

CALCUTTA HIGH COURT

Nirmala Birla

Vs

Wealth Tax Officer

(Sabyasachi Mukharji. J.)

23.09.1974

JUDGEMENT

Sabyasachi Mukharji. J.

(1.) IT appears that on the 29th March, 1973, the Wealth-tax Officer, 'M' Ward, District V (I), Calcutta, issued a notice under Section 17 of the Wealth Tax Act, 1957, with a view to reopen the assessment of the assessee for the assessment year 1968-69. The petitioners were the assessee Smt. Nirmala Birla, Kala-chand Chatterjee and Onkarmal Somanj as Trustees of Chandralekba Trust. On or about the 11th April, 1973, the petitioners made an application under Article 226 of the Constitution to this Court, inter alia, praying for the writs in the nature of Certiorari, Mandamus and Prohibition in respect of the notice mentioned hereinbefore. On the same date this Court issued a Rule Nisi in terms of the prayer of the said Rule. S. C. Ghose, J. who issued the said Rule Nisi also gave liberty to the revenue to conclude the proceedings initiated pursuant to the said notice under Section 17 of the said Act and to pass final order. But the revenue authorities were restrained from communicating or enforcing the said final order, if any, passed in the said proceedings until the disposal of the rule nisi. We enquired at the hearing of this appeal whether if pursuant to the liberty granted steps had been taken to complete the proceedings, if any, for which liberty had been given as mentioned hereinbefore, we were informed that till to-day no steps had been taken in respect of the proceedings pursuant to the said notice. Thereafter affidavits were filed and the said application under Article 226 of the Constitution became ready for hearing. IT appears that there are 29 other matters wherein other assesseees, according to the revenue, have also challenged the jurisdiction of the Wealth-tax Officer concerned to reopen the respective assessment or assessments under Section 17 of the Wealth-tax Act. IT appears that the case of the revenue is that in respect of the said assessments which have been reopened there involved the question of valuation of certain shares under the Wealth-tax Act, 1957. There was a report along with a letter of the Director of Inspection (Investigation) dated the 14th March, 1973, wherein certain basis of valuation of these shares had been given and on the basis of the said report the said assessments have been reopened. The question, therefore, is whether in view of the said report of the Director of Inspection

(Investigation) it can be said that there was omission or failure on the part of the assessee as contemplated under Clause (a) of Section 17 of the Act or information as mentioned in Clause (b) of Section 17 of the said Act. According to the revenue there is also another matter, namely, Birla Jan Kalyan Trust where the assessment in the income-tax proceeding has also been reopened on the said basis. In paragraph 8 of the petition made by the revenue it appears that the said cases were due to appear on the 28th March, 1974, for hearing before Masud, J. The learned Judge, however, in his judgment has stated that the said matters were due to appear on the 28th March, 1974, in the list as marked 'to be mentioned' for fixing a date of hearing. Be that as it may, it is a common case that either the said matters were due to appear for hearing on the 28th March, 1974, or due to appear on the said date for fixing a date of early hearing soon thereafter. IT may be mentioned, as it appears from the petition, that prior thereto the revenue had mentioned the said matters before S. C. Ghose, J. for referring (those cases to a larger Bench. The learned judge declined to do so at that stage and observed that the said question would be considered after the learned judge had gone into the matter. IT appears that the identical prayer was also made before Masud, J. by the present respondents and the learned Judge declined to pass any order in respect thereto. Ultimately, one day prior to 28th March, 1974, the revenue being the respondents to the appeal moved a petition before the Court which came up before Masud, J. for an order that (the learned Judge be pleased to report under Chapter V, Rule 2 of the High Court Rules of the Original Side that the said group of cases which were described as Birla group of cases as mentioned in annexure A to the petition, should be more advantageously heard by a Division Bench. The respondents to the present appeal, i. e. the revenue, also prayed that pending hearing or final disposal of the said application, the said cases be not listed for final disposal. This application was opposed by the present appellants, the petitioners to the rule nisi under Article 226 of the Constitution. The application was heard by Masud, J. and by a judgment delivered and order passed on 24th May, 1974, the learned Judge has held that it would be advantageous for both the parties to have the matter heard before a larger Bench and has directed that the writ petition being Petition No. 269 of 1973 be referred to the Hon'ble the Chief Justice under Rule 2, Chapter V of the Original Side Rules to the High Court. There is also an order passed restraining hearing and disposal of the other 31 applications mentioned in the Annexure A regarding what is described as Birla Group of cases reopening. This judgment and order of the learned Judge is the subject-matter of this appeal before us.

(2.) BEFORE us really two points are involved -- whether the order made is appealable and as such this appeal is maintainable, and, secondly, whether the order made by the learned Judge is a proper or correct order. It was contended on behalf of the respondents that the order of the learned Judge not being a final order was not appealable order and as such no appeal lay. In this connection, reliance was placed on several decisions but mainly on the Full Bench decision of this Court in the case of Nurul Hoda v. Amir Hasan, . There this Court observed while discussing various authorities on the question of "Judgment" that it was not necessary, to lay down exhaustive definition. The following tests, however, were indicated as useful guides for determining whether an order in question was final order or not, viz. (1) whether the order in

question had put an end to the proceeding so far as the court dealing with it was concerned, in which the order was sought for and made, (2) the order must involve determination of some right or liability affecting the merits, (3) an adjudication or a decision, which was not anything more than a step towards obtaining the final adjudication on the merits of the dispute in the proceeding was not a judgment within the meaning of Letters Patent, (4) where the decision involved adjudication on the question of limitation or jurisdiction of the Court, in certain cases such decisions might amount to judgment. It was further noted that a decision which affected the proceeding of the dispute need not necessarily be a decision which affected the merits of the dispute. Under the Constitution ' the High Courts are given the powers under Article 226 to be exercised in certain circumstances mentioned in the said Article. It is accepted that the said powers are to be exercised under certain circumstances when the ordinary remedies provided by the different statutes do not provide adequate and alternative remedies and in some other contingencies. We need not in detail deal with these contingencies. These extraordinary remedies are available to a party who feels aggrieved by an action as in this case the petitioners under Article 226 of the Constitution obtained this rule nisi on the ground that conditions pre-cedent for user of power of reopening had not been fulfilled. The different High Courts have framed different rules of procedure as to how this power given by the Constitution should be exercised by different High Courts. As this matter was moved in the original side of this Court Chapter V of the Rules of the High Court (Original Side) would be applicable. The High Court has also framed rules relating to applications under Article 226 of Constitution. Reference has been made in the impugned order to Rule 2 of Chapter V of the Original Side Rules which provides as follows :-- "Where it shall appear to any Judge, either on the application of the party or otherwise, that a suit or matter can more advantageously be heard by a Bench of two or more Judges, he may report to that effect to the Chief Justice who shall make such order thereon as he shall deem fit." Therefore, in any suit or matter which includes matter under Article 226 of the Constitution, if it appears to the learned Judge taking the matter that the matter can be more advantageously heard by a Bench of two or more Judges, discretion has been given to the learned Judge to make report to that effect. If a report to that effect is made then it is for the Chief Justice to make such order as he will deem fit, he may refer the matter to a learned single Judge or to a bench consisting of two or more Judges. The rule authorises expression of opinion by the learned Judge, either on the application of a party or otherwise about the procedure to be followed in the disposal of a pending matter.

(3.) IN essence, in our opinion, the rule enjoins that with regard to a particular matter the disposal of which involves such question either having regard to the complicated nature of the fact or of law that its disposal by a larger Bench would be more advantageous, discretion has been given to the learned Judge before whom the matter is pending to make a reference in terms of Rule 2 of Chapter V of the Original Side Rules. IN this connection, we may refer to Rule 3 of Chapter V which is in the following terms: "Where it shall appear to any Judge at any stage of a suit, application or other matter, that it involves a substantial question of law as to the interpretation of the Government of INdia Act, 1935, or any order in Council made thereunder,

he shall report to that effect to the Chief Justice, who shall constitute a Bench of two or more Judges to hear the question of law arising in the suit, application or other matter and remit the matter with their opinion to the Judge who made the report." The aforesaid rule deals with interpretation of the Government of India Act 1935 or of the Constitution of India. We are not concerned with that question. This discretion of the learned Judge under Rule 2 of Chapter V, as it appears from the rule, can be exercised either on the application of the party or suo motu. For regulating the procedure of the applications, under Article 226 of the Constitution separate rules have also been framed by this Court. Rule 46 of the said rules which were introduced in July, 1973 provides as follows :-- "IN all application which involve the revenue, and in which the court has granted an interim stay of the assessment and/or realisation or taxes, the parties will be at liberty, after the pleadings have been completed, to mention the matter to court, and the matter upon being so mentioned shall be directed to be placed in the daily hearing list upon a day deemed to be convenient to the court." Rule 26 which was also introduced on the 5th March, 1974 provides as follows :-- "The Court hearing such application may issue a Rule Nisi or summarily reject the application or make such order thereon as it thinks fit. A Judge issuing a rule nisi may make it returnable before a Division Bench," ;