

Commissioner of Income-Tax

Vs

Nirbheram Daluram.

Civil Appeal No. 6327 of 1983

(S. C. Agarwal, G. B. Pattanaik JJ)

05.03.1997

JUDGMENT

In this appeal, by special leave, the question that falls for consideration relates to the scope of the powers of the Appellate Assistant Commissioner while dealing with appeals against orders of Assessing Officers under section 251 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The matter relates to the assessment year 1956-57. Nirbheram Daluram (hereinafter referred to as "the assessee") is a partnership firm carrying on business in grains, rice, gunny bags and oil seeds, etc. Under order dated March 11, 1957, assessment was originally made on a total income of Rs. 28,724. On reassessment in proceedings initiated under section 147 of the Act the Income-tax Officer included in the total income a sum of Rs. 2,45,000 referable to ostensible transactions in hundi loans shown by the assessee. The assessee filed an appeal against the said assessment order passed by the Income-tax Officer. The Appellate Assistant Commissioner not only sustained the said addition of Rs. 2,45,000 but he also took notice of 10 other items of ostensible hundi loans amounting to Rs. 2,30,000 and directed that the total income be enhanced by the sum of Rs. 2,30,000. On further appeal, the Income-tax Appellate Tribunal (hereinafter referred to as "the Tribunal") deleted the said addition of Rs. 2,30,000 made by the Appellate Assistant Commissioner on the view that in doing so the Appellate Assistant Commissioner had exceeded his jurisdiction. At the instance of the Revenue, the Tribunal was directed by the High Court of Madhya Pradesh to refer the following questions of law for opinion :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the sum of Rs. 2,30,000 freshly added by the Appellate Assistant Commissioner ?

(2) Whether the sum of Rs. 2,30,000 was added by the Appellate Assistant Commissioner on new sources of income or items not considered by the Income-tax Officer from the point of view of assessability ?

(3) Whether the Appellate Assistant Commissioner had no jurisdiction or power to enhance the sum of Rs. 2,30,000 under the facts and circumstances in which he has added the same ?"

By the impugned judgment dated February 28, 1980, the High Court has answered these questions against the Revenue (see [1981] 127 ITR 491). The High Court has held that the Appellate Assistant Commissioner had no jurisdiction to consider the new entries which were not considered at all by the Income-tax Officer and to add the amount of Rs. 2,30,000 to the total income of the assessee. According to the High Court, the items containing that amount constituted new sources of income

which were not the subject-matter of assessment before the Income-tax Officer and, therefore, it was not open in appeal to consider these sources and to assess them. In taking this view, the High Court has placed reliance on the decision of this court in *Addl. CIT v. Gurjargravures Pvt. Ltd.* [1978] 111 ITR 1, wherein it was held that the Appellate Assistant Commissioner had no power to grant exemption under section 84 of the Act since the Income-tax Officer did not consider the item from the point of view of its non-taxability. Feeling aggrieved by the said decision of the High Court, the Revenue has filed this appeal.

Shri Ranbir Chandra, learned counsel appearing for the Revenue, has submitted that the High Court was in error in construing narrowly the powers conferred on the Appellate Assistant Commissioner under section 251 of the Act. Learned counsel has pointed out that the decision in *Addl. CIT v. Gurjargravures Pvt. Ltd.* [1978] 111 ITR 1 (SC), on which reliance has been placed by the High Court, was a decision of a two-judge Bench and that its correctness has been doubted by a Bench of three judges in *Jute Corporation of India Ltd. v. CIT* [1991] 187 ITR 688 (SC).

In *Jute Corporation of Indian Ltd. v. CIT* [1991] 187 ITR 688, this court has referred to the earlier decision of this court in *CIT v. Kanpur Coal Syndicate* [1964] 53 ITR 225, 229, which was also a decision of a three-judge Bench wherein the scope of section 31(3)(a) of the Indian Income-tax Act, 1922 (which was almost identical to section 251(1)(a) of the Act) was considered and it was held (at page 693) :

"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 (b) 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 coterminous 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."

After referring to these observations, this court in *Jute Corporation of Indian Ltd.* [1991] 187 ITR 688 has stated (at page 693) :

"The above observations are squarely applicable in the interpretation of section 251(1)(a) of the Act. The declaration of law is clear that the power of the Appellate Assistant Commissioner is coterminous with that of the Income-tax Officer, and if that is 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 the 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."

Taking note of the decision in Addl. CIT v. Gurjargravures Pvt. Ltd. [1978] 111 ITR 1 (SC), the court has said (at page 694) :

"Apparently, this view taken by the two-judge Bench of this court appears to be in conflict with the view taken by the three-judge Bench of this court in Kanpur Coal Syndicate's case [1964] 53 ITR 225. It appears from the report of the decision in the Gujarat case that the three-judge Bench decision in Kanpur Coal Syndicate case [1964] 53 ITR 225 (SC) was not brought to the notice of the Bench in Gurjargravures Pvt. Ltd. [1978] 111 ITR 1 (SC). In the circumstances, the view of the larger Bench in Kanpur Coal Syndicate case [1964] 53 ITR 225 (SC) holds the field."

Having regard to the decision in Jute Corporation of India Ltd. [1991] 187 ITR 688 (SC), it must be held that the High Court was in error in holding that the appellate power conferred on the Appellate Assistant Commissioner under section 251 was confined to the matter which had been considered by the Income-tax Officer and the Appellate Assistant Commissioner exceeded his jurisdiction in making an addition of Rs. 2,30,000 on the basis of the other 10 items of hundis which had not been explained by the assessee. This means that even if question No. 2 is answered in the affirmative, questions Nos. 1 and 3 must be answered in the negative. The appeal is, therefore, allowed, the impugned judgment of the High Court in so far as it relates to questions Nos. 1 and 3 is set aside and the said questions are answered in the negative, i.e., in favour of the Revenue and against the assessee. No order as to costs.