

ALLAHABAD HIGH COURT

Joti Prasad Agarwal

Vs.

Income Tax Officer

Civil Misc. Writ No. 222 of 1956

(V. Bhargava and J.N. Takru, JJ.)

26.08.1958

JUDGMENT

V. Bhargava, J.

1. The ten petitioners, who have filed this petition under Article 226 of the Constitution, were admittedly members of an association of persons known as the District Khand Kothiwal Association, Kasganj, which was formed under a scheme formulated by the Collector of Etah for distribution of khandsari sugar at controlled rates. The Association functioned between the 8th of January, 1947, and 6-1-1948. Certain profits were earned by the Association during this period. The profits thus earned were shown as income in the individual account books of all the members of the Association. Out of the 30 members, 23 were assessed to income-tax. Those members, whose income was taxable, were assessed to income-tax even in respect of their share of profits earned by the Association and the tax levied was paid by them.

Subsequently, on 1-3-1952, the Income-tax Officer assessed the income of the Association for the two assessment years 1947-48 and 1948-49 at Rs. 70,000/- and Rs. 50,000/- respectively in the hands of the Association. The President of the Association filed an appeal which was ultimately allowed by the Income-tax Appellate Tribunal, Delhi, and the assessments were set aside. On 23-4-1955, the Income-tax Officer made fresh assessments of the income in the hands of the Association. It is alleged that no notice of those proceedings was given to the ten petitioners, nor were the assessment orders dated 23-4-1955, communicated to them. It seems that the communication was sent to the President of the Association on whom was also served the notice during the time that the proceedings were being taken. The members of the Association, got knowledge of the order of assessment dated 23-4-1955, when notices of demand dated 7-11-1955, were served on them. Thereupon they presented writ petition challenging these two assessment orders.

2. Two of the grounds, on which those two orders were challenged and which were strenuously

argued before us by learned counsel for the petitioners, did not appeal to us. The first ground was that, in fact, there was no association of persons within the meaning of that expression as used in Section 3 of the Indian Income-tax Act because the Association was not a voluntary association formed by the petitioners and other members but was an association in which they all joined under compulsion.

This argument could not be accepted by us because it did not appear from the facts that there was any compulsion on any member to join in that association. All that the Government and the Collector of Etah did was to formulate a scheme under which the business of wholesale Khandsari sugar could only be carried out by an association of persons and not by individuals or by individual firms. Thereafter it was the option of the petitioners to join or not to join the association. There is no assertion at all that they joined the Association under any compulsion. The affidavit filed on behalf of the petitioners only gives an indication that they joined voluntarily, because otherwise they would have had to give up their business of selling khand sari sugar as wholesale dealers. The Association was thus not an association constituted under any law or under any directions of the State authorities under which these petitioners compulsorily became members of the Association without their consent. The facts further show that not only did the petitioners join the Association but they also contributed working capital for the Association. Even the amount of capital furnished by each member was not the same which itself is an indication that the Association was formed by an agreement of the members forming it under which alone different amounts of capital could be provided by the members joining it. Had these members joined under any compulsion under the orders of the Collector or Government, it cannot be expected that those orders would have permitted contribution of different amounts as capital by different members. Learned counsel, when urging this argument before us, referred to two cases of the Nagpur High Court reported in *Commissioner of Income-tax, Madhya Pradesh and Bhopal, Nagpur v. The Cloth Semi-wholesalers, Akola*¹, and *Buldana District Main Cloth Importers Group, Khamgaon v. Commissioner of Income-tax, Excess Profits Tax, Madhya Pradesh and Bhopal, Nagpur*². In the former case, the facts were entirely different. It appears from the judgment of the Nagpur High Court in that case that in fact, no Association at all of the semi-wholesalers, who had come up to the Court, had been formed. The semi-wholesalers merely had to nominate a common agent known as the nominee. It was he who had to receive the quota on behalf of the semi-wholesalers and distribute it to the retailers. The facts do not disclose that the semi-wholesalers had to contribute any capital and provide it for running a business by an association of themselves apart from their individual businesses as semi-wholesalers. In fact, the learned Judges, who decided that case, clearly held :

"We do not find any evidence of any agreement either to carry on the business or to share the profits".

The facts of the case before us are entirely different. In this case, as we have indicated earlier, the petitioners, with others did form an association of persons and the business was carried on by that association quite apart and distinct from the business of each of its members. They elected a

President and a Secretary. There was separate capital of the association. Consequently, the views expressed by the Nagpur High Court in that case are not at all applicable to the case before us. In the second case of (1956) 30 ITR 61 : AIR 1957 Nagpur 4, also, the facts were different from the facts of the case before us, though it appears that certain comments were made by the learned Judges which would partially support the contention of learned counsel for the petitioners.

¹(1956) 29 ITR 500: AIR 1956 Nag 103

²(1956) 30 ITR 61 : AIR 1957 Nag 4

The facts of that case were that the Deputy Commissioner had evolved a scheme for the distribution of cloth in his district during the period when the business was controlled by the Government and he had recommended that four persons be jointly given a right to import cloth in the district from the mills in India. That recommendation was accepted by the Government. Thereupon the Deputy Commissioner issued an order saying that, in accordance with the instructions of the Government, he directed that the distribution of cloth from the Bombay and Ahmedabad Mills and of local mills shall be carried on through the agency of the persons named in that order. The names of the four persons were thereafter reproduced under a heading 'Group of Importers.' Once again, it would appear that, in that case, there were no facts indicating that the 'Group of Importers' had formed an association for the purpose of carrying on a business as such with separate capital of its own. All that appears is that those four persons had to import jointly. The goods having been imported by them, there was no restriction on their distributing the goods amongst themselves or dealing with the goods as if the goods belonged to them separately. In fact, the judgment does not contain any facts to indicate how those four persons were functioning. All that they were doing was to import the goods jointly. Mere joint importing of goods under the orders of the Government could not necessarily lead to the inference that they had formed an association of persons for the purpose of carrying on a business. The Nagpur High Court, no doubt, proceeded on the basis that the participation of the persons forming the group in the scheme could not be said to be at their free will, but, on the other hand, it was under compulsion. That was only one of the factors taken into account by that Court in arriving at its conclusion that there was no association or persons. The facts given in the judgment are not complete enough as to show that the persons who formed the group in that case, had any option not to join the group at all. The facts of that case thus differ from the facts before us and that decision cannot be applicable to the present case. In the case before us, the facts clearly disclose that an association of persons with a separate capital for the purpose of carrying on a business and sharing the profits of that business was formed by these ten petitioners with some others and, consequently, this ground taken in the petition must fail.

3. The second ground, which we are not inclined to accept, is that this association of persons ceased to function from 6-1-1948, and thereafter there could be no assessment of tax on the income of this association of persons. It is significant that there is no assertion that the association of persons itself ceased to exist after 6-1-1948. All that is asserted is that it ceased to carry on its business. On the other hand, there are indications that the association continued to

exist, because the petitioners, in their affidavit, have themselves stated that the President of the association continued. It was alleged by the petitioners that they had deposited certain moneys with the President for discharging the income-tax liability of the Association and this deposit was made by the persons forming the Association subsequent to the discontinuance on 6-1-1948. These assertions clearly imply an admission by the petitioners themselves that the Association continued to be in existence though the business of the Association was no longer being carried on. If the Association did continue to function, no question could arise of any bar to its being assessed to tax on the income which had been earned by it while it was actually carrying on the business.

4. A third point was, however, urged by learned counsel for the petitioners on account of which we think that this petition must succeed. The third point raised by learned counsel is that, under Section 3 of the Income-tax Act, income-tax is charged for a particular year in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually, and once an income has been charged to tax in the hands of one of the entities mentioned in Section 3, it cannot be charged in the hands of another of these entities subsequently. In the present case, the income, which was earned by the Association, was assessed and charged to tax in the hands of the members of the Association individually under one of the alternatives provided under Section 3 of the Income-tax Act. This assertion of the petitioners is admitted by the opposite party, the Income-tax Officer, in the counter-affidavit filed on his behalf. The income having once been charged to tax it is urged that it could not be charged to tax again in the hands of the Association. Learned Counsel for the opposite party contended before us that there was no, bar to tax being charged on the income in the hands of the association after it had already been charged to tax in the hands of the individual members of that association relying on the fact that in the Income-tax Act there is no specific provision barring such action of charging of tax by the Income-tax Officer.

We do not think that any specific provision in this behalf was required. Section 3 of the Act, which is the main charging section, only talks of charging the income of certain persons and does not talk of income-tax being charged on persons. This implies, that the charge is to be levied on an income only once. Whether it is to be charged in the hands of one person or another can certainly be determined under Section 3 and other relevant provisions of the Income-tax Act. Section 3 is clear enough to indicate that the same income cannot be charged repeatedly in the hands of different persons or in the hands of the same person. In fact, when examining this argument advanced by learned counsel for the opposite party, we put a question whether he could point out any specific provision in the Income-tax Act under which there was a bar to the income of one individual for one previous year being repeatedly assessed and charged to tax. He was unable to point out any and we had to fall back on Section 3 of the Act reading in it a provision which enables the Income-tax Department to charge tax only once on the income and not more than once. In the present case, this income of the Association has already been charged in the hands of the members of the Association individually and the assessment and the charge of tax

under that assessment have not yet been set aside. In fact, those orders of assessment have not been challenged. The position has proceeded further and the tax, which was charged, has actually been realized. While the income had already once been charged to tax and the tax realized, we cannot see how the same income can now be assessed and charged to tax again in the hands of the Association. Learned counsel, when arguing this point, drew our attention to the provisions of Sections 14, 16 and 17 of the Income-tax Act where certain provision has been made for cases in which the income is charged to tax in the hands of an association of persons and then the shares of the individual members of the association are taken into account subsequently for the individual assessments of those members. We do not think that those provisions of law are of any help in the present case. Even in those cases where the income of an association of persons is charged to tax in the hands of the association, there is no provision permitting tax to be levied again on the same income in the hands of the individual members of the association. The provisions in the sections referred to by learned counsel only permit the department to take into account individual shares of the individual members of the association for purposes of assessing to tax the other individual income of the members apart from the income earned from the association and for certain other purposes. Those provisions do not permit double taxation of the same income, meaning taxation of the same income again in the hands of the individual members after it has been assessed and charged to tax in the hands of the association. In the present case, as we have mentioned above, this income has already been assessed to tax in the hands of the individual members. We need not express any opinion at all on the question whether the Income-tax Officer had or had not the power to set aside those assessments of the income in the hands of the individual members of the Association and thereafter to proceed to assess that income in the hands of the Association, as that question does not arise in the present case. So far as the present case is concerned, it has to be decided on the basis that income-tax has been assessed in the hands of the individual members of the Association in exercise of the discretion which vests in the Income-tax Officer under Section 3 of the Act to proceed in that manner instead of assessing the income in the hands of the Association and, once it has been assessed and charged to tax and that assessment remains a valid assessment, there can be no fresh assessment of tax on that income in the hands of the Association. The orders of 23-4-1956, assessing this income in the hands of the Association and charging tax on it were clearly without jurisdiction.

5. We may also take notice of an argument advanced by learned counsel for the opposite party that this was not a fit case where this Court should exercise its jurisdiction under Article 226 of the Constitution as the Income-tax Act is a self-contained statute providing remedies for orders passed under that Act and the petitioners should have sought their remedy under the Act itself. Learned counsel principally relied on a decision of the Punjab High Court, *In re Lal Lachhman Dass Nayar*³, The Punjab High Court, in that case, was dealing with the question whether a writ of certiorari could issue in respect of proceedings taken by an Income-tax Officer under Section 34 of the Income-tax Act and, when summarizing its conclusions at about the end of the judgment, one of the learned Judges of that Court held that the principles applicable were

1. the Income-tax Act has entrusted to the Income-tax Officer the decision of the facts and the law to decide whether the provisions of Section 34 are applicable;
2. the exigencies of the State require that there should be a Tribunal to expeditiously and at a small expense decide questions which arise in the matter of assessment;
3. machinery has been created by the Act for the determination of the liability of an individual for assessment and the extent thereof;
4. it is that machinery and that alone which can be used for the purposes of assessment and all complaints against such assessment are to be adjudicated

³(1952) 22 ITR 418 : AIR 1953 Pun 55

- upon in accordance with the machinery provided by the Act;
5. it is the statutory duty of the Income-tax Officer to make the assessment which can only be challenged by way of appeal under the Act and the case stated to the High Court; and
6. whether the attack on the proceeding under Section 34 of the Act is due to the want of preliminary conditions or conditions precedent or to the bar of time, or illegality due to the matter being res judicata or due to the provision being ultra vires or the amendment being prospective, they are all questions of law and do not affect the jurisdiction of the Income-tax Officer."

We may mention that the principles laid down in that case do not apply to the present case because, in our opinion, the present case clearly raised a question of jurisdiction viz., the right of the Income-tax Officer to take proceedings for assessment of income in the hands of an association of persons after that income has already been assessed and charged to tax in the hands of the individual members of that association.

Further, we think that the present case clearly comes within the scope of a writ of certiorari in accordance with the principles laid down by the Supreme Court in *T.C. Basappa v. T. Nagappa*⁴, and *Hari Vishnu Kamath v. Ahmad Isheque*⁵, Both those cases laid down that certiorari will be issued for correcting errors of jurisdiction, as and when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it. A further principle, that was laid down in these two cases was that an error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In the present case, even if we had held that the Income-tax Officer had not exercised jurisdiction not vested in him, it is clear that he had ignored the provisions of Section 3 of the Income-tax Act and has totally disregarded the effect of that provision of law which takes away his right to charge tax on the income of the association so that he has committed a manifest error apparent on the face of the record. It is, therefore, a fit case where a writ of certiorari should be issued by this Court.

6. We accordingly allow this petition and quash the assessment orders dated 23-4-1955. The subsequent proceedings for recovery need not be quashed as the original orders of assessment,

under which those proceedings have been taken, having been quashed, the subsequent proceedings automatically become null and void. The petitioners will be entitled to their costs of this petition which we fix at Rs. 200/-.

Petition allowed.

⁴1955 SCR 250

⁵1955 SCR 1104 : AIR 1955 SC 233