Commissioner of Income Tax, Delhi

Vs

Bansi Dhar and Sons

Commissioner of Income Tax, Bihar, Patna

Vs

Chathuram Bhadani and Others

Civil Appeals Nos. 1668(NT) of 1978 and 77 and 78(NT) of 1974

(R. S. Pathak, Sabyasachi Mukharji JJ)

19.12.1985

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. The main question involved in these appeals, is the question of jurisdiction of the High Court, to grant stay or pass interim orders in pending references under Section 66 of the Indian Income Tax Act, 1922 (hereinafter called the 'Act of 1922') and Section 256 of the Income Tax Act, 1961 (hereinafter called the 'Act of 1961'). These appeals are by special leave from the judgments of the High Courts. The main judgment is the judgment of the Delhi High Court in the case of L. Bansi Dhar and Sons v. CIT (C.A. No. 1668/78). The question arose in application filed by the assessee under Section 151 of CPC in two Income Tax References Nos. 82 and 83 of 1973 relating to the assessment years 1960-61 and 1962-63 respectively praying that the High Court might be pleased to grant an order of injunction for restraining the Commissioner of Income Tax (I), Central Revenue Building, and/or his subordinate officers including the Income Tax Officer, Company Circle (III), from enforcing and/or realising the demand raised in the aforesaid assessment years 1960-61 and 1962-63, and from taking any steps for the recovery thereof till the disposal of the references pending in the High Court.

2. The assessee is a Hindu Undivided Family. The Karta of the HUF is Lala Bansi Dhar. His father, Lala Murlidhar, died in the year 1949 in an air crash. On the death of the father, a sum of Rs 2,49,874 was received by Lala Bansi Dhar from the insurance company on account of an accident insurance policy covering the risk of the life of the deceased. The income derived from the said amount was treated as the income of Lala Bansi Dhar and was assessed in his personal assessment. Lala Bansi Dhar was married on February 3, 1953, and a son, Tilak Kumar, was born on February 3, 1956. The income from the insurance amount continued to be assessed in the personal assessment of Lala Bansi Dhar even after formation of the HUF on his marriage and the birth of a son, and continued to be so assessed till the assessment year 1959-60.

3. In the assessment year 1960-61 for the first time, the Income Tax Officer treated the income from the insurance amount as that of the HUF and assessed the income in the hands of the HUF. On appeal by the assessee, an HUF, the Appellate Assistant Commissioner set aside the assessment

holding that the income was the personal income of Lala Bansi Dhar not of the HUF. Against that order, the revenue preferred an appeal to the Income Tax Appellate Tribunal. A similar appeal was also preferred to the Tribunal by the revenue for the assessment year 1962-63. Both the appeals were disposed of by the Tribunal by a common order on November 23, 1970 whereby it was held that the income in question was that of the HUF and was liable to be assessed as such. Then at the instance of assessee-HUF, the Tribunal referred to the High Court the following question under Section 256(1) of the Income Tax Act, 1961, as arising out of the said common order namely :

Whether, on the facts and in the circumstances of the case, the amount of Rs 2,49,874 received by L. Bansi Dhar from the insurance company on account of the accident insurance policy covering the risk to the life of his father, L. Murlidhar, is correctly treated as ancestral property of the HUF of which L. Bansi Dhar is the karta ?

4. Two references were registered as Income Tax References Nos. 82 and 83 of 1973, and it was in the said references, that the applications for injunction and stay had been filed by the assessee-HUF under Section 151 of the Code of Civil Procedure invoking the inherent jurisdiction of the High Court.

5. It was stated in the application for stay that for the subsequent assessment years 1963-64 and 1964-65, similar appeals had been filed by the revenue before the Tribunal and the same were pending, that for the assessment years 1965-66 to 1969-70, however the orders of the Appellate Assistant Commissioner were against the assessee, and the assessee-HUF had preferred appeals to the Tribunal which were also pending, that in the said appeals preferred by the assessee-HUF on application by the assessee, the Tribunal had granted stay of the recovery of the tax demanded on the condition that the assessee should furnish adequate security to the satisfaction of the Income Tax Officer, that since the matter relating to the two assessment years (1960-61 and 1962-63) was before the High Court in references under Section 66(1) of the Indian Income Tax Act, 1922/Section 256(1) of the Income Tax Act, 1961, similar order of stay should be granted by the High Court and prejudice would be caused to the assessee if in spite of full tax being paid by its karta in his personal assessment, the HUF is asked to pay tax over again in respect of the same income. A counter-affidavit was filed in which a preliminary objection was raised that under the provisions of the Income Tax Act, the High Court exercised only are advisory or consultative jurisdiction and consequently had no jurisdiction or power to grant stay of the recovery of tax as prayed for in the application, and that, in fact, the grant of stay by the High Court and this Court had been prohibited by the two Acts of 1922 and 1961. On merits, however, it was admitted that tax had been paid by Lala Bansi Dhar in his personal capacity on the basis of the same income which had been returned by him in his individual income tax return, yet, it was submitted that as a result of the impugned order of the Appellate Tribunal, the income from the insurance amount was assessable in the hands of the HUF and the HUF was obliged to pay the tax unless and until the question of law referred to the High Court was answered in favour of the assessee and that the assessee would not be prejudiced if no stay was granted and the tax was realised, as it would get a refund of the tax paid in case the references were answered in its favour.

6. The question for determination which fell for consideration before the High Court and which requires to be considered in these appeals by this Court, is, whether the court, in a reference to is either under Section 66(1) of the Act of 1922, or under Section 256(1) of the Act of 1961, has jurisdiction or power to pass any order granting stay of recovery of the taxes pending the disposal of the references.

7. The High Court on consideration of certain matters, rejected the preliminary objections and granted stay of the realisation of taxes. The High Court found that, in the facts and circumstances of the case, there should be stay on terms and the High Court granted that stay on condition that the assessee should furnish adequate security for the said amount to the satisfaction of the concerned Income Tax Officer within six weeks from the date of the order of the High Court. The other two matters being Civil Appeals Nos. 77 and 78 of 1974 arise out of the decision of the Patna High Court where stay was granted by the Patna High Court in respect of realisation of tax pending disposal of the income tax references.

8. The revenue has come up to this Court challenging the validity of the decision of the High Courts that pending references in income tax matters to the courts either under Section 66 of the Act of 1922 or under Section 256 of the Act of 1961, the High Courts or the Supreme Court, as the case may be, have inherent powers or jurisdiction to pass any order granting stay or granting injunction staying the realisation of the amount pending disposal of the references. Incidentally, it may be pointed out that at the bar at time of hearing of the appeals, it was stated by counsel on behalf of the assessee that in the decision of the Delhi High Court, ultimately the reference has been answered in favour of the assessee. So far as the assessee in that matter is concerned the question has become academic.

9. The High Court of Delhi in its judgment had discussed all the relevant authorities. The references were pending under Section 66(1) of the Act of 1922 for the first two years, in respect of similar appeals for the assessment year 1965-66 and 1969-70 the references were pending under Section 256(1) of the Act of 1961. The scheme of Section 66(1) of the Act of 1922 as well as Section 256(1) of the Act of 1961 are well known.

10. The High Court noted and as is the case that the Act of 1922 did not and the Act of 1961 does not contain any express provision empowering the High Court or the Supreme Court to grant stay of recovery of tax including pending disposal of the reference before it or pass any order in that respect of the same. Therefore, the assessee sought to invoke the inherent jurisdiction or the ancillary powers of the courts.

11. Prior to 1918, there was no provision for reference to the High Court at all in respect of any decision by the revenue authorities. In Act VII of 1918, Section 51 contained this provision under which the chief revenue authority was empowered to refer a case to the High Court when any question arose regarding the interpretation of any of the provisions of the Act or of any rule made thereunder. The said authority could do so (i) either suo motu or (ii) on reference from a subordinate authority or (iii) on the application of the assessee. This is no part of the civil or appellate authority or revisional jurisdiction of the High Court.

12. Section 66 of the Act of 1922 contains similar provisions like Section 149 of the English Income Tax Act, 1918. Section 66 of the Act of 1922 provides that within certain time either at the instance of the assessee or at the instance of the revenue, the Tribunal might refer a question of law for the opinion of the High Court. It also empowered the assessee to make an application to the High Court in case the Tribunal refused to refer the question after drawing up a statement of case. It is well settled that the facts found by the Tribunal were to be accepted by the High Court and in case the High Court found that the facts found by the Tribunal were not sufficient, the High Court might under sub-section (4) of Section 66 require the Tribunal to make such additions thereto or alteration therein as the High Court might direct in that behalf. The High Court upon hearing of any such case should decide the question of law raised thereby and deliver its judgment thereon containing the

grounds on which such decision is founded and shall send a copy of such judgment under the seal of the court and the signature of the Registrar to the Appellate Tribunal. Sub-section (7) of Section 66 provides that notwithstanding that a reference is made under the section to the High Court, "income tax shall be payable in accordance with the assessment made in the case". It is provided that if the amount of an assessment is reduced as a result of such reference, the amount over-paid shall be refunded with such interest as the Commissioner may allow unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to the Supreme Court, or to an authority authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to the Supreme Court.

13. Section 66-A provides for reference to be heard by benches of High Courts and appeals in certain cases to this Court.

14. The provisions of Code of Civil Procedure relating to appeals to the Supreme Court as far as might apply in case of appeals under the section in the like manner as in the case of appeals by the High Court provided that nothing in sub-section (3) shall be deemed to have effect on sub-section (5) or sub-section (7) of Section 66. Sub-section (4) of Section 66-A provides that where the judgment of the High Court is varied or reversed in appeal under the section, effect shall be given to the order of the Supreme Court in the manner provided in sub-sections (5) and (7) of Section 66 in the case of a judgment of the High Court.

15. After the High Court and in cases of appeals to the Supreme Court, the courts answer the question in any manner or give certain opinion. The appellate tribunals would dispose of the appeals in accordance with the opinions expressed or answers given by the High Courts or the Supreme Court. Therefore under the scheme, the appeal is kept pending before the Tribunal and the appellate jurisdiction in retained by the Tribunal, but the High Court exercises an advisory or consultative jurisdiction.

16. Under Section 256 of 1961 Act, the provision of reference to the High Court is the same as under Section 66 of 1922 Act. The slight differences between Section 256 of 1961 Act and Section 66(1) and (2) of 1922 Act have been noted in Kanga & Palkhivala's Income Tax, 7th edn., Vol. I, p. 1146. For the present purpose it is not necessary to set these out in detail. There is provision for reference to the Supreme Court under Section 257 of 1961 Act. By Sections 261 and 262, there are provisions for appeal to Supreme Court and hearing before Supreme Court from the decision of the references in the High Courts. Section 265 enjoins that notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, tax shall be payable in accordance with the assessment made in the case. The scheme of 1961 Act so far as the scheme of reference to the High Court on a question of law is concerned is the same as that of 1922 Act. When a question of law arises, the Tribunal can and in certain circumstances must seek at the instance of the assessee or in its own motion or at the instance of the revenue the opinion of the High Court on such a question. The jurisdiction exercised by the High Courts is purely advisory, it is neither of a civil court exercising original, nor of any appellate or revisional jurisdiction. Therefore, the powers and jurisdiction of the High Courts and in certain cases of the Supreme Court, are those which are expressed and conferred upon them and also those which inhere in the exercise of that jurisdiction or are ancillary or those which subserve the exercise of that function and jurisdiction of giving advice. The appeal is kept pending before the Appellate Tribunal.

17. In Tata Iron & Steel Co. Ltd. v. Chief Revenue Authority, the judicial committee had to consider

the question whether the function of the High Court under these provisions was advisory or not. The judicial committee decided that such advice was not judgment within the meaning of Clause 39 of the Letters Patent of the High Court of Bombay. The sue of the expression 'determination' was not decisive as to whether the decision was merely advisory or not. The decision or order made by the court under Section 51 was merely advisory. This view was reaffirmed in CIT v. Bombay Trust Corpn. Ltd. (AIR 1936 PC 269 : (1935-36) 63 IA 408). It is for this reason that Section 66-A of the 1922 Act expressly provided for an appeal from a decision of the High Court under Section 66 of the said Act. The High Court noted that neither 1922 Act nor 1961 Act did contain any express provision empowering the High Court or the Supreme Court to grant stay of recovery of tax pending disposal of the reference before it. The High Court in the decision under appeal held that it had inherent jurisdiction under Section 66 of 1922 Act or under Section 256 of 1961 Act to grant stay pending disposal of the reference. The High Court referred to the several decisions some of which will have to be noticed here. Thereafter on consideration of the relevant facts, the High Court granted the stay in the instant case as noted before.

18. Reliance was placed by the High Court on the decision of the Andhra Pradesh High Court in Polisetti Narayana Rao v. CIT ((1956) 29 ITR 222 (AP HC)). The Andhra Pradesh High Court referred to the decision in the case of Hukum Chand Boid v. Kamalanand Singh (ILR (1906) 33 Cal 927 : 3 CLJ 67) and referred to the observations of Woodroffe, J., where he posed the question as to whether the power vested in the High Court under Section 151 of the Code of Civil Procedure was wide enough to apply to a case like the present. It was noted that the decision was approved and followed by the Madras High Court in several cases as was noted at page 226 of 29 ITR. It was further pointed out that Article 227 was wide enough to include such power. The judgment of that Court was delivered by Bhimasankaram, J. Subba Rao, C.J. of the Andhra Pradesh High Court was a party to that decision. It may, however, be pointed out that in the facts and circumstances the Court found that the assessee was not entitled to any relief pending the disposal of the reference. As pointed out before that reliance had been placed by the Andhra Pradesh High Court on the decision in Hukum Chand Boid case (ILR (1906) 33 Cal 927 : 3 CLJ 67). It is necessary, therefore, to discuss that decision. The said case was concerned with the nature of the jurisdiction and the ambit of power under Sections 583 and 546 of the Code of Civil Procedure, 1882 as it stood at the relevant time. The Division Bench of the Calcutta High Court consisting of Woodroffe and Mookerjee, JJ. held that under the principle indicated by Section 583 of the Code of Civil Procedure a decree for reversal necessarily carried with it the right to restitution of all that had been taken under the erroneous decree and the appellate Court having seisin of the appeal, had as ancillary to its duty to grant restitution, an inherent power in the exercise of which it could, notwithstanding that the decree appealed against had been executed, call upon the respondent to furnish security for the due performance of any decree which might be made on the appeal. After discussing the facts the court held that the Code of Civil Procedure bound the courts so far as it went. The Code was not exhaustive and did not affect the previously existing powers unless it took these away; in matters with which it did not deal, the court could exercise an inherent jurisdiction to do that justice between the parties which was warranted under the circumstances and which the necessities of the case required. There was difference of opinion between Woodroffe, J. and Mookerjee, J. on the scope of applicability of Section 546 of the Code of Civil Procedure. Justice Woodroffe at page 931 of the report observed :

> The court has, therefore, in many cases, where the circumstances require it, acted upon the assumption of the possession of an inherent power to act ex debito justitiae and to do that real and substantial justice for the administration, for which it alone exists.

19. Similarly Justice Mookerjee observed at page 941 of the report as follows :

> It may be added that the exercise by courts, of what are called their "inherent powers" or "incidental powers" is familiar in other systems of law, and such exercise is justified on the ground that it is necessary to make its ordinary exercise of jurisdiction effectual, because, "when jurisdiction has once attached, it continues necessarily and all the powers requisite to give it full and complete effect can be exercised, until the end of the law shall be attained". (See Works on Courts and their Jurisdiction, Section 27 and Wells on Jurisdiction of Courts, Chapter XVII)

20. These observations, however, will have to be understood in the context in which the same were made. If there was jurisdiction to do certain matter then all powers to make that jurisdiction effective must be implied to the authority unless expressly prohibited. But in references under 1922 Act as well as 1961 Act the court merely exercise an advisory or consultative jurisdiction while the appeals are kept pending before the Tribunal, therefore, nothing should be implied as detracting from the jurisdiction of the tribunals. Power to grant stay is incidental and ancillary to the appellate jurisdiction. What was true of the appellate jurisdiction could not be predicated of the referential jurisdiction. See the observation of the majority judgment of the Delhi High Court in Narula Trading Agency v. CST ((1981) 47 STC 45 (Del HC) - though made in the context of different statutory provisions.

21. This decision of Andhra Pradesh High Court was noticed by this Court in ITO v. M.K. Mohammed Kunhi ((1969) 71 ITR 815 : (1969) 2 SCR 65 : AIR 1969 SC 430). That decision requires a little closer examination. This Court in that decision was dealing with Section 254 of the Act of 1961 which conferred on the Appellate Tribunal powers of the widest amplitude in dealing with appeals before it. This Court held that that power granted by implication the power of doing all such acts, or employing such means, as were essentially necessary to its execution. The statutory power under Section 254 carried with it the duty in proper cases to make such orders for staying recovery proceedings pending an appeal before the Tribunal, as would prevent the appeal, if successful, from being rendered nugatory. Section 254 carried with it the appellate powers of the Appellate Tribunal. This Court while interpreting that power referred to the Sutherland's Statutory Constructions, 3rd edn., articles 5401 and 5402, in Domat's Civil Law (Cushing's edn.), Vol 1, at p. 88, Maxwell on Interpretation of Statutes, 11th edn. and came to the conclusion that where the power was given to an authority, incidental powers to discharge that authority were implied in the grant of that power. This Court noted that the Income Tax Appellate Tribunal was not a court but exercised judicial powers. The court noted that there were certain decisions in which difficulties were felt that the Appellate Tribunal did not possess the power to stay recovery during the pendency of an appeal. Reference was made to a decision of the Andhra Pradesh High Court in the case of Vetcha Sreeramamurthy v. ITO ((1956) 30 ITR 252 (AP HC)), where Viswanatha Sastri, J. observed that there was no confinement of an express power of granting a stay of realisation of the tax, nor was there any power allowing the tax to be paid in instalments. The learned judge observed that neither the Appellate Assistant Commissioner nor the Appellate Tribunal was given the power to stay the collection of tax. Therefore, according to the learned judge, whether the law should not be made more liberal so as to enable an assessee who has preferred an appeal, to obtain from the appellate forum, a stay of collection of tax, either in whole or in part, on furnishing suitable security, was a matter for the legislature to consider. Referring to the decision in Polisetti Narayana Rao v. CIT ((1956) 29 ITR 222 (AP HC)), this Court made an observation to the effect that "the same High Court held that stay could be granted by it pending reference of a case by the Appellate Tribunal to the High Court. This power the High Court had under Section 151 of the Civil Procedure Code and

under Article 227 of the Constitution". This passage in our opinion cannot be taken as approving the observations of the Andhra Pradesh High Court in Polisetti Narayana Rao case ((1956) 29 ITR 222 (AP HC)). This Court was dealing with the power of the appellate authority i.e. the Appellate Tribunal. Thereafter, that would be an entirely different question. The appellate authority must have the incidental power or inherent power - inherent for the disposal of an appeal to grant a stay or not to grant a stay.

22. The High Court, in our opinion, as was contended by the revenue in answering a question under Section 66 of 1922 Act or Section 256 of 1961 Act does not exercise original, appellate or revisional jurisdiction but only advisory jurisdiction. See the observations of the judicial committee in Tata Iron & Steel Co. Ltd. v. Chief Revenue Authority, Bombay (AIR 1923 PC 148 : (1922-23) 50 IA 212). It is only consultative, neither original nor appellate.

23. In New Jehangir Vakil Mills Ltd. v. CIT ((1959) 37 ITR 11 : (1960) 1 SCR 249 : AIR 1959 SC 1177), this Court held that the High Court cannot direct the Tribunal to find new facts or raise a new question of law or embark on a new line of enquiry.

24. In CIT v. Scindia Steam Navigation Co. Ltd. ((1961) 42 ITR 589 : (1962) 1 SCR 788 : AIR 1961 SC 1633), a bench of five judges of this Court was of the view that reference jurisdiction or special jurisdiction is different from appellate or supervisory jurisdiction. The jurisdiction of the High Court in a reference under Section 66 of 1922 Act was a special one, different from its ordinary jurisdiction as a civil court. The High Court hearing a reference under that section did not exercise any appellate or revisional or supervisory jurisdiction over the Tribunal. It acted purely in an advisory capacity on a reference which properly came before it under Section 66(1) and (2) of 1922 Act. This Court noted that the High Court gives the Tribunal advice, but ultimately it is for the Tribunal to give effect to that advice. This Court further observed that it was of the essence of such a jurisdiction that the court shall decide only questions which were referred to it and not any other questions. This Court was, however of the view that the power of the court to issue a direction to the Tribunal under Section 66(2) of the Act of 1922 was in the nature of a mandamus and it was well settled that no mandamus would be issued unless the applicant had made a distinct demand on a the appropriate authorities for the very reliefs which he sought to enforce by mandamus and that had been refused.

25. This question was again considered by this Court in Petlad Turkey Red Dye Works Co. Ltd. v. CIT ((1963) 48 ITR 92 : 1963 Supp 1 SCR 871 : AIR 1963 SC 1484). This Court observed at page 98 of the report that the jurisdiction of the High Court was confined to giving an opinion. It was purely advisory and the High Court had no jurisdiction to direct the Tribunal to take fresh evidence.

26. In C.P. Sarathy Mudaliar v. CIT ((1966) 62 ITR 576 (SC)), this Court noted that the High Court cannot set aside the order of the Tribunal and the High Court does not sit in appeal over the judgment of the Tribunal. If the High Court found that the material facts were not stated in the statement of case, or the Tribunal had not stated its conclusion on material facts, the High Court might call upon the Tribunal to submit a supplementary statement of case under Section 66(4) of 1922 Act. It may be mentioned that it would be incidental to answering the question.

27. In the case of CIT v. Greaves Cotton and Co. Ltd. ((1968) 68 ITR 200 (SC)), this Court noted that it was well settled that the High Court was not a court of appeal under reference under Section 66 of 1922 Act or under Section 256 of 1961 Act and it was not open to the High Court in such a reference to embark upon a reappraisal of the evidence and the facts found by the Tribunal must be

accepted by the High Court.

28. A Full Bench of the Kerala High Court in the case of K. Ahamad v. CIT ((1974), 96 ITR 29 (Ker HC)), held that the High Court had power to delete under Section 256 of 1961 Act an erroneous sentence in the judgment. The Full Bench held that the courts were constituted for the purpose of doing justice and should have power that is inherent to the discharge of the function and that these must have power akin to correct accidental slips. The Full Bench therein acted on the principle that no act of the court should ever injure a party.

29. A learned single Judge of the Bombay High Court in the case of Jatashankar Dayaram v. CIT ((1975) 101 ITR 343 (Bom HC)) held that application for a reference under Section 256(2) of 1961 Act in forma pauperis can be permitted. This would be incidental or ancillary to the discharge of the function of giving advice conferred under Section 66 of 1922 Act.

30. This Court in the case of Jaipur Mineral Development Syndicate v. CIT ((1977) 106 ITR 653, 656 : (1977) 1 SCC 508 : 1977 SCC (Tax) 208), held that reference which was dismissed for paper books not being filed in time could be restored.

31. It is common ground that jurisdiction conferred upon the High Court under the Income Tax Act is neither original nor appellate. The jurisdiction which it exercised in dealing with the income tax reference was advisory and is a special jurisdiction.

32. It was contended on behalf of the assessee that the High Court was a court when it exercised its special jurisdiction and it was well settled that the High Court while hearing a reference under a taxing statute had inherent power to make all such orders as it would be necessary to do justice where the circumstances of the case so required and for this reliance was placed on the observations of this Court in the case of Jaipur Mineral Development Syndicate v. CIT ((1977) 106 ITR 653, 656 : (1977) 1 SCC 508 : 1977 SCC (Tax) 208). But as has been noticed before the power that was exercised was for properly giving advice.

33. The Allahabad High Court in Sridhar v. CWT ((1985) 153 ITR 543, 547 (All HC)) observed that the only power that High Court could exercise under Section 27 of the Wealth Tax Act, 1957 was similar to Section 66 of 1922 Act i.e., to give opinion about the questions referred to it in an advisory capacity by answering the questions in favour of the assessee or the revenue, as the case might be. Even while hearing a reference under a taxing statute, the High Court has certain inherent powers. But the extent and scope of the inherent power which can be exercised by an appellate or revisional court cannot be the extent and scope of the inherent power of the High Court while exercising an advisory jurisdiction such as is conferred by Section 27 of the Act. The inherent power which the High Court can exercise while hearing a reference under Section 27 must be confined to the procedure about the hearing of a reference and to passing such orders as are ancillary or incidental to the advice which the High Court proposes to give while answering the questions. While hearing a reference under Section 27, the Allahabad High Court further held that the High Court did not have the further inherent power to pass interim orders restraining the orders of AAC or by the Tribunal being given effect to. It was further held that what the High Court could not do at the time of passing the final order, it could certainly not do as an interim measure in the purported exercise of its inherent power.

34. It is true that the High Courts sometimes act on the assumption that it possessed inherent power to act ex debito justitiae and to do read and substantial justice for which alone these existed where

the circumstances of the case so required, the power related to matters of procedure and not substantive rights of the parties. See in this connection Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal ((1962) 1 Supp SCR 450 : AIR 1962 SC 527), where this Court at page 463 of the report referred to Section 151 of the Code of Civil Procedure and observed that the section itself said that nothing in the Code should be deemed to limit or otherwise affect the inherent power of the court to make orders necessary for the ends of justice. This 'inherent power' as was observed by this Court "had not been conferred on the court. It was a power inherent in the court by virtue of its duty to do justice between the parties before it."

35. Further the Code itself recognised the existence of the inherent power of the Code, there was no question of implying any powers outside the limits of the Code. See also Padam Sen v. State of U.P. ((1961) 1 SCR 884, 887 : AIR 1961 SC 218 : (1961) 1 Cri LJ 322).

36. The special jurisdiction of the High Court under Section 256 does not deprive it of judicial character or its inherent power, it was submitted. This in our opinion does not solve the question because the High Court in answering reference indubitably acts in judicial capacity and must be implied to have powers which are necessary to discharge the obligations in exercising its jurisdiction of giving advice conferred by the special provisions of the statute. It was further submitted that the extent and scope of that inherent power could not be confined to a straitjacket. It took within its ambit the power to grant stay of proceedings before the court as it deemed necessary to do for the ends of justice. The High Court could exercise such power to grant stay, it was submitted where the legislature had not denied or excluded the same in unmistakable terms. But this was not clear because of the language. It was stated that pendency of a reference would not stay the realisation, indicates that reference has nothing to do with the stay of realisation. The realisation or non-realisation of tax is part of the appellate jurisdiction of the Tribunal. It was, however, submitted that the inherent power of the High Court and also of the Supreme Court had not been excluded by the general provision in Section 265 of 1961 Act which stated that notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court, tax shall be payable in accordance with assessment made. This section, it was submitted, did not impose any embargo on the inherent power. It was submitted that Section 265 of 1961 Act, as regards reference made to the High Court, is in pari materia with Section 66(7) which also related to reference to the High Court. Section 66(7) was interpreted by the Andhra Pradesh High Court in Polisetti Narayana Rao v. CIT ((1956) 29 ITR 222 (AP HC)). It was submitted that legislature by adopting the identical language in 1961 Act must be regarded as having accepted it in Section 265 of 1961 Act. It was submitted that while in enacting similar provisions of Section 66(7), in Section 265 the legislature must be regarded as intending the same meaning to the pari materia expression in the 1961 Act. For this reliance was placed on the observations of House of Lords in the case of Barras v. Aberdeen Steam Trawling and Fishing Co. Ltd. (1933 All ER 52 : 1933 AC 402), where it was held that once certain words in an Act of Parliament had received a judicial construction in one of the superior courts, and the legislature repeated these without any alteration in a subsequent statute, the legislature must be taken to have used them according to the meaning which a court of competent jurisdiction had given to them. Lord Macmillan however observed that this rule of interpretation afforded only a valuable presumption as to the meaning of the language employed in a statute. Where a judicial interpretation is well settled and well recognised the rule ought, doubtless, to receive effect, but it must be a question of circumstances whether Parliament was to be presumed to have tacitly given statutory authority to a single judgment of a competent court so as to render that judgment, however obviously wrong, unexaminable by the highest court.

37. Therefore, in this case only solitary decision of the Andhra Pradesh High Court which was not

in all subsequent cases followed and which in a way was contrary to several decisions of the other High Courts as well as this Court cannot be said to have received parliamentary acceptance. The attention of the Andhra Pradesh High Court was not drawn to the decision of this Court in Seth Premchand Satramdas v. State of Bihar ((1951) 19 ITR 108 : 1950 SCR 799 : AIR 1951 SC 14) where dealing with the nature of the jurisdiction of the courts in reference matters under Sales Tax Act this Court observed that the High Court acquired jurisdiction to deal with the case by virtue of an express provision of the Bihar Sales Tax Act. Jurisdiction was only consultative neither original nor appellate.

38. The Calcutta High Court in the case of Dwarka Prasad Bajaj v. CIT ((1980) 126 ITR 219 (Cal HC)), observed that in exercising its jurisdiction under Section 256 of the Income Tax Act, 1961, the High Court did not act as a court of appeal, as the Income Tax Appellate Tribunal does under Section 254 of the Act. The High Court, in disposing of the reference, could only answer the questions referred and could not raise any question by itself. The findings of fact by the Tribunal were final so far as the High Court was concerned and only on limited grounds such findings of fact could be challenged. After the judgment of the High Court is delivered, the Tribunal has to pass necessary orders to dispose of the case in conformity with the judgment under Section 260 of the Act. The High Court exercised a very limited jurisdiction. It did not dispose of the entire matter but its decision was confined only to the questions of law as arise from the order of the Tribunal. Therefore, it could not be said that the High Court exercised its general jurisdiction under Article 227 of the Constitution in dealing with a reference. If the High Court could in such case exercise its powers under equally jurisdiction and grant a temporary injunction or a stay it would have to ascertain and to go into facts for which the Income Tax Act, 1961 did not make any provision. Moreover, issuance of orders permitting collection or recovery of tax or staying such collection or recovery if made under exercise of inherent power would result in extension of the jurisdiction of the High Court under Section 256 of the Act of 1961. The Calcutta High Court, further, was of the view that a court could not vest itself with such additional jurisdiction by invoking its inherent powers. Hence, the court, in seisin of a reference under the Income Tax Act could not issue an order of temporary injunction, according to the Calcutta High Court, or stay of proceedings which was an injunction in an indirect manner in respect of recovery of taxes.

39. In an appropriate case, if the assessee feels that a stay of recovery pending disposal of the reference is necessary or is in the interest of justice, then the assessee is entitled to apply before the appellate authority to grant a stay until disposal of reference by the High Court or until such time as the appellate authority though fit. But in case the appellate authority acted without jurisdiction or in excessive jurisdiction or in improper exercise of the jurisdiction, then decision of such appellate authority can be corrected by the High Courts by issuing appropriate writs under Articles 226 and 227 of the Constitution.

40. It has to be borne in mind that in answering questions or disposing of reference either under Section 66 of 1922 Act or Section 256 of 1961 Act, the High Courts do not exercise any jurisdiction conferred upon them by the Code of Civil Procedure or the Charters or by the Acts establishing respective High Courts. In respect of certain matters jurisdictions exercised by the High Court, must be kept separate from the concept of inherent powers or incidental powers in exercising jurisdiction under Section 66 of 1922 Act or Section 256 of 1961 Act. Section 66 of Income Tax Act of 1922 or Section 256 of Income Tax Act of 1961 is a special jurisdiction of a limited nature conferred not by the Code of Civil Procedure or by the Charters or by the special Acts constituting such High Courts but by the special provisions of Income Tax Act, 1922 or 1961 for limited purpose of obtaining High Court's opinion on questions of law. In giving that opinion properly if any question of

incidental or ancillary power arises such as giving an opportunity or resorting a reference dismissed without hearing or giving some additional time to file paper book, such powers inhered to the jurisdiction conferred upon it. But such incidental powers cannot be so construed as to confer the power of stay of recovery of taxes pending a reference which lie in the domain of an appellate authority. Therefore, the concept of granting stay in a reference ex debito justitiae does not arise. That concept might arise in case of the appellate authority exercising its power to grant stay where there is no express provision. Ex debito justitiae is to do justice between the parties.

41. Rendering advice on the question of law referred to the courts has nothing to do with the recovery of taxes or granting stay in respect of the same.

42. Therefore, in our opinion it cannot be said that the High Court has inherent power or incidental power in the matter of a reference pending before it to grant stay of realisation or to grant injunction. That must remain within the jurisdiction of the appellate authority and pendency of a reference does not detract from that jurisdiction of the appellate authority. In our opinion, therefore, the High Court was in error in exercising its jurisdiction by passing an order for stay of realisation under Section 151 of the Code of Civil Procedure in a pending reference. The High Court could have exercised its power if the appellate authority had not properly exercised its jurisdiction, not in reference jurisdiction but by virtue of its jurisdiction under Article 226 or Article 227 in appropriate cases. But that was not the case here.

43. In that view of the matter, we are in respectful agreement with the views expressed by the Allahabad High Court in Sridhar v. CWT ((1985) 153 ITR 543, 547 (All HC)) and the views of the Calcutta High Court in Dwarka Prasad Bajaj v. CIT ((1980) 126 ITR 219 (Cal HC)) and we are unable to sustain the views expressed by Andhra Pradesh High Court in Polisetti Narayana Rao v. CIT ((1956) 29 ITR 222 (AP HC)). The appeals are accordingly allowed. The judgment and order of the High Court are set aside. But in the facts and circumstances of the case, parties are directed to pay and bear their own costs.

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