Kilasho Devi Burman and others

Vs

Commr. of Income-tax, West Bengal, Calcutta

Civil Appeal Nos. 2242-2246 of 1978

(S. P. Bharucha, S. Saghir Ahmed JJ)

08.02.1996

JUDGEMENT

BHARUCHA J.

1.This is an appeal by special leave. The order that is impugned was passed by the High Court at Calcutta in an income-tax reference. The question that the High Court was called upon to answer were :

> "1. Whether on the facts and in the circumstances of the case, there was a valid assessment on an H. U. F. for the assessment year 1955-56?
>
> 2. If the answer to question No. 1 is in the affirmative, then, whether on the facts and in the circumstances of the case, the assessments for 1958-59 to 1962-63 in the status of H. U. F are valid?"

2. The reference related to Assessment Years 1958-59 to 1962-63, the relevant previous years whereof were B. S. years 1364 to 1368. The assessee was Rash Behari Das Burma, who was governed by the Mitakshara School of Hindu law. It is unnecessary for the purposes of this decision to go into his family history, which is referred to both in the Statement of Case placed before the High Court by the Income-tax Appellate Tribunal and the judgment of the High Court. What we now set out is what is relevant and it is taken from the Statement of Case. For the Assessment Year 1955-56 the assessee submitted a return dated 14th November, 1957, describing himself as the karta of his H. U. F. An assessment was said to have been made on the H. U. F. The assessment order on the record of the Revenue bears no signature. There is no signed copy of the assessment form. There is a demand notice dated 10th April, 1958 with some initial or signature on it. According to the assessee, neither the statutory notice nor the demand notice nor the assessment order had been received. On the record there is an acknowledgment slip bearing the date 25th April, 1958 signed by one Phool Singh. According to the assessee, there was no such person who had any authority to receive any notice on his behalf. There was no material to show that the demand raised in the demand notice had been paid by the assessee.

3. The assessee filed a partition suit (bearing No. 665 of 1955 in the Calcutta High Court). A settlement was arrived at. The properties were to be divided by metes and bounds, but that remained to be done when the Statement of Case was drawn by the Tribunal.

4. For the Assessment Years 1956-57 to 1961-62, no notices were issued to the H. U. F. under Section 22 of the Income-tax Act, 1922. Similarly, for the Assessment Year 1962-63, no notice was

issued to the H. U. F. under Section 139 of the Income-tax Act, 1961. The Income from the properties which were covered by the partition suit were returned by and assessed in the hands of the erstwhile members of the H. U. F.

5. The Income-tax Officer therefore took proceedings under Section 147 (a) of the Income-tax Act, 1961 and concluded that the assessee's H. U. F. had escaped assessment; this was on the basis that no genuine partition had taken place and that the assessee had made a return which misrepresented the facts. The I. T. O. started proceedings under Section 148 for the Assessment Years 1958-59 to 1961-62 and under Section 139 (2) for the Assessment Year 1962-63. The assessee filed 'nil' returns under protest. The I. T. O. rejected the assessee's contention and made assessments on the H. U. F. The assessee appealed but, except for certain reductions in the quantum, the orders of the ITO were affirmed.

6. The assessee appealed to the Tribunal. The assessee urged that during the relevant assessment years there was no H. U. F. and no valid proceedings there against could be taken. It was also urged that the H. U. F. had never been assessed and that, therefore, there was no reason to make an application under Section 25-A of the 1922 Act. On behalf of the Revenue it was submitted that there was an assessment on the H. U. F. as was clear from the order for A. Y. 1955-56 and that, so long as that assessment stood, it was permissible to proceed against the H. U. F. for the H. U. F. was presumed to exist until an order under Section 25-A of the 1922 Act was passed. The Tribunal went into the question as to whether there was an assessment on the H. U. F. for the Assessment Year 1955-56. Its conclusions were:

> "(i) There was no signed assessment order :
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> (ii) even if a demand notice is taken to exist in this case, the assessment is invalid as, in spite of there being a positive demand thereunder, it had not been served on the assessee;
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> (iii) if there was no assessment on the H. U. F. (for 1955-56), there was no need, on the part of the assessee to come forward with an application under Section 25-A as that section contemplated an application being made thereunder only when there was already an assessment on the H. U. F.;
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> (iv) the absence of an application under Section 25A could not, under these circumstances, give the Income-tax authorities any jurisdiction to proceed against the family as such;
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> (v) Section 25-A (3) had no operation because there was no assessment on the family, the disputed H. U. F. being in the same position as a dead assessee whose income until Section 24-B was enacted could not be subjected to tax (see Ellis Reid v. CIT, 5 ITC 100), and
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> (vi) the assessment in the status of an H. U. F. when the family had ceased to exist had to be set aside as it was not valid."

7. The Revenue sought a reference to the High Court contending, among other things, that the factual findings of the Tribunal were "unsupported by any evidence and is unreasonable and perverse". The Tribunal modified the questions suggested and framed the two questions which are quoted above. Having regard to the frame of the questions that the Revenue wanted the Tribunal to

refer to the High Court, it was, in our view, open to the High Court to consider the record before the Tribunal to determine whether the Tribunal's factual conclusion were perverse.

8. The High Court in a reference under the taxation statues exercise advisory jurisdiction in regard to questions of law. It is only when it has before it a question that asks whether the Tribunal has, upon the evidence on record before it, come to a conclusion which is perverse that it may go into facts for this is a question of law. A conclusion is perverse only if it is such that no person, duly instructed, could, upon the record before him, have reasonably come to it.

9. In the instant case, the High Court placed reliance upon the acknowledgment slip dated 25th April, 1968 signed by Phool Singh. It said, "Records show this Phool Singh to have received a number of notices on behalf of the assessee on widely separated dates". The "records" which the High Court referred to was a statement of "Facts which are admitted and/or found by the Tribunal and which are necessary for drawing up a statement of the case (vide para 3 of the Reference application)" which was annexed to the Revenue's reference application. This statement said, "Records show this Phool Singh to have received a number of notices on behalf of the assessee on widely separated dates". The Statement of Case does not say this about Phool Singh.

10. It is the Tribunal that finds facts. It sets these out in the Statement of Case whereby it refers question of law to the High Court. The High Court, in reference proceedings, cannot go behind the facts found. Where the High Court is of the view that it is requisite that facts other than those found need to be ascertained it must call upon the Tribunal to submit a Supplemental Statement of Case. Even when, as here, the High Court is required to decide whether the findings of fact reached by the Tribunal are perverse, the High Court is confined to the evidence that was before the Tribunal. The High Court cannot look at evidence that was not before the Tribunal when it reached the impugned findings to hold that these findings are perverse.

11. The statement of "admitted" facts was placed by the Reveue before the Tribunal as an annexure to its reference application. That the Statement of Case does not state that Phool Singh had received earlier notices on behalf of the assessee shows that the Tribunal had not so found; that there is no mention of this at all suggests that the Revenue did not place this argument and the supporting material before the Tribunal. The High Court could have required the Tribunal to ascertain whether Phool Singh had received earlier notices on behalf of the assessee and prepare a Supplemental Statement of Case, but the High Court could not, upon these "admitted" facts, have reached the conclusion that the Tribunal's findings of fact were perverse.

12. The High Court based itself upon the demand notice and the acknowledgment slip signed by Phool Singh and observed, "Unless an assessment order was passed under or in pursuance of the Act question of a notice of demand in the prescribed from specifying the sum payable by the assessee could not arise". The High Court did not give due importance to the fact that upon the record produced by the Revenue before the Tribunal there was no signed assessment order nor a signed assessment form.

13. That an assessment order has to be signed is established by the judgment of this Court in Kalyankumar Ray. v. Commr. of Income-tax, (1991) 191 ITR 634: (1991 AIR SCW 2860). It said (paras 5 and 7):

"If, therefore, the Income-tax Officer first draws up an order assessing the total income and indicating the adjustments to be made, directs the office to compute the tax payable on that basis

and then approves of it, either immediately or some time later, no fault can be found with the process, though it is only when both the computation sheets are signed or initialled by the Income-tax Officer that the process described in Section 143 (3) will be complete.

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All these decisions emphasise that all that is needed is that there must be some writing initialled or signed by the Income-tax Officer before the period of limitation prescribed for completion of the assessment has expired in which the tax payable is determined and not that the form usually styled as the "assessment order" should itself contain the computation of tax as well."

14. A valid assessment upon the H. U. F. for the Assessment Year 1955-56 was central to the case of the Revenue, Since it was unable to establish, by the production of a signed assessment order for that year, that there was such valid assessment, its case fell and the Tribunal was right in so holding. The High Court was in error in concluding that the findings of the Tribunal on the record were perverse.

15. The appeal is allowed. The judgment and order under appeal is set aside. The judgment and order of the Tribunal is restored.

16. The respondents shall pay to the appellants the costs of the appeal. Appeal allowed.