Grindlays Bank Limited,

Vs

Income Tax Officer, Calcutta and Others

Civil Appeal No. 2009 of 1978

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

15.01.1980

JUDGMENT

PATHAK, J. -

1. This appeal by special leave is directed against the judgment of the High Court at Calcutta dated May 8 and 12, 1978 insofar as it directs the Income Tax Officer to make a fresh assessment in respect of the appellant.

2. The appellant is a banking company incorporated in the United Kingdom with its registered office at London. It carries on banking business in India, and is assessed under the Income Tax Act, 1961.

3. The appellant filed a return of its income for the assessment year 1972-73. During the assessment proceeding, the Income Tax Officer issued a notice under Section 142(1) of the Income Tax Act requiring the appellant to produce certain account book and documents. The appellant applied against the notice to the High Court at Calcutta under Article 226 of the Constitution. A learned single judge of the High Court did not accept the wide construction which the appellant sought to put upon the impugned notice, and construing it in specific limited terms he directed the appellant to comply with it. The appellant preferred an appeal to the High Court. Meanwhile, pursuant to the direction by the learned single judge, the Income Tax Officer made an assessment order on March 31, 1977. Thereafter, the appeal was allowed by a Division Bench of the High Court by its judgment dated May 8 and 12, 1978, and the impugned notice under Section 142(1) and the consequent assessment order were quashed. But while doing so, the Division Bench also directed the Income Tax Officer to make a fresh assessment. Aggrieved by that direction, the appellant applied for, and obtained, special leave to appeal to this Court.

4. The sole question before us is whether the High Court erred in directing a fresh assessment. The appellant contends that the High Court was in error in making the direction because the assessment had already become barred by limitation and thereby a valuable right not to be assessed had accrued to the appellant, and the High Court was not competent to deprive the appellant of that accrued right.

5. It is necessary first to examine whether the bar of limitation had come into play at any time before the High Court passed the impugned order.

6. The assessment year under consideration is the year 1972-73. By virtue of Section 153(1)(a)(iii) of the Income Tax Act, no assessment order in respect of that assessment year could be made after

two years from the end of that assessment year. The end of the assessment year is March 31, 1975. However, the appellant filed period for making petition on March 17, 1975, fourteen days before the end of the period for making the assessment order. On the same date March 17, 1975, the learned single Judge granted an interim injunction restraining the Income Tax Officer from proceeding with the assessment, and on March 25, 1975, the injunction was made operative for the pendency of the writ petition. The writ petition was disposed of by the learned single Judge by his judgment dated August 31, 1976. It is apparent that the assessment proceedings remained stayed throughout the period from March 17, 1975 to August 31, 1976 by virtue of the orders of the court. As has been mentioned, the learned single Judge disposed of the writ petition on August 31, 1976. In his judgment, besides directing the appellant to comply with the notice under Section 142(1) as construed by him, he also included a direction to the Income Tax Officer to complete the assessment by March 31, 1977. On September 22, 1976, he amended his judgment inasmuch as it now required that "the assessment for the relevant year must be completed on the 31st of March, 1977 but must not be completed before 31st March, 1977". In other words, while the Income Tax Officer could continue with the assessment proceedings he was restrained by the Court from making the assessment order before, and in fact could make it only on March 31, 1977. Now, it is important to note that when the amendment was made by the learned single Judge in his judgment, it was an amendment made by him to a judgment disposing of the writ petition and having regard especially to the nature and the terms of the amendment, it must be deemed to have taken effect as from August 31, 1976, the date of the original judgment. In the appeal filed thereafter by the appellant, no interim order was made suspending the operation of the direction that the assessment order be made on March 31, 1977 only. A stay order was made against the enforcement of the notice of demand alone. Adhering to the directions of the learned single Judge, the Income Tax Officer made an assessment order on March 31, 1977. In the result, the assessment proceeding remained pending during the entire period from March 1975 to March 31, 1977 by successive orders of the court. If regard be had to clause (ii) of Explanation 1 to Section 153, which provides that in computing the period of limitation for the purposes of Section 153, the period during which the assessment is stayed by an order or injunction of any court shall be excluded, it is abundantly clear that the assessment order dated March 31, 1977 is not barred by limitation. In computing the period for making the assessment, the Income Tax Officer would be entitled to exclude the entire period from March 17, 1975, on which date there were fourteen days still left within the normal operation of the rule of limitation. The assessment order was made on the very first day after the period of stay expired; it could not be faulted on the ground of limitation. There is, therefore, no force in the submission of the appellant that the limitation for making the assessment had expired and a valuable right not to be assessed had thereby accrued to it, and that, consequently, the High Court was not competent to make the order directing a fresh assessment.

7. The next point is whether the High Court possessed any power to make the order directing a fresh assessment. The principal relief sought in the writ petition was the quashing of the notice under Section 142(1) of the Income Tax Act, and inasmuch as the assessment order dated March 31, 1977 was made during the pendency of the proceeding consequent upon a purported non-compliance with that notice, it became necessary to obtain the quashing of the assessment order also. The character of an assessment proceeding, of which the impugned notice and the assessment order formed part, being quasi-judicial, the "certiorari" jurisdiction of the High Court under Article 226 was attracted. Ordinarily, where the High Court exercises such jurisdiction it merely quashed the offending order and the consequential legal effect is that but for the offending order the remaining part of the proceeding stands automatically revived before inferior Court or tribunal with the need for fresh consideration and disposal by a fresh order. Ordinarily, the High Court does not substitute its own

order for the order quashed by it. It is, of course, a different case where the adjudication by the High Court establishes a complete want of jurisdiction in the inferior Court or tribunal to entertain or to take the proceeding at all. In that event, on the quashing of the proceeding by the High Court there is no revival at all. But although in the former kind of case the High Court, after quashing the offending order, does not substitute its own order it has power nonetheless to pass such further orders as the justice of the case requires. When passing such orders the High Court draws on its inherent power to make all such orders as are necessary for doing complete justice between the parties. The interests of justice require that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court, by the mere circumstance that it has initiated a proceeding in the Court, must be neutralised. The simple fact of the institution of litigation by itself should not be permitted to confer an advantage on the party responsible for it. The present case goes further. The appellant would not have enjoyed the advantage of the bar of limitation if, notwithstanding his immediate grievance against the notice under Section 142(1) of the Income Tax Act, he had permitted the assessment proceeding to go on after registering his protest before the Income Tax Officer, and allowed an assessment order to be made in the normal course. In an application under Section 146 against the assessment order, it would have been open to him to urge that the notice was unreasonable and invalid and he was prevented by sufficient cause from complying with it and, therefore the assessment order should be cancelled. In that event, the fresh assessment made under Section 146 would not be fettered by the bar of limitation. Section 153(3)(i) removes the bar. But the appellant preferred the constitutional jurisdiction of the High Court under Article 226. If no order was made by the High Court directing a fresh assessment, he could contend, as is the contention now before us, that a fresh assessment proceeding is barred by limitation. That is an advantage which the appellant seeks to derive by the mere circumstance of his filing a writ petition. It will be noted that the defect complained of by the appellant in the notice was a procedural lapse at best and one that could be readily corrected by serving an appropriate notice. It was not a defect affecting the fundamental jurisdiction of the Income Tax Officer to make the assessment. In our opinion, the High Court was plainly right in making the direction which it did. The observations of this court in Director of Inspection of Income-tax (Investigation), New Delhi v. Pooran Mall & Sons ((1974) 96 ITR 390, 395 : (1975) 4 SCC 568, 572 : 1975 SCC (Tax) 346) are relevant. It said : (SCC p. 572, para 6)

The court in exercising its powers under Article 226 has to mould the remedy to suit the facts of a case. If in a particular case a court takes the view that the Income Tax Officer while passing an order under Section 132(5), did not give an adequate opportunity to the party concerned it should not be left with the only option of quashing it and putting the party at an advantage even though it may be satisfied that on the material before him the conclusion arrived at by the Income Tax Officer was correct or dismissing the petition because otherwise the party would get an unfair advantage. The power to quash an order under Article 226 can be exercised not merely when the order sought to be quashed is one made without jurisdiction in which case there can be no room for the same authority to be directed to deal with it. But in the circumstances of a case the court might take the view that another authority has the jurisdiction to deal with the matter and may direct that authority to deal with it or where the order of the authority which has the jurisdiction is vitiated by circumstances like failure to observe the principles of natural justice the court may quash the order and direct the authority to dispose of the matter afresh giving the aggrieved party a reasonable opportunity of putting forward its case. Otherwise, it would mean that where a court quashes an order because the principles of natural justice have not been complied with, it should not, while passing that order permit the tribunal or the authority to deal with it again irrespective of the merits of the case.

The point was considered by the Calcutta High Court in Cachar Plywood Ltd. v. I. T. O. ((1978) 114

ITR 379 (Cal)) and the High Court, after considering the provisions of Section 153 of the Income Tax Act, considered it appropriate, while disposing of the writ petition, to issue a direction to the Income Tax Officer to complete the assessment which, but for the direction of the High Court, would have been barred by limitation.

8. Our attention has been drawn to a recent decision of this Court in Rajinder Nath v. C. I. T. ((1979) 4 SCC 282 : 1980 SCC (Tax) 1 : 120 ITR 14) (in which one of us was a member). In that case, the Court considered the provisions of Section 153(3)(ii) of the Income Tax Act and laid down that the word "direction" in that sub-section refers to a direction necessary for the disposal of the case and which the court has power to make while deciding the case. In the view taken by us that the order made by the High Court directing a fresh assessment is necessary for property and completely disposing of the writ petition, the appellant can obtain no assistance from Rajinder Nath ((1979) 4 SCC 282 : 1980 SCC (Tax) 1 : 120 ITR 14).

9. Mr. A. P. Mohanti, who appeared for the intervener, supported the contention that the High Court was not entitled to make an order directing a fresh assessment, and has referred us to three cases, Pickles v. Foulsham (9 Tax Cases 261, 285) Anisminic Ltd. v. Foreign Compensation Commission ((1969) 1 All ER 208) and Bath and West Countries Property Trust Ltd. v. Thomas (Inspector of Taxes) ((1978) 1 All ER 305). We are of opinion that the cases are distinguishable. In Pickles (9 Tax Cases 261, 285) case Cave L.C. declined to remand the case to the Special Commissioners because the time for making the requisite assessment had expired. In Anisminic Ltd. ((1969) 1 All ER 208) the decision of the Commissioner considered by the House of Lords was a nullity. The present case is one of a mere procedural lapse, an imperfect notice which is replaceable by a proper notice. The third case, Bath and West Countries Property Ltd. ((1978) 1 All ER 305) was again a case where it was too late for the Inspector to make a fresh assessment. In the case before us a direction by the High Court is sufficient to raise the bar of limitation, a power absent in the aforesaid cases.

10. In our judgment, the order made by the High Court directing the Income Tax Officer to make a fresh assessment was necessary in order to do complete justice between the parties. The High Court had jurisdiction to make the order, and it acted in the sound exercise of its judicial discretion in making it.

The appeal is dismissed with costs.

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