Jute Corporation of India Ltd.

Vs.

Commissioner of Income-tax and another

Civil Appeal No. 1935 of 1981

(K. N. Singh, Dr. T. K. Thommen, Kuldip Singh JJ)

04.09.1990

JUDGMENT

K.N.SINGH J

1.The appellant is a Government Corporation engaged in jute industry. It was assessed to income tax for the, assessment year 1974-75 by the Income-tax Officer. The assessee preferred appeal before the Appellate Assistant Commissioner. During the hearing of the appeal, the assessee raised an additional ground claiming deduction of Rs. 11,54,995/- on the ground of liability of Purchase-tax. The assessee claimed that in view of the decision of this Court in Kedarnath Jute Company Ltd. v. Commr. of Income-tax, 82 ITR 363: (AIR 1971 SC 2145) the aforesaid amount being tax liability. should be deducted from its income for purposes of charging tax. The Appellate Assistant Commissioner permitted the assessee to raise the additional ground and after hearing the Income-tax Officer, he accepted the assessee's claim and allowed deduction of Rs. 11,54,995/- in computing, the total income of the assessee for the assessment year 1974-75. The Revenue preferred appeal before the Income-tax Appellate Tribunal. The Tribunal held that the Appellate Assistant Commissioner had no jurisdiction to entertain an additional ground or to grant relief to the assessee on a ground which had not been raised before the Income-tax Officer. The Tribunal set aside the order of the Appellate Assistant Commissioner placing reliance on the decision of this Court in Addl. Commr. of Income-tax Gujarat v. Gurjargravures P. Ltd., (1 978) 111 ITR 1 : (AIR 1978 SC 40). The assessee made application before the Tribunal under S. 256(1) of the Income-tax Act, 1961 for making reference to the High Court. The Tribunal refused to refer the question on the findings that the question stood covered by this Court's decision in Gurjargravures (supra)., The assessee thereupon approached the High Court under S. 256(2) of the Act for calling the statement of case and reference from the Appellate Tribunal. A Division Bench of the Calcutta High Court held that the Tribunal was right in rejecting the assessee's application, therefore, it refused to call statement of case. The assessee thereupon approached this Court under Art. 136 of the Constitution, and obtained leave. Hence this Appeal.

2. The question of law which the assessee sought to be referred to the High Court under S.256(1) of the Act was:

> "Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was justified in holding that the Appellate Assistant Commissioner of Income-tax had exceeded his powers in entertaining the additional ground of appeal taken before him in respect of the claim for deduction of a sum of Rs. 1 1,54,995 / -

representing liability for raw jute purchase-tax."

3. Section 251 of the Income-tax Act (hereinafter referred to as the Act) prescribes power of the Appellate Authority hearing appeal against the order of Income-tax Officer. Clause (a) of S. 251 (1) confers power on the Appellate Authority namely the Appellate Assistant Commissioner (now after the Amendment of 1987 the Deputy Commissioner (Appeals)) according to which Appellate Authority while hearing appeal against an order of assessment has power to confirm, reduce, enhance or annul the assessment; he is further empowered to set aside the assessment and remit the case back to the Assessing Officer for making a fresh assessment in accordance with its directions, after making such further inquiry as may be necessary. If a direction is issued by the Appellate Authority, the Assessing Officer is required to proceed to make such fresh assessment and determine the amount of tax, if any, payable on the basis of fresh assessment. The Appellate Assistant Commissioner is thus invested with wide powers under S. 251 (1)(a) of the Act while hearing, an appeal against the order of assessment made by the Income-tax Officer. The amplitude of the power includes power to set aside the assessment order or modify the same. The question is whether the Appellate Assistant Commissioner while hearing an appeal under S. 251 (1)(a) has jurisdiction to allow the assessee to raise an additional ground in assailing the order of the assessment before it. The Act does not contain any express provision debarring an assessee from raising an additional ground in appeal and there is no provision in the Act placing restriction on the power of the Appellate Authority in entertaining an additional ground in appeal. In the absence of any statutory provision, general principle relating to the amplitude of appellate authority's power being coterminus with that of the initial authority should normally be applicable. But this question for the purposes of the Income tax, Act has been an intricate and vexed one,- There is no uniformity in the judicial opinion on this question.

4. S. 31 of the Income-tax Act, 1922 also conferred power on the Appellate Assistant Commissioner to hear appeal against the assessment order made by the Income-tax Officer. The Chagla, C. J. of the Bombay High Court considered the question in detail in Narrondas Manordass v. Commr. of Income-tax, (1957) 31 ITR 909: (AIR 1958 Born 35) and held that the Appellate Assistant Commissioner was empowered to correct the Income-tax Officer not only with regard to a matter which had been raised by the assessee but also with regard to a matter which may have been considered by the Income-tax Officer and determined in the course of the assessment. The High Court observed that since the Appellate Assistant Commissioner had revising authority against the decisions of the Income-tax Officer, a revising authority not in the narrow sense of revising those matters, which the assessee makes a grievance but the subject-matter of the appeal not only he had the same powers which could be exercised by the Income-tax Officer. These observations were approved by this Court in Commr. of Income-tax v. McMillan and Co., (1958) 33 ITR 182 : (AIR 1958 SC 207) the Appellate Assistant Commissioner on an appeal preferred by the assessee had jurisdiction to invoke, for the first time provisions of Rule 33 of the Income-tax Rules, 1922, for the purpose of computing the income of a non-resident even if the Income-tax Officer had not done so in the assessment proceedings. But in Commr. of Income-tax, Bombay v. Shapporji Pallonji Mistry, (1962) 44 ITR 891: (AIR 1962 SC 1086) this Court while considering the extent of the power of the Appellate Assistant Commissioner referred to a number of cases decided by various High Courts including Bombay High Court judgment in Narrondas case (AIR 1958 Born 35) and also the decision of this Court in McMillan and Co. case (AIR 1958 SC 207) and held that in an appeal filed by the assessee, the Appellate Assistant Commissioner has no power to enhance the assessment by discovering new sources of income, not considered by the Income-tax Officer in the order appealed against. It was urged on behalf of the Revenue that the words "enhance the assessment" occurring in S. 31 were not confined to the assessment reached through particular process but the amount which

ought to have been computed if the true total income had been found. The Court observed that there was no doubt that this view was also possible, but having regard to the provisions of Ss. 34 and 33B, which made provisions for assessment of escaped income from new sources, the interpretation suggested on behalf of the Revenue would be against the view which had held the field for nearly 37 years. In this view the Court held that the Appellate Assistant Commissioner had no power to enhance the assessment by .discovering new sources of income. This decision does not directly deal with the question which we are concerned. Power to enhance tax on discovery of new source of income is quite different than granting deduction on the admitted facts fully supported by the decision of this Court. If the tax liability of the assessee is admitted and if the Income-tax Officer is afforded opportunity of hearing by the Appellate Authority in allowing the assessee's claim for deduction on the settled view of law, there appears to be no good reason to curtail the powers of the appellate authority' under S. 251(1)(a) of the Act.

5. In Commr. of Income-tax, U.P. v. Kanpur Coal Syndicate, (1 964) 53 ITR 225 : (AIR 1965 SC 325) a, three Judge Bench of this Court discussed the scope of S. 31(3)(a) of the Income-tax Act, 1922 which is almost identical to S. 25 1 (1)(a). The Court held as under (at p. 328 of AIR):

> "If an appeal lies, Section 31 of the Act describes the powers of the Appellate Assistant Commissioner in such an appeal. Under Section 31(3)(a) in disposing of such an appeal the Appellate Assistant Commissioner may, in the case of an order of assessment, confirm, reduce, enhance or annul the assessment; under clause (h) thereof he may set aside the assessment and direct the Income-tax Officer to make a fresh assessment. The Appellate Assistant Commissioner has, therefore plenary powers in disposing of an appeal. The scope of his power is conterminous with that of the Income-tax Officer. He can do what the Income-tax Officer can do and also direct him to do what he has failed to do."

6. The above observations are squarely applicable to the interpretation of S. 251 (1)(a) of the Act. The declaration of law is clear that the power of the Appellate Assistant Commissioner is conterminous with that of the Income-tax Officer, if that be so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income-tax Officer. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise an Appellate Authority while hearing appeal against the order of a subordinate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations if any prescribed by the statutory provisions. In the absence of any statutory provision the Appellate Authority is vested with all the plenary powers which the subordinate authority may have in the matter. There appears to be no good reason and none was placed before us to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer.

7. In Addl. Commr. of Income-tax, Gujarat v. Gurjargravures P. Ltd. (AIR 1978 SC 40) (supra) this Court has taken a different view, holding that in the absence of any claim made by the assessee before the Income-tax Officer regarding relief, he is not entitled to raise the question of exemption under S. 84 before the Appellate Assistant Commissioner hearing appeal against the order of Income-tax Officer. In that case the assessee had made no claim before the Income-tax Officer for exemption.. under S. 84 of the Act, no such claim was made in the return nor any material was placed on record supporting such a claim before the Income-tax Officer at the time of assessment.

The assessee for the first time made claim for exemption under S. 84 before the Appellate Assistant Commissioner who rejected the claim but on further appeal the Appellate Tribunal held that since the entire assessment was open before the Appellate Assistant Commissioner there was no reason for his not entertaining the claim, or directing the Income-tax Officer to allow appropriate relief. On a reference the High Court upheld the view taken by the Tribunal. On appeal this Court set aside the order of the High Court as it was of the view that the Appellate Assistant Commissioner had no power to interfere with the order of assessment made by Income-tax Officer on a new ground not raised before the Income-tax Officer, and therefore the Tribunal committed error in directing the Appellate Assistant Commissioner to allow the claim of the assessee under Section 84 of the Act. Apparently this view taken by two Judge Bench of this Court appears to be in conflict with the view taken by the three Judge Bench of the Court in Kanpur Coal Syndicate's case (AIR 1965 SC 325) (supra). It appears from the report of the decision in Gujarat case the three Judge Bench decision in Kanpur Coal Syndicate (supra) case was not brought to the notice of the Bench in the Gurjargravures P. Ltd. (AIR 1978 SC 40) (supra). In the circumstances the view of the larger Bench in the Kanpur Coal Syndicate (supra) holds the field. However we do not consider it necessary to overrule the view taken in Gurjargravoures P. Ltd. (supra) case as in our opinion that decision is founded on the special facts of the case, as would appear from the following observations made by the Court: "As we have pointed out earlier, the statement of the case drawn up by the Tribunal does not mention that there was any material on record to sustain the claim for exemption which was made for the first time before the Appellate Assistant Commissioner. We are not here called upon to consider a case where the assessee failed to make a claim though there was no evidence on record to support it, or a case where a claim was made but no evidence or Insufficient evidence was adduced in support. In the present case neither any claim was made before the Income-tax Officer, nor was there any material on record supporting such a claim." The above observations do not rule out a case for raising an additional ground before the Appellate Assistant Commissioner if the ground so raised could not have been raised at that particular stage when the return was filed or when the assessment order was made, or that the ground became available on account of change of circumstances or law. There may be several factors justifying raising of such new plea in appeal, and each case has to be considered on its own facts. If the Appellate Assistant Commissioner is satisfied he would be acting within his jurisdiction in considering the question so raised in all its aspects. Of course, while permitting the assessee to raise an additional ground, the Appellate Assistant Commissioner should exercise his discretion in accordance with law and reason. He must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The satisfaction of the Appellate Assistant Commissioner depends upon the facts and circumstances of each case and no rigid principles or any hard and fast rule can be laid down for this purpose.

8. In Rai Kumar Srimal v. Commr. of Income-tax, West Bengal Ill, (1976) 102 ITR 525 a Division Bench of Calcutta High Court presided over by Sabyasachi Mukharji, J., as he then was held that the Appellate Assistant Commissioner was entitled to admit new ground or evidence either suo motu or at the invitation of the parties. If he is acting on being invited by the assessee, then there must be some ground for admitting new evidence in the sense that there must be some explanation to show that the failure to adduce earlier the evidence sought to be adduced before the Appellate Assistant Commissioner was not wilful and not unreasonable. This view is reasonable and it finds favour with us.

9. In the instant case the assessee was carrying on manufacture and sale of jute. In the assessment year of 1974-75 he did not claim any deduction on its liability to pay Purchase Tax under the provisions of the Bengal Raw Jute Taxation Act, 1941, as the appellant entertained a belief that it was not liable to pay Purchase Tax under the aforesaid Act. But later on it was assessed to Purchase

Tax and the order of assessment was received by it, on 23-11-1973. The appellant disputed the demand and filed an appeal before the Appellate Authority and obtained stay order. The assessee thereafter claimed deduction for the amount of Rs. 11,54,995 towards his liability to pay Purchase Tax as deduction for the assessment year 1974-75. The assessee had not actually paid the Purchase Tax as he had obtained stay from the Appellate Authority nonetheless its liability to pay tax existed, and it was entitled to deduction of Rs. 11,54,995 as was held by this Court in Kedarnath Jute Mfg. Co. Ltd. v. Commr. of Income-tax (Central), Calcutta, (1971) 82 ITR 363 : (AIR 1971 SC 2145). There was no dispute about these facts. In these circumstances the Appellate Assistant Commissioner allowed the assessee to raise this question and after hearing the Income-tax Officer, he granted the deduction from the assessee's income. The Tribunal took a contrary view placing reliance on the decision of this Court in Gurjargravures P. Ltd. (AIR 1978 SC 40) (supra). As already discussed the facts in the instant case are quite clear, unlike the facts involved; in Gurjargravoures case. We are, therefore, of the view that the view taken by the Appellate Tribunal and the High Court is not sustainable in law. In our opinion, the High Court and Tribunal both committed error in refusing to state the case, or making a reference.

10. The next question which arises for consideration is to now what order should be passed in the present circumstances. In view of the findings recorded by us ordinarily we should direct the High Court to call for the statement of case from the Tribunal and thereupon decide the matter afresh, but this procedure would be time consuming. Since we have already discussed the correct position of law we do not consider it necessary to follow the usual procedure. Since the view taken by the Income-tax Appellate Tribunal is not sustainable in law we grant leave against the order of the Appellate Income-tax Tribunal under Art. 136 and set aside the same and remit the matter to the Appellate Income-tax Tribunal to consider the merit of the deduction permitted by the Appellate Assistant Commissioner. If the Tribunal thinks it necessary it may remand the matter to the Appellate Assistant Commissioner (now Deputy Commissioner of Appeals) for rehearing. The appeal is accordingly disposed of. There will be no order as to costs.

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