

Commissioner of Income-tax, Bangalore

Vs

Sharadamma

Civil Appeal No. 3169 of 1984

(B.P. Jeevan Reddy, S.C. Sen JJ)

03.04.1996

JUDGMENT

1. This appeal is preferred against the order of the Karnataka High Court answering the question referred to it under section 256(2) of the Income-tax Act in the affirmative i.e. in favour of the assessee and against the Revenue. The question referred to the High Court reads:-

"Whether on the facts and in the circumstances of the case, the I.T.A.T. is right in law in cancelling the penalty levied by the Inspecting Assistant Commissioner under Section 271(1) (c) holding that the Inspecting Assistant Commissioner had no jurisdiction to levy penalty under Section 271(1)(c) in view of changed provisions of law ?"

2. The assessment year concerned herein is 1972-73.

3. The High Court followed its earlier decision in R. Abdul Azeez v. Commr. of Income-tax, Karnataka, (1981) 128 ITR 547, and has answered the question against the Revenue. In R. Abdul Azeez, the Karnataka High Court had taken the view that by virtue of the omission of sub-section(2) of Section 274 of the Taxation Laws (Amendment) Act, 1975, with effect from April 1, 1976, the penalty proceedings pending before the Inspecting Assistant Commissioner on March 31, 1976, cannot continue before him thereafter and that he has no jurisdiction to continue those proceedings or to pass any orders therein. It has been held that any orders passed him soon or after April 1, 1976, levying penalty, are without jurisdiction. The question is whether the said view is correct. We think not. We are supported in saying so by the ratio of the decision of this Court in Commr. of the Income-tax v. Dhadi Sahu, (1993) 199 ITR 610 : (1993 AIR SCW 3578). The facts in Dhadi Sahu, are the following : the assessment years concerned therein were 1968-69 and 1969-70. Assessment order were passed in respect of the said assessment years on February 28, 1970. The Income-tax Officer initiated proceedings for the imposition of penalty under Section 271(1) (c) of the Act, and the matter was referred to the Inspecting Assistant Commissioner under the Section 274(2) of the Act. On the said date, Section 274(2) of the Act read as follows :-

"Notwithstanding anything contained in Clause (iii) of sub-section(1) of Section 271, if in a case calling under clause (c) of that sub-section, the minimum penalty imposable exceeds a sum of rupees one thousand, the Income-tax Officer shall refer the case to the Inspecting Assistant Commissioner, who shall for the purpose have, all the powers conferred under this Chapter for the imposition of penalty".

4. Pending reference of the case before the Inspecting Assistant Commissioner, Section 274(2) was amended with effect from April 1, 1971 by the Taxation Laws (Amendment) Act, 1970. The amended sub-section (2) read as follows : -

"Notwithstanding anything contained the clause (iii) of sub-section (1) of section 271, if in a case falling under clause (c) of that sub-section, the amount of income (as determined by the Income-tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds, a sum of twenty five thousand rupees, the Income-tax Officer shall refer the case to the Inspecting Assistant Commissioner, who shall for the purpose, have all the powers conferred under this Chapter for the imposition of penalty."

(The word underlined by us were substituted for the words "the minimum penalty imposed exceeds a sum of Rupees one thousand.")

5. On February 15, 1975, the Inspecting Assistant Commissioner passed orders imposing penalties for both the said assessment years.

6. The assessee filed appeals before the Tribunal contending that by virtue of the amendment effect by Taxation Laws (Amendment) Act, 1970, the Inspecting Assistant Commissioner lost jurisdiction to proceed with the said penalty proceedings with effect from April 1, 1971, inasmuch as in the said cases, the amount of income in respect of which the particulars have been concealed, was less than Rupees Twenty five thousand, within the meaning of sub-section (2) of Section 274 as amended in 1970, with effect from April 1, 1971. The contention was that penalty proceedings cannot continue before the Inspecting Assistant Commissioner because the essential requirement of amended sub-section (2) was not satisfied. The Tribunal accepted the said plea and allowed the appeal. At the instance of the Revenue, the Tribunal stated the following question for the opinion of the Orissa High Court under Section 256(1) of the Act :

"Whether on the facts and circumstances of the case and on a interpretation of Section 274, as amended by the Taxation Laws (Amendment) Act, 1970, the Inspecting Assistant Commissioner to whom the case referred prior to April 1, 1971, had jurisdiction to impose penalty."

7. The High Court answered the question in favour of the assessee whereupon the matter was brought to this Court. This Court at the outset stated the general principle applicable in this behalf in the following words :

It may be stated that the outset the general principle is that a law which brings about a change in the forum does not affect pending actions unless an intention to the contrary is clearly shown. One of the modes by which such an intention is shown is by making a provisions for change over to proceedings from the Court or the Tribunal where they are pending in the Court or the Tribunal which, under the new law, gets jurisdiction to try them."

8. The Court then observed that once a reference was validly made to the Inspecting Assistant commissioner he did not lose the jurisdiction to deal with the matter on account of the aforesaid Amendment Act. It pointed out that the Amending Act does not contain any provision that the references validly pending before the Inspecting Assistant Commissioner should be returned without

passing any final order if the amount of income in respect of which the particulars have been concealed did not exceed Rupees Twenty five thousand. The said circumstances, it held, supported the inference drawn by the Court that the Inspecting Assistant Commissioner continued to have jurisdiction to impose penalty. The Court observed :

"It is also true that no litigant has any vested right in the matter of procedural law but, where the question is of change of forum, it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum. The right becomes vested when the proceedings are initiated in the Tribunal or the Court of first instance and, unless the Legislature has, by express words or by necessary implication, clearly so indicated, that vested right will continue in spite of the change of jurisdiction of the different Tribunals or forums."

9. This Court pointed out that the view taken by it is also the view taken by Gujarat, Patna, Punjab and Haryana, Bombay, Calcutta and Madhya Pradesh High Courts, whereas Allahabad and Karnataka High Courts had taken a contrary view. The Court disapproved the contrary view taken by the Allahabad and Karnataka High Courts and approved the view taken by the other High Courts.

10. In our opinion, the principle underlying the said decision is squarely applicable herein. In this case also, a reference was made to the Inspecting Assistant Commissioner in accordance with the law in force on the date of reference. Once the Inspecting Assistant Commissioner was thus seized of the matter, he did not lose seizin thereof on account of the deletion of sub-section (2) of Section 274. This is also the principle underlying Section 6 of the General Clauses Act.

11. We may also mention that in Dhadi Sahu, this Court referred inter alia to the earlier decision of this Court in Manujendra Dutt v. Purendu Prosad Roy Chowdhury, AIR 1967 SC 1419, which too was a case of deletion of Section 29 of the Calcutta Thika Tenancy Act, 1949 by the Amendment Act of 1953. It was held by this Court that by virtue of the said deletion, the Controller, before whom the proceeding was pending, was not deprived of the jurisdiction to try the matter pending before him on the date of coming into force of the Amending Act.

12. We are, therefore, of the view that the Inspecting Assistant Commissioner did not lose the jurisdiction to continue with the proceeding pending before him on March 31, 1976, by virtue of the deletion of sub-section (2) of Section 274 by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1976, He was entitled to continue with those proceedings and pass appropriate orders according to law.

13. Accordingly, we allow this appeal and answer the question aforementioned in the negative, i.e., in favour of the Revenue and against the assessee. There shall be no order as to costs. Appeal allowed.