

Income Tax Officer 'A' Ward, Calcutta and Another

Vs

Ramnarayan Bhojnagarwala

Civil Appeal No. 318 of 1971

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

25.09.1975

JUDGMENT

KRISHNA IYER, J.

1. This is really a case where litigation would have been avoided, had the concerned Income-tax Officer carried out the directions issued by the Appellate Assistant Commissioner, with quick dispatch to determine the ownership of the deposit in the bank account as between the respondent before us and his nephew Madanlal.

The Facts

2. There was a bank account in which a huge sum was seen as lying in deposit. The assessing authority proceeded on the footing that the amount represented the income of one Madanlal, in whose name the bank account stood. He contested his ownership and urged that really this sum belonged to his uncle who is the respondent before us. Anyway his contention was overruled by the Income-tax Officer, but, in appeal, the Appellate Assistant Commissioner set aside the order and directed that the Income-tax Officer do determine the real ownership of the bank deposit. This was done in September, 1970. It is admitted before us that, although we are in October, 1975, the Income Tax Officer has not yet determined the real ownership of the deposit as between the uncle and the nephew. There is no valid reason why the Income-tax Officer should have delayed so long and indeed administrative officers and tribunals are taking much longer time than is necessary, thereby defeating the whole purpose of creating quasi-judicial tribunals calculated to produce quick decisions, especially in fiscal matter. Five years to dawdle over the decision of a small matter directed by an appellate amounts to indiscipline subversive of the rule of law. We hope that the administration, takes serious notice of delays caused by tax officer's lethargy, under some pretext or other, in speeding up enquiries into incomes and finalizing assessments. The mere fact that a writ petition was pending in the High Court, especially in the background of no stay having been granted, shows that a alibi of a High Court proceeding cannot be successfully put forward by the Income-tax Officer for his slow motion in settling the question directed by his appellate officer. Law must move quick not merely in the courts but also before tribunals and officers charged with the duty of expeditious administrative justice. We emphasize this because if the Income-tax Officer had fixed the ownership of the deposit years ago, may be the respondent before us might not have had to go up in litigation in High Court and the Income Tax Department itself would not have had to proceed against him.

3. We have no doubt that either the uncle or nephew must pay the tax under normal circumstances and they cannot play off one against the another to defeat the claims of the Revenue. Even so, High

Court has disposed of this case in appeal before the Division Bench on certain assumptions and representations, for which Counsel for the Income-tax Department was largely responsible. The result is that there has been no investigation into the basic question raised before the High Court by the respondent that the Income-tax Officer had no jurisdiction to start proceedings under Section 148 on the score that he had no 'reasonable belief' which is the sine qua non for the initiation of such proceedings. The question remains to be decided by the High Court. We, therefore, set aside the judgment of the High Court but remand the appeal to the High Court for a fresh hearing on the question as to whether the foundational fact of reasonable belief is satisfied in this case or not.

4. However, if the Income-tax Officer at least at this late stage will bestir himself to adjudicate upon the ownership of the bank deposit and if he holds that the nephew Madanlal is the owner of such deposit, the writ appeal before the High Court may not have to be proceeded with - of course, subject to appeals that may be available to Madanlal. We direct that the Income-tax Officer determine the ownership of the bank deposits within six months from today, and thereafter only the appeal before the High Court need be considered. We may observe in conclusion that Shri S. T. Desai, Counsel for the respondent has fairly assured us that, so far as his client is concerned, all cooperation will be available to enable the Income-tax Officer to determine who the owner of the bank deposit is. Indeed he is interested in this subject-matter and we hope that such evidence as the Income-tax Officer requires from him will be readily forthcoming. With this direction we allow the appeal and remand the case of the High Court for fresh disposal in the light of our observations. No order as to costs.

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