rs. 7,526/-, Rs. 3,521/., Rs. 5,313/-and Rs. 6,881/-respectively. He came to the conclusion that the amounts received from members of the Club as guests charges must be considered as the incline of the assessee and that the same is liable to be taxed.

5. Aggrieved by the orders of the Income-tax Officer, the assessee took up the matters in appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner affirmed the orders of the Income-tax Officer. A further appeal was taken by the assessee to the Income-tax Appellate Tribunal. The Tribunal upheld the contentions of the assessee and came to the conclusion that the notices issued under Section 34(1)(b) were incompetent notices as the Income-tax Officer cannot be said to have received any information after he made the assessments in questions.

6. As the instance of the department the Tribunal referred to the High Court under Section 66(1) of the Act, one question relating to the assessment year 1956-57 and two questions relating to the assessment years 1957-58, 1958-59 and 1959-60. In respect of the assessment year 1956-67, the question referred was:

whether on the facts and circumstances of these cases the Tribunal erred in holding that the provisions of Section 34(1)(b) were not properly invoked and the re-assessment proceedings for the assessment years '956-57, were invalid.

In respect of the remaining assessment eat years, the questions referred are :

(1) Whether on the facts and circumstances of these cases the Tribunal was justified in holding that the re-assessment for the years 1957-58, 1958-59 and 1959-60 under Section 34 were invalid on the ground that the Income-tax Officer had passed no orders of assessment on the original returns ?

(2) Whether on the facts and circumstances of these cases the Tribunal erred in holding that the provisions of Section 34 were not properly invoked and the re-assessment proceedings for the assessment years 1957-58, 1958-59, and 1959-60 were invalid ?

7. The High Court answered all those questions in favour of the Department. The learned Counsel for the assessee did not challenge the correctness of the answer given by the High Court in respect of question No. 1 relating to the assessment years 1957-58, 1958-59, and 1959-60. He submitted that the question is concluded by the decision of this Court in Commissioner of Income-tax, Calcutta v. Bidhu Bhusan Sarkar In view of that submission we do dot propose to go into that question.

8. Now coming to the question referred in respect of the assessment year 1956-57 and the second question referred in respect of the subsequent years the Income-tax Officer has not placed any material before the Tribunal to show that he received any fresh information either on questions of facts or on questions of law subsequent to the date he passed the original assessment orders. This court has repeatedly ruled that the information referred to in Section 34(1)(b) must be that the Income-tax Officer receives after he makes the original order of assessment. It must come to his

knowledge subsequent to the assessment sought to be reopened. In these cases it is admitted that all the facts were placed before the Income-tax Officer when he passed the original orders of assesssment. The fact that the Club had received certain amounts as guests charges from its members had been placed before the Income-tax Officer. It is not the case of the Income-tax Officer that he did not come to know all the relevant facts when he made the original orders of assessment. It is also not his case that at the time he made those orders he was not aware of the true legal position. It was for the Income-tax Officer to show that he had received some information subsequent to his passing the original orders of assessment. No such material was placed before the Tribunal. That being so, the Tribunal, in our opinion was right in holding that the Income-tax Officer was incompetent to initiate proceedings under Section 34(1)(b). The High Court has given no reason to come to the conclusion that there was any subsequent information on the basis which the Income-tax Officer could have re-assessed the assessee under Section 34(1)(b).

9. For the reasons mentioned above, we allow Civil Appeal Nos. 1304, 1307 of 1971 to the extent mentioned above, discharge the answer given in respect of the question relating to the assessment year 1956 57 as well as the answer given to the second question relating to the subsequent years and answer those questions in favour of the assessee. The answer given by the High Court in respect of the first question relating to the assessment years 1957-58, 1958-59 and 1959-60 stands. The assessee is entitled to its coats in these appeals in this Court. Hearing fee one set.

10. Now coming to Civil Appeals Nos. 2157-2160 of 68 they are dismissed as not being maintainable. In these appeals, there will be no order as to costs.