SUPREME COURT OF INDIA

Raja Jagdambika Pratap Narain Singh

Vs.

Central Board of Direct Taxes

C.A.No.2166 of 1970

(V. R. Krishna Iyer, R. S. Sarkaria and A. C. Gupta, JJ.)

17.07.1975

JUDGEMENT

KRISHNA IYER, J.:-

1. The freak but few facts of this appeal appear to highlight an issue of morality versus legality. But a closer scrutiny whittles down this conflict and induces us to dismiss the appeal, subject to certain observations warranted by the circumstances of the case. We may proceed straight to a miniaturised statement of the circumstances giving rise to the controversy before us.

2. The appellant has been the owner of a mango grove of long ago from which he has been deriving income by way of fruits and fallen trees. Way back in 1939-40 he claimed this income to be agricultural and therefore immune to Central income tax. His plea was overruled by the Income-tax Officer, but adverse orders notwithdanding, the assessee reached the High Court undaunted by the disappointment he met with as he steered through the statutory spiral of authorities. Unfortunately, on account of the zigzag course of this litigation which had its deck-by-deck slow motion, more than two decades passed before the High Court could pronounce at long last in favour of the

appellant holding that the income in dispute was agricultural income and therefore could not be taxed.

3. The State did not carry the ease further to this Court and thus the decision of the Allahabad High Court rendered on March 21,1963 became final. As a proposition of law, on the facts of the case, the ruling was that such income as arose from mango fruits and fallen trees was agricultural income and therefore outside the pale of the Income-tax Act (vide S. 4 (3) of the Income-tax Act). We have no reason to disagree with this view and proceed to dispose of this writ appeal which has come to us by certificate under Art. 133 (1) (a) of the constitution on the footing that for all the assessment years with which we are concerned - as will be explained presently - what has been taxed and is in dispute is agricultural income.

4. Some more facts are necessary to bring out the real grievance of the appellant. We have already mentioned that although the first assessment related to the year 1939-40, the final pronouncement by the High Court came only in 1963. During this protracted pendency, years rolled on and, at the base, the tax officer was busy ritually repeating annually, by his orders, the tax impost on similar income accruing year after year, treating it as non agricultural income. Indeed, the assessee had been assessed to tax for 21 years on this assumption but he filed appeals only for 8 years, and even that only upto the Appellate Assistant Commissioner's level where he left it off apparently in the hope that if ultimately the High Court upheld his contention for one year, the tax authorities would give effect to that holding for all the years - not a fantastic assumption if Government were a virtuous litigant.

5. At this stage we may state that for the years1940-41, 1941-42, 1947-48, 1949-50, 1950-51 and 1958-59 to 1961-62 appeals had been preferred most of which were dismissed although in one year or so the appellate authority gave relief accepting the plea of agricultural income. So far as the Income-tax Officer was concerned, he uniformly adopted the hostile line of treating the income as non-agricultural and, except for the years referred to above, the assessee did not think it necessary - was it wise or otherwise the sequel proves -to challenge these assessment orders. But when the High Court held in his favour in 1963 for the assessment year 1939-40, he applied for refund to the Central Board of Direct Taxes for the tax paid by him for the other years on the glib ground that, limitation apart, the income having been found by the High Court to be agricultural, had to be excluded from the tax. The Central Board of Revenue, however, declined to oblige him and when on May 11, 1968 his petition was rejected, the assessee moved the High Court under Art. 226 seeking many reliefs including a direction to the Central Board to issue 'necessary instructions to the Income-tax officer, Faizabad,. . for the purpose of passing final assessment orders for the assessment years 1940-41 to 1961-62 and for another writ 'quashing the order of the Central Board of Direct Taxes dated I1-5-1968 wherein the Board declined to interfere in the matter in dispute'. A Division Bench of that Court dismissed the writ petition on two grounds: (a) that the assessment orders for the relevant years had become final, the assessee not having taken advantage of his remedy provided for in the statute; (b) that several years had lapsed between the last impugned order which related to the assessment year 1961-62 and the writ petition which was filed in September 1968. However, the Court made an observation that if so advised, the petitioner may file appeals under Section 30 of the

Indian Income-tax Act, 1922 and pray for condonation of delay under S. 30 (2) of the said Act. Sorely discomfited, the assessee has come up to this Court hopefully and urged that the various assessment orders were void, that the State was bound to refund what had been illegally levied, that the Central Board should have exercised its power to give proper directions for refund and that in any case justice should be done to the party who should not be penalised for not having filed appeals and second appeals and references to the High Court year after year - a repeat performance which would add to the totality of avoidable litigation since the High Court was seized of the identical point between the same parties.

6. At the first flush it may seem that the assessee's agricultural income having been taxed illegally, a refund was obligatory and the fanatical insistence on the legal 'pound of flesh' based on limitation and finality was not to be expected from a party like the State. Indeed, one might go to the extent of quoting the cynical words of the ancient legal wit: "Law and equity are two things which God hath joined, but which Man has put asunder". We have to examine the merits of the case in the light of the facts we have set out above and of the principles settled by this Court in regard to the exercise of the writ jurisdiction of the High Court.

7. Shri Manchanda, alive to the spinal weakness of his case in law in that his client had, by option for inaction, permitted the impugned order to become final and listless by lapse of limitation period, played upon judicial sensitivity to justice, equity and good conscience. He argued that regardless of statutory remedies and rules of limitation, the High Court had power under Article 226 to quash orders loudly illegal, deprivatory of property and promoting unjust enrichment by the State. He also urged that the assessment orders were void and the routine challenges through prescribed channels could be by-passed and frontal attack made under Art. 226 in such extraordinary situations. Sri Ramachandran, appearing for the Revenue, scouted the supplicant plea for equity as unavailable in a court of law. He also insisted that the orders of assessment having become conclusive could not be invaded by the back-door, that the orders were not nullities but good until set aside through the regular statutory processes and that the alleged jab on the face of justice is imaginary, the party himself having been guilty of gross laches. We will examine these pleas, not in the general terms set out but within the confines of the particular facts of the present case.

8. We must pause to state one important aspect of the assessment orders since that oxygenates Sri Manchanda's submission on equity. The income-tax Officer, aware of the pendency in the High Court of the precise question confronting him about the agricultural character of the income, had in some years (e.g, 1952-53) recited in his order under S. 23 (3) of the Act, words which kindled hope in the assessee somewhat in the following terms:

"Income from Mango gul Mahuwa and Kathal have been excluded from the total income and treated as agricultural income by the learned appellate Asstt. Commissioner of Income Tax Banaras in this very case but this very point is already under consideration before the Hon'ble High Court of Judicature at Allahabad. However with respects to the learned A,A.C, and pending the decision of

the Hon'ble High Court on this point the sum of Rs. 7.960/- is being added back."

But the palliative is absent in the orders relating to many other years and, above all, the orders are all made under Section 23 (3), which means final assessments - neither provisional assessments being under Section 23 (3) nor conditional assessments, such orders being unknown to the scheme of the Act.

9. The points in controversy may be briefly formulated:

(1) Are the orders of assessment, which have not been assailed, amenable to challenge under Art. 226 of the Constitution, or is such jurisdiction inhibited because the regular statutory remedies have not been pursued?

(2) Is the appellant guilty of laches to such an extent 'that the extra-ordinary remedy in writ jurisdiction should not be exercised in his favour? '

(3) Are the orders of assessments nullities since they are taxes levied on agricultural income, and if so, is the appellant entitled to claim a refund?

(4) Is the Central Board of Direct Taxes charged with any statutory duty to grant refunds even in cases where orders of assessment, though illegal, have been allowed to become final by the wilful default of the assessee?

(5) If justice is on the side of the assessee but law against him, can he seek redressal in a Court on that footing?

We may deal with these points more or less as a package submission but not in the order in which they have been itemised.

10. Counsel has placed considerable stress on the last point which we deal with first. It is true that two stark facts generate some considerations of conscience in favour of the assessee. The High Court having declared this kind of income which was taxed by the Income-tax Officer, 'agricultural income', it is not liable to tax under the Income-tax Act (Section 4 (3). In any case, after the

Constitution of India came into force, the Union List in the Seventh Schedule expressly excluded agricultural income as forbidden zone for the Centre, so much so it would be an unconstitutional levy if a taxing authority imposed tax on agricultural income purporting to act under the Income-tax Act. It may, therefore, well be argued that all the assessments, notwithstanding that no appeals were filed, were void being beyond the jurisdiction of the officer to tax. There is a basic difference between the decision in Commr. of IT v. Tribune Trust Lahore, 16 ITR 214, 223 = (AIR 1948 PC 102 at p, 106) cited by, Sri Ramachandran and the present case. There, one of the exemptions statutorily provided in favour of income derived from property held under trust wholly for religious or charitable purposes, fell for consideration. The Judicial Committee held that such assessments, regularly made, which failed to give the exemption claimed, were not nullities:

"The assessments were duly made, as they were bound to be made, by the Income-tax Officer in the proper exercise of his duty...It does not appear to their Lordships that they were a 'nullity' in any other sense than that if they had been challenged in due time they might have been set aside."

True, mere exemptions from taxation of income , otherwise competently taxable fell wholly within the jurisdiction of the officer for determination. There is a fundamental difference where the claim is that agricultural income is beyond the legislative competence of Parliament to enact and altogether outside the jurisdiction of the Income-tax Officer. It may well be contended that the impost is ultra vires his powers and therefore a nullity. Merely because an order has been passed by the Officer and has not been appealed against, it does not become legal and final if otherwise it is void; for instance, if there is a flagrant violation of natural justice, the order by a Tribunal may be a nullity. However, we need not explore this penumbral area because we are satisfied, for reasons to be set out below, that the writ petition itself is misconceived and is bad for unexplained delay. Even so we may state that the levies for the various years would have undoubtedly been set aside and refund ordered if only the assessee had been diligent enough to make annual appeals to higher authorities. In that sense there is some justice on his side. What is more, in some of the orders, as earlier indicated, the Income-tax Officer himself has stated that he is making the assessments finally but he takes note of the pendency of the identical question before the High Court. He has vaguely quickened wishful thinking in the assessee that in the event of his winning in the High Court he may somehow get a refund. We have set out what Mr. Manchanda has pressed before us as the 'justice' of his case, Assuming for a moment that 'justice' is on his side, law is against him because the assessment orders are now unassailable except perhaps under Article 226 or Article 32 with which we will deal separately. Can a court over-ride law to effectuate what it conceives to be justice?

11. Any legal system, especially one evolving in a developing country, may permit judges to play a creative role and innovate to ensure. Justice without doing violence to the norms set by legislation. But to invoke judicial activism to set at nought legislative judgment is subversive of the constitutional harmony and comity of instrumentalities. So viewed, the appeal of Sri Manchanda, for relief in the name of justice must fail. If the statute speaks on the subject the judge has to be silent and stop. In a contest between morality and legality, the court, in clear cases has no option. Here, both sides agree that the assessments are final, that limitation has long ago run out, that the Central Board has no judicial power to upset what has been decided by lesser tribunals. Not being a

fringe area for judicial activism to play the submission must suffer rejection.

12. The surviving issue of some moment is whether the writ jurisdiction is muzzled by statutory finality to orders regardless of their illegality. We think not. If the levy is illegal, the constitutional remedy goes into action. The Privy Council ruling does not contradict this rule of law because for one thing there the case was income taxable but for a statutory exemption; here the income is agricultural and beyond the orbit of the Income-tax Act. For another, the judicial Committee was not considering the sweep of the constitutional remedy de hors statutory challenges but was construing the plea of 'nullity' with reference to an order passed, erroneously may be, but within jurisdiction and impugned before the statutory tribunals.

13. Even so, the journey of the appellant is beset with insurmountable hurdles. Article 226 is not a blanket power, regardless of temporal and discretionary restraints. If a party is inexplicably insouciant and unduly belated due to laches, the court may ordinarily deny redress. And if the High Court has exercised its discretion to refuse, this Court declines to disturb such exercise unless the ground is too untenable. To awaken this Court's special power gross injustice and grievous departure from well-established criteria in this jurisdiction, have to be made out. In the present case, long years have elapsed not only after the impugned orders but even after the High Court held the taxed income agricultural. The reason for the inaction is stated to be an illusory expectation of suo motu modification of assessment orders on representation by the party. The High Court has examined and dismissed the plea and consequentially refused relief. We do not think that in so refusing relief on ground of laches the High Court exercised its discretion arbitrarily or improperly. And the sorry story must thus close.

14. When at the end of the legal tether, the appellant made a plaintive plea for considerateness based on good conscience. No doubt, we feel this is a case where, had the party not been optimistically asleep but had diligently appealed, the tax could not have been recovered by the State. We equally see some compassionate merit in his complaint that a few of the assessment orders made misleading reference to the pendency of the High Court being seized of the identical legal issue. But it is no good alibi in expiation of the sin of gross delay in coming to the High Court. It is doubtful if the Central Board can exercise any judicial power and direct refund. Nor is there a statutory duty cast on it to consider applications for refund and so a writ of mandamus could not issue from the Court. Even so, it is always open to the State, where the justice of the case warrants reconsideration of the levy of a tax illegally imposed, to view the situation from an equitable standpoint and direct refund, wholly or in part. This perhaps, is a case where a liberal approach may well be justified. The Court has, however, jurisdiction only when there is a statutory duty. There being none, the issuance of a writ hardly arises. We endorse the observations of the High Court that, despite inordinate delay, the appellate authority, if moved under Section 30 (2), will give due regard to the happenings in between, in exercising its power of condonation of delay in filing appeals. We also make it clear that no observation made in this judgment with regard to delay on the part of the assessee in moving the High Court, under Art 226 shall be taken into account to the prejudice of the assessee while considering the condonation of the delay on his part in preferring the appeal/appeals, if any, filed by him to the appropriate authority under the Act.

15. The appeal fails and is dismissed. The circumstances are such that the parties may appropriately be directed to bear their respective costs. We direct accordingly.

Appeal dismissed