

CALCUTTA HIGH COURT

Cachar Plywood Ltd

Vs.

Income Tax Officer

A.O.D. No. 1135 of 1975

(S.K. Datta and G.N. Ray, JJ.)

05/ 29.04.1977

JUDGMENT

S.K. Datta, J.

1. This appeal is against the judgment and order of Sabyasachi Mukharji J. *dated November 27, 1975 [Cachar Plywood Ltd. v. Income-tax Officer¹*, whereby the connected rule was discharged.

2. The petitioner-appellant is an assessee under the Income Tax Act, 1961, and was being duly assessed till the assessment year 1969-70 by the Income- tax Officer, "A" Ward, Karimganj. The Central Board of Direct Taxes passed the following order in respect of the assessee on December 23, 1972.

"F No. 185/141/72-IT(AI)

Central Board of Direct Taxes,

New Delhi, 23-12-72.

ORDER

No. 572-J. In exercise of the powers conferred by Sub-section (1) of section 127 of the IT Act, 1961 (43 of 1961), and of all other powers enabling it in this behalf, the Central Board of Direct Taxes hereby transfers the case, the particulars of which are mentioned in column 3 of the Schedule hereto annexed from the Income Tax Officer mentioned in column 4 to the Income Tax Officer mentioned in column 5 thereof.

¹1977 109 ITR 470 (Cal)

Sl. No.	G.I.R. No.	Name of the assessee	From Income Tax Officer	To Income Tax Officer
1	2	3	4	5

1	C-3	Cachar Plywood Ltd., Oliviacherra, Cachar.	I.T.O., A-Wd., Karimganj	I.T.O. CC XXXIII, Cal.

This order shall take effect from 8-1-73.

Sd/- B. Madhavan

Under Secretary

Central Board of Direct Taxes.

Thereafter, in pursuance thereof, the Income Tax Officer, Central Circle XXXIII, Calcutta, issued a notice to the appellant on February 20, 1973, calling upon it to produce certain documents in connection with the assessment year 1970-71 under Section 143(2) of the Act. The appellant challenged the aforesaid order of the Central Board of Direct Taxes by an application under article 226 of the Constitution on grounds, inter alia, that the order did not contain any reasons for transfer as required by law, and the connected rule was issued on this application on the concerned Income Tax Officers, the Commissioner of Income Tax, Central Circle, the Secretary, Central Board of Direct Taxes and the Union of India. The rule was contested by the respondents and on hearing the parties the rule was discharged by the impugned order under appeal.

3. As the appeal came up for hearing, learned Advocate-General conceded that in view of the decision of the Supreme Court in *Ajantha Industries v. Central Board of Direct Taxes*², wherein it was held that recording of reasons in the order of transfer and its communication to the assessee are mandatory, it is no longer possible for him to urge the validity of the impugned order which did not record any reasons. The appeal, accordingly, has to be allowed and the order of transfer of the case to the Income Tax Officer, Central Circle XXXIII-Calcutta, dated December 23, 1972, in consequence has also to be quashed. It may be mentioned here that after the discharge of the rule on **November 27, 1975 [Cachar Plywood Ltd. v. Income-tax Officer, [1977] 109 ITR 470 (Cal)**, the Income Tax Officer, Central Circle XXXIII-Calcutta, had completed the assessment in respect of the aforesaid years though, under order of the appeal court, the orders have not been communicated to the appellant.

4. The learned Advocate-General submits that while passing the aforesaid order, the court should also pass appropriate directions, under Section 153(3) of the Act, otherwise it would no longer be possible for the original Income Tax Officer to make assessments of the income of the appellant for the assessment years 1970-71, 1972-73, 1973-74 and 1974-75, which under Sub-section (1) of Section 153 would be barred by limitation. He further submitted that unless such directions, which the statute authorises, are given, by reason of the mere pendency of the proceeding, the assessee would reap an unfair and improper advantage which was never their claim in the writ

petition.

The relevant provisions are as follows:

"153. Time limit for completion of assessments and reassessments.--(1) No order of assessment shall be made under Section 143 or Section 144 at any time after-

(a) the expiry of-

(i) four years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or

²1976 102 ITR 281 (SC)

before the 1st day of April, 1967 ;

(ii) three years from the end of the assessment year in which the income was first assessable, where such assessment year is, the assessment year commencing on the 1st day of April, 1968 ;

(iii) two years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or after the 1st day of April, 1969 ; or

(b) the expiry of eight years from the end of the assessment year in which the income was first assessable, in a case falling within clause (c) of Sub-section (1) of section 271 ; or

(c) the expiry of one year from the date of the filing of a return or a revised return under Sub-section (4) or Sub-section (5) of Section 139,

whichever is latest.

(2) No order of assessment, reassessment or recomputation shall be made under Section 147-

(a) where the assessment, reassessment or recomputation is to be made Under clause (a) of that section, after the expiry of four years from the end of the assessment year in which the notice under Section 146 was served:

(b) where the assessment, reassessment or recomputation is to be made under Clause (b) of that section, after-

(i) the expiry of four years from the end of the assessment year in which the income was first assessable, or

(ii) the expiry of one year from the date of service of the notice under section 148, whichever is later,.....

(3) The provisions of Sub-sections (1) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may (subject to the provisions of Sub-section (2A)) be completed at any time-

(i) where a fresh assessment is made under section 146 ;

(ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order, under Section 250, 254, 260, 262, 263 or 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act;

(iii) where, in the case of a firm, an assessment is made on a partner of the firm in

consequence of an assessment made on the firm under Section 147.

Explanation 1.--In computing the period of limitation for the purposes of this section-

(i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be reheard under the proviso to Section 129, or

(ii) the period during which the assessment proceeding is stayed by an order or injunction of any court, or.....

shall be excluded."

(Provisions of sub-section (2A) as also other Explanations have not been quoted as they are not relevant for this appeal).

5. Sub-sections (1) and (2) provide, as the marginal note indicates, for time limits for completion of assessments and reassessments. Sub-section (3) which in Clauses (i), (ii) and (iii) provides for cases where there is no time limit for completion of assessment or reassessment or recompilation as provided in Sub-sections (1) and (2), applies and such assessment, reassessment or recomputation may be completed at any time. Such assessment or reassessment or recomputation, however, can only be made when it is in consequence of or to give effect to any finding or direction contained in an order in appeal or revision or in an order by the court on a reference or in an order of any court in any other proceeding otherwise than by way of appeal or reference under the Act. A writ proceeding as here in respect of any order under the Act under Section 127 of the Act will be such proceeding being one otherwise than by way of appeal or reference under the Act. Prima facie, therefore, the court has the jurisdiction in the instant case to pass appropriate directions for assessments in respect of the years which otherwise would be barred by limitation if such action is called for in the interest of justice and in the attending circumstances.

6. Learned Advocate-General referred to the decision in *Director of Inspection of Income Tax (Investigation) v. Pooran Mall & Sons*³, in support of his proposition that the instant case is a fit case where the court, in disposing of the appeal, should pass such appropriate directions in connection with the said assessments for years indicated above by the Income Tax Officer having the jurisdiction to assess, particularly in view of the authority and power conferred on court in such "other" proceeding. The Supreme Court observed, while considering Section 132(5) of the Income Tax Act, 1961, as follows :

"The court in exercising its powers under article 226 has to mould the remedy to suit the facts of a case. If in a particular case a court takes the view that the Income Tax Officer, while passing an order under Section 132(5), did not give an adequate opportunity to the party concerned it should not be left with the only option of quashing it and putting the party at an advantage even though it may be satisfied that on the material before him the conclusion arrived at by the Income Tax Officer was correct or dismissing the petition because otherwise the party would get an unfair advantage. The power to quash an order under Article 226 can be exercised not merely when the order sought to be quashed is one

made without jurisdiction in Which case there can be no room for the same authority to be directed to deal with it. But, in the circumstances of a case, the court might take the view that another authority has the jurisdiction to deal with the matter and may direct that authority to deal with it or where the order of the authority which has the jurisdiction is vitiated by circumstances like failure to observe the principles of natural justice, the court may quash the order and direct the authority to dispose of the matter afresh after giving the aggrieved party a reasonable opportunity of putting forward its case. Otherwise, it would mean that where a court quashes an order because the principles of natural justice have not been complied with, it should not while passing that order permit the tribunal or the authority to deal with it again irrespective of the merits of the case."

On the above authority it was submitted that the court has ample jurisdiction to issue directions so that the Income Tax Officer, "A" Ward, Karimganj, may complete the assessment for the aforesaid years and there can be little dispute that the instant case is a fit one where such discretion should be exercised.

³1974 96 ITR 390 (SC)

7. Dr. Debi Prosad Pal, learned counsel for the appellant, relied on the same decision in support of his contention that such direction cannot in law be issued at this stage when the assessment for the relevant years undisputedly had already become barred by limitation. The court in exercise of its jurisdiction, it is submitted, cannot revive a barred claim where under the operation of the provisions of Sub-section (1) of Section 153 of the Act, the authority has lost its jurisdiction to pass any order of assessment in respect of the relevant years. Further, sub-section (3) of section 153 is a proviso to sub-sections (1) and (2) of the same section and its provisions cannot enlarge or curtail the substantive provisions for limitation of time for assessment. It was also submitted that there was no injunction at the material time on the Income Tax Officer, Karimganj, from making assessment within the period of limitation and for such inaction on the part of such officer, the court should not exercise its discretion to the serious prejudice of the appellant-assessee.

8. Dealing with the question of injunction, it is true there was no fetter on the Income Tax Officer, "A" Ward, Karimganj, to proceed with the assessments for the relevant years. But so long as the impugned order of the Central Board of Direct Taxes dated December 23, 1972, transferring the case of the appellant from the file of the said officer to the Income Tax Officer, Central Circle XXXIII, Calcutta, is in existence, as it does exist even today till it is quashed, the Income Tax Officer of Karimganj had no jurisdiction to proceed with the assessment. His inaction, which is inevitable, cannot accordingly be a ground for refusal to exercise a jurisdiction by this court if it is otherwise called for in the circumstances of the case and the court has been conferred such jurisdiction which it should exercise in national interest as otherwise taxes payable for those years would be irrecoverable for no fault of the revenue.

9. The contention that Sub-section (3) of Section 153 is a proviso to Subsections (1) and (2) is also hard to accept. As the arrangement of the section stands, it cannot be said that Sub-section (3) of Section 153 is a mere proviso to its earlier sub-sections. This sub-section confers plenary powers on the appropriate authority to pass appropriate directions in regard to assessment, reassessment or recomputation which can be made and completed at any time in consequence of any finding of court or to give effect to its direction as may be made. In such cases, the provisions of Sub-sections (1) and (2) are not applicable at all so that Sub-section (3) which by its own force excludes operation of the earlier sub-sections cannot be said to be a mere proviso to them and thus not competent to curtail or affect the provisions of the earlier sub-sections. Even a proviso may in appropriate cases be considered as a substantive provision dealing independently with matters specified therein and not as qualifying the main or preceding provision as noted in *Ishverlal Thakorelal v. Motibhai Nagjibhai*⁴,

10. Dr. Pal's formidable contention is that the intended assessments by lapse of time have already become barred by limitation creating vested rights in the assessee and the court has no jurisdiction to revive such claims when such jurisdiction is already lost. He referred to the following observations in *Pooran Mall's case*⁵,

".....there is no doubt that there is no equity about limitation..... Naturally, after the

⁴1966 1 SCR 367

⁵[1974] 96 ITR 390 (SC)

period of limitation has expired no proceedings can be taken to assess nor could any period of limitation laid down by the Act be extended merely by a superior tribunal directing an inferior tribunal to make an assessment or to take proceedings which result in assessment after the period of limitation is over."

11. The above propositions are basic concepts of law and the court on its own has no jurisdiction to extend the period of limitation in absence of requisite provision in that regard. We have already seen that Subsection (3) of Section 153 of the Income Tax Act, 1961, is a substantive provision of law. It provides, inter alia, in respect of a proceeding before any court, otherwise than by way of appeal or reference under the Act that provisions of sub-sections (1) and (2) shall not apply to certain classes of assessments, reassessments and recompilations which may be completed at any time. One of such classes of assessment is where it is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order of any court in such proceeding. When the court is in seisin of such proceeding, the time-limit of assessment as provided in sub-sections (1) and (2) of section 153 shall have no application to the assessment which may be made at any time in consequence of or to give effect to any finding or direction contained in an order of court in the said proceeding. Accordingly, it can be said that when such proceeding is pending before a court there can be no limitation on the revenue to make assessment in consequence of any finding or to give effect to any direction, if any, in the order of court in such proceeding. In respect of such matters there can be no question of limitation as expressly provided in subsection (3) and, accordingly, there is no question of extending the period of limitation or revival of timer-barrred assessments when such assessments may be made at any time. Those provisions, in our opinion, are also salutary and in national

interest when mere initiation and pendency of proceedings by an assessee may defeat the purpose of the Act and the court has been made the repository for exercise of such power obviously in appropriate cases.

12. The appellant, while challenging the order of transfer of his case, did not dispute his assessability to Income Tax for the relevant years. By force of events such assessments would be time barred for no fault of the revenue unless appropriate directions are given by the court. We have not the least doubt in our mind that the present case is a fit one in national interest and, in the circumstances, to issue appropriate directions, the power in respect whereof has been expressly conferred on the court, authorizing the Income Tax Officer, "A" Ward, Karimganj, to make assessment in respect of the relevant years referred to above.

13. The appeal in the premises is allowed and the impugned order of transfer of the case of the appellant dated December 23, 1972, is set aside with the direction on the Income Tax Officer, "A" Ward, Karimganj, to make assessment on the appellant in respect of the assessment years 1970-71, 1972-73, 1973-74 and 1974-75. There will be no order for costs in the appeal in the circumstances.

G.N. Ray, J.

14. I agree.

Appeal allowed.