

CALCUTTA HIGH COURT

Commr. of Income Tax

Vs

S. Sarkar & Co

(Chakravartti, C.J. Lahiri , J.)

17.08.1954

JUDGMENT

Chakravartti, C.J.

1. This Reference involves a short question of procedure but it was said on behalf of the Commissioner of Income-tax that the question was one of importance.
2. It appears that the Income-tax Officer had to deal with the assessment of the assessee, Messrs. Sarkar & Co. for two assessment years, namely, 1945-46 and 1946-47.
3. One of the points raised by the assessee in the appeals appears to have been that its business was owned by a partnership and not by a Hindu undivided family. Necessarily, there was also an application for registration of the partnership under Section 26A, Income-tax Act. The Income-tax Officer held that before the assessee had made a partition within the meaning of Section 25A of the Act, the claim for the treatment of the business as a business owned by a firm could not be entertained and the claim for registration could not be allowed. The Income-tax Officer, who made that order was the Income-tax Officer, District III (2). Thereafter, the assessee preferred appeals to the Appellate Assistant Commissioner and that Officer disposed of the appeals on 2-2-1950. It appears that, in the meantime, the assessment file had been transferred to the Income-tax Officer, Non-Companies (Income-tax-cum-Excess Profits Tax), District Calcutta, by an order of the Commissioner made under Section 5(5), read with Section 5(7)(a) of the Act. That order was made on 1-10-1948. It will thus appear that even during the hearing of the appeals before the Appellate Assistant Commissioner, the Income-tax Officer in charge of the assessment file was no longer the Income-tax Officer, District III (2), but the other Income-tax Officer to whom the assessment file had been transferred.
4. The Appellate Assistant Commissioner held in favour of the assessee and thereafter three appeals were preferred by the Income-tax Officer, District III (2), under the direction of the Commissioner. It is not necessary to refer to the view which the Tribunal came to take on the

merits of the appeals. It appears that although the Tribunal was inclined to hold in favour of the Department on the merits of the case, it nevertheless dismissed the appeals on the ground that having been filed by the Income-tax Officer, District III(2), Calcutta, who was no longer in seisin of the case and not by the Income-tax Officer, Non-Companies (Income-tax-cum-Excess Profits Tax), who had such seisin, the appeals were incompetent. The Commissioner of Income-tax, West Bengal, thereafter required the Tribunal to refer to this Court a question of law and a question in the following terms was referred:

"Whether on the above facts and circumstances of this case the Appellate Tribunal was correct in holding that the officer competent to file the appeals was the Income-tax Officer, Non-Companies, E. P. T., to whom the case of the respondent had been transferred by the Commissioner of Income-tax, West Bengal, before the date of the filing of the appeals and not the Income-tax Officer, District III (2), Calcutta, who made the assessments and passed the order refusing registration of the respondent and who had been directed to appeal to the Appellate Tribunal under Section 33(2), Income-tax Act, by the said Commissioner of Income-tax?"

The Tribunal took the view that an appeal by the Income-tax Officer, District III (2), could not be regarded as a good appeal, inasmuch as at the time of filing the appeal, he had no seisin over the assessee's case and he was also not an "aggrieved officer", competent to file an appeal. I may say at once that the second ground given by the Tribunal is pointless, because in order to be qualified to maintain an appeal, it is not necessary that the appellant Income-tax Officer should himself feel some particular grievance. As regards the other point, Mr. Meyer suggested at one stage of his argument that the very direction of the Commissioner to the Income-tax Officer, District III(2), to file the appeals amounted to a retransfer of the file to him and that therefore the appeals were competent. That, however, does not seem to have been the basis upon which the Tribunal had proceeded at the hearing of the appeals and which had been accepted by the Commissioner of Income-tax himself. It is only necessary to make an extract from the statement of facts contained in the application for a Reference.

"The Tribunal, however", observed the Commissioner of Income-tax, "by their order dated 21-8-1951, have dismissed the appeal on the technical ground that it was not filed by the Income-tax Officer, Non-Companies (Income-tax-cum-Excess Profits Tax) District, who was seised of the case at the time of filing the appeal."

The Commissioner of Income-tax therefore was admitting in the clearest possible terms that when the appeal was filed, it was the Income-tax Officer, Non-companies (Income-tax-cum-Excess Profits Tax) District, Calcutta, who was still in seisin of the case and the assessment file had not been re-transferred to the Income-tax Officer, District III(2). Mr. Meyer himself

conceded subsequently that such indeed was the position.

5. On the above facts, the question is whether the Commissioner of Income-tax was entitled to direct the Income-tax Officer, District III(2), to prefer the appeal and whether the appeal preferred by that Officer under such direction was competent. Mr. Meyer referred to the definition of 'Income-tax Officer' as given in the Act, but I do not see that the definition leads anybody anywhere. The provision under which the Commissioner directs an Income-tax Officer to file an appeal against an order of an Appellate Assistant Commissioner is contained in Section 33(2) of the Act which says that the Commissioner "may, if he objects to an order passed by the Appellate Assistant Commissioner under Section 31, direct the Income-tax Officer to appeal to the Appellate Tribunal." To my mind, the definite article "the" points to the Income-tax Officer who is concerned with the case at the time when the appeal is to be filed. The section does not say that the Commissioner may direct "an" Income-tax Officer, I need not however rest my decision on that ground alone, because it appears to me that there is a more fundamental one, on which the view of the Tribunal must be upheld.

6. If the contention advanced on behalf of the Commissioner of Income-tax is to be accepted, it will amount to holding that the Commissioner of Income-tax can, if he likes, authorise one Income-tax Officer to perform some functions with regard to a particular assessment and at the same time authorise another Income-tax Officer to perform certain other functions with regard to the same assessment. It must not be forgotten that an appeal at the instance of the Commissioner of Income-tax is also a proceeding in the course of the completion of an assessment. If the Act had authorised the Commissioner of Income-tax to distribute the functions relating to the same assessment of the same assessee between different Income-tax Officers, no objection could have been taken to the order made by the Commissioner of Income-tax in the present case, subject to what Section 33(2) means. It appears, however, that while the Act has provided that the Income-tax Officers shall perform their functions in respect of such persons or classes of persons or of such incomes or classes of income or in respect of such areas as the Commissioner of Income-tax may direct, it has not provided that the Commissioner of Income-tax can also direct an Income-tax Officer to perform only some of the functions in respect of a particular person or classes of persons or some particular person's income or classes of income and direct at the same time one or more other Income-tax Officers to perform the remaining functions. Such a power has been conferred by the Act only on the Central Board of Revenue by Sub-section (6) of Section 5. The language of Section 5, Sub-section (5), which deals with the power of the Commissioner is that the Income-tax Officers "shall perform their functions in respect of such persons or classes of persons or of such incomes or classes of income or in respect of such areas as the Commissioner of

Income-tax may direct."It will be noticed that persons, classes of persons, incomes, classes of income and areas are taken as whole. In striking contrast is the language of Sub-section (6) of the same section which deals with the power of the Central Board of Revenue. That subsection provides that

"The Central Board of Revenue may by notification in the official Gazette, empower..... Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income or such areas as may be specified in the notification."

It will be noticed that Sub-section (6) is expressed by reference to functions in respect of persons or income or areas, whereas Sub-section (5) is expressed by reference not to functions in respect of persons or incomes or areas, but by reference to persons or incomes or areas themselves. It seems to me to be perfectly clear that the Act does not contemplate that the Commissioner of Income-tax can distribute the functions in respect of the same assessee or the same assessment of the same assessee as between different Income-tax Officers, asking one Officer to proceed with his assessment and asking another to take appeals before the Appellate Tribunal.

7. In my opinion, even apart from the true meaning of Section 33(2), the view taken by the Tribunal is in complete accordance with what appears to me to be the true intention of the Act.

8. Mr. Meyer submitted that unless such power were conceded to the Commissioner of Income-tax, great inconvenience might often result where the exigencies of an assessment case required its transfer to a particular Income-tax Officer. Considerations of convenience are hardly relevant when we are to interpret the Act, but I may observe that, in the present case at least, I do not see how it was necessary on imperative to recall the Income-tax Officer, District III(2), to the scene for the purpose of challenging the Appellate Assistant Commissioner's order before the Appellate Tribunal while the transferee Officer appears to have been in charge of the case even before the Appellate Assistant Commissioner. It is true that the former officer had made the assessment order but it can hardly be necessary for purposes of good administration that an officer, making an assessment, should be detained to defend it in all subsequent proceedings even though he may have been transferred in the meantime to another circle and the file taken over by another Officer. But as I have said, such considerations are not even pertinent while the question is one of construction of the Act.

9. For the reasons given above, the answer to the question referred must be in the affirmative and we answer it accordingly.

10. The assessee is entitled to and will get the costs of this Reference.

Lahiri, J.

11. I agree.