

Union of India and Others

Vs

Seth R. Dalmia

Civil Appeals Nos. 1107-1112 (NT) of 1970

(Y. V. Chandrachud, R. S. Sarkaria, A. C. Gupta JJ)

27.02.1975

JUDGMENT

GUPTA, J. -

1. These six appeals by certificates granted by the High Court of Delhi arise out of six writ petitions filed by the respondent before us challenging the validity of six notices dated September 7, 1965 issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the Act). The notices relate to the assessment years 1949-50, 1950-51 and 1951-52, the corresponding accounting years ending on September 30 of 1948, 1949 and 1950 respectively. Three of the notices were issued to the petitioner in his individual capacity and the other three were served on him as a member of an association of persons. The petitioner had been assessed as an individual for the aforesaid assessment years in accordance with the provisions of the Indian Income Tax Act, 1922. Thereafter a commission known as Vivian Bose Commission was appointed to enquire into the affairs of various companies with which the appellant was alleged to have been associated. On the facts disclosed in the report of enquiry, the Income-tax Officer, Special Investigation Circle A, New Delhi, issued the aforesaid two sets of notices to the petitioner under Section 148 of the Act. The notices informed the petitioner that these were issued "after obtaining the necessary satisfaction of the Central Board of Direct Taxes, New Delhi". This claim was questioned by the petitioner in the High Court and one of the grounds on which the validity of the notices was challenged was that sanction of the Central Board of Direct Taxes had not been taken before the notices were issued as required by Section 151 of the Act. The High Court accepting this contention quashed all the six notices served on the petitioner and by issuing a writ of prohibition restrained the appellants. The Union of India, the Central Board of Direct Taxes, New Delhi, and the Income-tax Officer, Special Investigation Circle A, New Delhi, from taking any action upon these notices. As the writ petitions succeeded on this ground, the High Court did not consider the other objections to the notices raised in the petitions. The propriety of that decision is in question in these appeals.

2. The relevant part of Section 151 of the Act reads as follows :

151. Sanction for issue of notice.- (1) No notice shall be issued under Section 148 after the expiry of eight years from the end of the relevant assessment year, unless the Board is satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice.

#(2) \* \* \* \*##

Section 4(1) of the Central Boards of Revenue Act, 1963 Provides :

The Central Government may make rules for the purposes of regulating the transaction of business by each Board and every order made or act done in accordance with such rules shall be deemed to be the order or act, as the case may be, of the Board.

"Board" as defined in Section 2 of this Act means the Central Board of Direct Taxes or the Central Board of Excise and Customs. Rule 4 of the Central Board of Direct Taxes (Regulations of Transaction of Business) Rules, 1964 is in these terms :

The Chairman may, by an order made with the previous approval of the Central Government, distribute the business of the Board among himself and the other Members and specify the cases or class of cases which shall be considered jointly by the Board.

What happened in this case was that the Income-tax Officer put up the case of the respondent to the Central Board of Direct Taxes by a comprehensive note prepared by him and Shri S. A. L. Narayana Row, the only member of the Board besides the Chairman, on being satisfied on the reasons recorded by the Income-tax Officer that for each of the assessment years in both capacities of the respondent a fit case had been made out for the issue of a notice under Section 148 of the Act, the impugned notices were issued to the respondent. In support of his case that sanction of the Board had not been obtained, the respondent relied on the office order dated January 1, 1964 annexed to the affidavit of Shri P. G. Gandhi, Under Secretary, Central Board of Direct Taxes, filed in answer to the writ petitions, which sets out the distribution of work between the Chairman and the member of the Central Board of Direct Taxes. In this document, entry No. 7 in the list of work allotted to the Chairman reads : "all assessment work of Income-tax". It was contended that Shri Narayana Row had therefore no authority to deal with cases for reopening of assessments and as such the impugned notices issued upon his satisfaction were invalid. In paragraph 5 of the affidavit of Shri P. G. Gandhi, it is admitted that "all assessment work of income-tax" had been assigned to the Chairman under office order dated January 1, 1964 which included matters relating to the reopening of assessments under Section 34 of the Income Tax Act, 1922 or under Section 147 of the Income Tax Act, 1961, but the paragraph adds that later with the approval of the Central Government this item of work was assigned to the member of the Board Shri S. A. L. Narayana Row who in this case accorded the sanction.

3. An affidavit affirmed by Shri J. P. Singh who at the relevant time was the Chairman of the Central Board of Direct Taxes and ex-officio Additional Secretary to the Government of India in the Ministry of Finance, was also filed on behalf of the appellants. Paragraphs 3 to 7 of Shri Singh's affidavit state how Shri Narayana Row came to deal with the cases relating to the reopening of assessments. These paragraphs read as follows :

3. That on March 30, 1964 I suggested to Shri S. A. L. Narayan Row, the then Member of the Central Board of Direct Taxes that he should take up the work of according sanction of the Board under Section 151(1) for reopening of assessments under Section 147 of the Income Tax Act, 1961 to which he consented.

4. Rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964 envisaged that Chairman may by an order made with the previous approval of the Central Government distribute the business of the Board among himself and the other members. The approval regarding the transfer of work relating to sanction under Section 151(1) of Income Tax Act

from the Chairman to the Member Central Board of Direct Taxes was accordingly referred to by me to the Secretary, Ministry of Finance (Department of Revenue & Expenditure) on June 9, 1964.

5. That on June 18, 1964, I personally discussed the proposal regarding transfer of work from myself to the Member, Central Board of Direct Taxes with Shir V. T. Dehejia, the then Secretary of the Government of India, Ministry of Finance (Department of Revenue & Expenditure).

6. That Shri V. T. Dehejia, the then Secretary to the Government of India, Ministry of Finance (Department of revenue & Expenditure) approved the said proposal to which effect a note was made by me on June 18, 1964.

7. That pursuant to the duty assigned to him under Rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules 1964, Shri S. A. L. Narayana Row, Member, Central Board of Direct Taxes gave sanction for the reopening of the assessments under Section 147 of the Income Tax Act, 1961 in the aforesaid case on August 11, 1965.

4. The High Court observed that on a reading of the affidavit affirmed by Shir J. P. Singh

it would appear that the work which had till then been done by the Chairman was to be transferred to the member and approval of the Secretary to the Government of India was obtained for this transfer or allocation of work.

The High Court however found that the averments in the affidavit were "not in line" with the office notes in the relevant file which appears to have been made available to the learned Judges of the High Court who heard these writ petitions. We have also looked into the copies of these office-notes which are on record. It appears that on March 13, 1964 Shri J. P. Singh, Chairman of the Board, recorded the following note :

M(I&ED) may also consider whether he could take up the cases for sanction of reopening of assessments (old Section 34).

This was obviously a note for consideration of the other Member of the Board who, on the next day, recorded his consent to this proposal in the following words :

I will take up case of reopening of assessment also.

Below the sentence conveying Shir Row's assent to the proposal, the Chairman wrote "Thanks". The matter however did not rest there. On May 14, 1964 the following note was put up by Shir B. B. Ghosh, Under Secretary :

Rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964 envisages that Chairman may by an order made with the previous approval of the Central Government distribute the business of the Board among himself and the other Members. Accordingly, the Officer Order already issued in the matter will require amendment. Draft D. O. is submitted for consideration. We may also inform the Heads of Departments under the Board about the decision. Draft letter is submitted for approval.

5. The last relevant not on this subject reads :

Discussed with Secy. (R&E). It is just a minor internal arrangement. No formal order is necessary.

This is signed by Shri J. P. Singh and bears the date June 18, 1964.

6. The High Court held that as no formal order was passed changing the allocation with the previous approval of the Central Government, the sanction as granted by Shir S. A. L. Narayana Row is without jurisdiction and authority.

It is not quite clear whether the High Court was satisfied that Shri J. P. Singh's proposal for a change in the allocation of work was at all approved by the Government or that in the absence of a formal order to that effect the approval was of no consequence. The High Court does not appear to have taken any note of the affidavit of Shri P. G. Gandhi in paragraph 5 of which it is stated that all assessment work of income-tax was assigned to Shri Narayana Row with the approval of the Central Government. From the affidavit of Shri J. P. Singh, the then Chairman of the Central Board of Direct Taxes, part of which we have extracted above, it appears that Shri Singh had referred to the Secretary, Ministry of Finance (Department of Revenue and Expenditure) the proposal for transfer of work relating to sanction under Section 151(1) of the Act from the Chairman to the member of the Board, that Shri Singh personally discussed the matter with Shri V. T. Dehejia who was then the Secretary, Ministry of Finance, and that Shri Dehejia approved the proposal. Shri J. P. Singh's affidavit adds that the note he made in the office file on June 18, 1964 - "Discussed with Secy (R & E). It is just a minor internal arrangement. No formal order is necessary." - refers to these facts. In the face of the statements appearing in the affidavits of Shri J. P. Singh and Shri P. G. Gandhi that the work relating to the reopening of assessments was assigned to Shri Row with the previous approval of the Central Government, it is difficult to see how it can be said that the office notes were not in line with the averments in the affidavits. The High Court did not disbelieve the statement of Shri J. P. Singh that he had discussed the proposal with Shri V. T. Dehejia, who approved the proposal. Possibly, the absence of a formal order expressing the approval led to the observation that Shri Singh's affidavit was not in line with the office notes and also the ultimate finding that the notices issued upon the satisfaction of the member of the Board was "without jurisdiction and authority". Dr. Singhvi, learned Counsel for the respondent, contended (1) that the material on record did not prove beyond doubt that the Central Government had approved the proposal of the Chairman to alter the original distribution of work and (2) that in any event the law required the approval to be expressed in the shape of a formal order. Referring to the office note of the Chairman dated June 18, 1964, Dr. Singhvi submitted that it was not clear from this note what exactly was considered unnecessary - a formal order expressing the approval, or getting the proposed alteration approved by the Central Government? It was argued that as the suggested alteration was considered "just a minor internal arrangement", it was likely that the Chairman thought that no prior approval of the Central Government was necessary before the altered arrangement was put into operation, in which case the notices would be invalid in view of Rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964. However, it seems to us, when the note said "no formal order is necessary" it could not possibly mean that approval of the Central Government was unnecessary, and we have no doubt that it meant that no formal order conveying the approval was necessary. Regarding the statements in the affidavits of Shri J. P. Singh and Shri P. G. Gandhi that all work relating to the reopening of assessments was assigned to Shri Narayana Row with the approval of the Central Government, Dr. Singhvi pointed out that these statements had been verified by Shri J. P. Singh as true to his knowledge "derived from records in the possession of the Central Board of Direct Taxes" and by Shir P. G. Gandhi as "based on the information derived from record in possession of the Board". It was argued that as the

records did not disclose any order of approval by the Central Government, the said statements were of no value. It seems to us that the verification of the statements in Shri J. P. Singh's affidavit clearly suggests that the facts stated therein were true to his knowledge which the records also bear out. As stated already, the High Court did not question the truth of the facts stated in Shri Singh's affidavit, nor do we find any reason to do so, We have no doubt that the office note made by Shir J. P. Singh on June 18, 1964 supports the statements made in his affidavit.

7. The next question is whether the approval should have been formally expressed in the shape of an order. On this question Dr. Singhvi referred to the decision of this Court in *Fonseca (P) Ltd. v. L. C. Gupta* ((1973) 1 SCC 480.). In that case an order made by the Deputy Secretary to the Government of India, Ministry of Works and Housing, who was not empowered to make such an order under the Rules of Business, was held to be illegal, ineffective and void. We do not think this decision had any relevance. The authority of Mr. V. T. Dehejia, Secretary, Ministry of Finance (Department of Revenue and Expenditure) to approve the proposal for the Central Government was never questioned, nor the power of the Chairman to distribute the business of the Board between himself and the other member with the previous approval of the Central Government. We have already held that upon the material on record such approval appears to have been given. *Fonseca's* case (*supra*) is hardly of any assistance on the question whether in this case the approval of the Central Government should have been recorded in a formal order. Dr. Shinghvi characterised the distribution of the business of the Board by the Chairman as sub-delegated legislation and referred to a number of authorities to show that the law required publication of such sub-delegated legislation which implied that it must be expressed in a formal document. It was submitted that this was necessary to enable the persons affected by such sub-delegated legislation to ascertain what the legislation was. We do not think that the distribution of work by the Chairman of the Board can be equated with legislation. The allocation of business and the approval are matters of internal arrangement not affecting anyone's rights. Initially the Board consisting of the Chairman and the member had the jurisdiction to deal with the matter in question. Thereafter, in exercise of the power conferred by Rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964 the Chairman with the approval of the Central Government distributed the business of the Board between himself and the member, keeping all assessment work of income-tax to himself. Then, again with the approval of the Central Government, he assigned this work to the member. Rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964 does not prescribe any special or particular manner in which the approval is to be recorded. The giving of approval given at that stage does not touch the rights of the assessee. The fact that approval was given must of course be proved and, in our view, that has been done in this case; no question of publication of the order of allocation and the approval accorded to it by the Central Government can therefore arise. The office file does not also disclose any formal order approving the original distribution of work as between the Chairman and the member of the Board. It appears from the office note of January 1, 1964 that a draft showing the allocation of work was signed by Shri J. P. Singh and Shri V. T. Dehejia, Secretary of the Ministry of Finance (Department of Revenue and Expenditure) appended his signature below Shri Singh's. This shows clearly that a formal expression of the approval was not considered necessary. If there is no reason to doubt the truth of the statements made in Shri J. P. Singh's affidavit, and we think there is none, then the legality of the impugned notices under Section 148 of the Act cannot be challenged on the ground that they were issued upon the satisfaction of Shri Narayana Row.

8. On behalf of the appellants our attention was also drawn to the Central Board of Direct Taxes (Validation of Proceedings) Act, 1971 (No. 37 of 1971) which provides, inter alia, that no action taken by the Chairman and other members of the Board, either singly or jointly, without having

been validly entrusted with the powers or duties in that behalf in accordance with the provisions of the Central Board of Revenue Act, 1963 or the rules made thereunder shall be deemed to be invalid or ever to have been invalid on that ground. As in our opinion the impugned notices were issued in due compliance with the requirements of Rule 4 of Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964, we do not find it necessary to consider the provisions of this Act for the purpose of these appeals.

9. The appeals are accordingly allowed and the judgment and orders appealed from are set aside. The High Court will now proceed to dispose of the writ petitions in accordance with law on the other grounds raised therein. The appellants will be entitled to their costs in this Court - one hearing fee.

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