CALCUTTA HIGH COURT

Dwarka Prasad Bajaj

Vs

Commissioner of Income-Tax

(Deepak Kumar Sen and C Banerji, JJ.)

10.05.1979

JUDGMENT

Dipak Kumar Sen, J.

1. In this application of Dwarka Prasad Bajaj, the assessee, made in the above reference a rule nisi was issued calling upon the Commissioner, West Bengal-I, to show cause why the amount of tax in dispute in respect of the assessment years 1967-68 and 1970-71 which are the subject-matter of Certificate Cases Nos. 347/TR-ASL/74-75, No. 321/ TR-ASL/75-76, No. 346/TR-ASL/74-75 and 2987/TR-ASL/72-73 and the notice for settling a sale proclamation dated the 14th September, 1978, issued by the TRO, Asansol, should not be stayed till the disposal of the above reference. Pending the dispasal of the rule the Commissioner and the TRO, their servants and agents were restrained from giving any effect to and/or taking any steps whatsoever in pursuance of the said certificate cases and the said notice for settlement of sale proclamation. The TRO was farther restrained from realising the disputed amounts of tax in respect of the said assessment years during the pendency of this application.

2. For the assessment year 1967-68, the petitioner in its business of manufacture of mustard oil, disclosed the gross profits in its trading account showing a return of 2.60%. The respective yields of oil, oil cake and gad as also loss or shortage at 2.17% in the oil seeds due to refraction and in transit were also disclosed. In the assessment year 1970-71, gross profit in the petitioner's trading account was similarly disclosed oh the basis of a return of 2.61%. The respective yields of oil, oil cake and gad and loss or shortage of seeds at 1.86% were shown.

3. In the assessment year 1967-68, the ITO while accepting the yield, held that the shortage claimed was excessive and that the gross profits were understated. He added the sum of Rs. 60,020 disallowing the excess shortage claimed, another sum of Rs. 16,925 to the gross profits on estimate and a further sum of Rs. 15,928 in the gad account. Similarly, for the assessment

year 1970-71, the ITO while accepting the declared yield added the sum of Rs. 68,611 on account of excess shortage including gad and Rs. 67,653 to the gross profits.

4. The petitioner preferred appeals before the AAC who gave some relief to the petitioner and the petitioner's total income was reduced in both the assessment years.

5. The petitioner preferred further appeals to the Income-tax Appellate Tribunal. The Tribunal gave further relief to the petitioner reducing the additions in both the said assessment years.

6. The petitioner thereafter applied for a reference under Section 256(1) of the I.T. Act, 1961, which was rejected but on the petitioner's application under Section 256(2) this court directed the Tribunal to draw up a consolidated statement of case in respect of the said two assessment years and refer the following question of law for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, there was any material before the Tribunal that in holding 3% G.P. was reasonable and accordingly maintaining to the extent of Rs. 23,000 the addition made by the Income-tax Officer and reduced by the Appellate Assistant Commissioner in the trading account of the assessee during the year ?"

7. It is alleged in the petition that subsequent to the said order the petitioner has duly filed the paper book in the proceedings and the reference is pending.

8. It is alleged further that from time to time the petitioner and/or its representatives appeared before the ITO concerned and also the TRO, Asansol, and had submitted that as the matter was subjudice before this court the petitioner was not liable to pay the demands raised by the said assessments till the reference was disposed of.

9. On or about the 15th September, 1978, the petitioner was served with a notice issued by the TRO, Asansol, dated the 14th September, 1978, under Rule 52 of the Second Schedule to the I.T. Act, 1961, in pursuance of the execution of the said certificate case forwarded by the ITO, "C" Ward, Asansol, and the 21st September, 1978, was fixed as the date for drawing up and settling the sale proclamation in respect of the property situated at No. 61, Netaji Subhas Road, Ranigunj, Burdwan. It is alleged that the said property is the residential house of the petitioner, in a portion whereof the oil mill of the petitioner is situated. It is alleged further that since 1970-71 the petitioner did not have any income and had suffered heavy losses in his business and accordingly the petitioner is unable to pay the illegal demand raised. It is contended that the petitioner has reasonable chances of success in the reference and it would cause hardship if the demand was realised during the pendency of the reference. It is contended that this court in its inherent jurisdiction under Section 151 of the Code of Civil Procedure de hors the I.T. Act is empowered

to pass an order of stay of realisation of the illegal demand. It is further contended that Section 265 of the I.T. Act, 1961, is no bar for the exercise of powers of this court in such inherent jurisdiction.

10. This application is opposed but no affidavit has been filed on behalf of the respondent in opposition to the petition.

11. At the hearing, it was contended by Dr. Debi Pal, learned advocate for the assessee, that under the proviso to article 225 of the Constitution, the bar in Section 226 of the Government of India Act, 1935, on courts for exercise of their ordinary jurisdiction in respect of revenue matters had been removed and as such the court could exercise such jurisdiction in all revenue matters. It was further contended that under Article 227 of the Constitution a High Court has general power of superintendence over all subordinate courts and Tribunals operating within its jurisdiction and as such this court could give suitable relief in proper cases, invoking such powers.

12. Proceedings before the I.T. authorities have to be treated as judicial proceedings under Section 136 of the I.T. Act, 1961, and, therefore, all orders and directions given by the I.T. authorities were amenable to the jurisdiction of this court in exercise of its power of superintendence.

13. Dr. Pal finally submitted that there was no bar in law which prevented this court from exercising its inherent jurisdiction in appropriate cases. In a pending reference the High Court was in seisin of the lis between the assessee and the revenue who were parties thereto and had ample jurisdiction to exercise its inherent powers and make appropriate orders including orders of injunction and stay of all proceedings arising out of the subject-matter of the reference.

14. In support of his contentions, Dr. Pal cited several cases which are considered hereafter in their chronological order :

(a) Polisetti Narayana Rao v. CIT [1956] 29 ITR 222. This is a decision of the Andhra Pradesh High Court. In this case, the assessee filed a petition praying for stay of collection of arrears of income-tax pending the disposal of a reference under Section 66(2) of the Indian I.T. Act, 1922, The jurisdiction of the High Court to issue an order as prayed for was challenged on behalf of the revenue. Relying on Section 66(7) of the Act, which provided that "notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case.....", it was contended on behalf of the revenue that the power exercised by the High Court under Section 66(2) was merely consultative and advisory. The court had no power to pass a decree or order under the I.T. Act, and accordingly, also had no power to pass any order directing stay of collection of tax. It was contended on

behalf of the assessee, on the other hand, that the jurisdiction of the High Court conferred under Section 151 of the CPC read with Article 227 of the Constitution and the proviso to Article 225 removed the previous limitations imposed by Section 226(1) of the Government, of India Act, 1935, it should be held that the court had sufficient jurisdiction and power to issue interim orders. It was held that the word "superintendence" under Article 227 of the Constitution was of a very wide connotation and it would be undesirable to limit its scope though the same should be rarely resorted to and should be invoked only in cases where there was no other remedy available, It was held that in a proper case the High Court had power under Section 151 of the CPC read with Article 227 of the Constitution to issue an order as was sought for and Section 66(7) of the Indian I.T. Act, 1922, did not limit the scope of its power. On the facts, however, it was held that mere inability to pay tax on the part of the petitioner was not a proper ground for directing the stay of collection.

(b) ITO v. M. K. Mohammed Kunhi [1969] 71 ITR 815 (SC). In this case, penalties were imposed on the assessee under Section 271(1)(c) read with Section 274(2) of the I.T. Act, 1961, for concealment of particulars of income and furnishing inaccurate particulars. The assessee preferred appeals to the Income-tax Appellate Tribunal and made an interim prayer for stay of collection of the penalties imposed. The Tribunal declined to order any stay holding that it had no power to grant the same. The assessee moved the High Court under Article 226 of the Constitution. The High Court held that the Tribunal had power to stay the proceedings as also the collection of the penalties pending the appeal and directed the Tribunal to dispose of the stay application in accordance with law. On further appeal by the revenue, the Supreme Court considered the scheme of assessment, collection and recovery of tax under the I.T. Act, 1961, and, in particular, the powers of the Income-tax Appellate Tribunal. It was noted that the Income-tax Appellate Tribunal Rules, 1963, and Section 220(6) of the I.T. Act did not confer specific powers on the Tribunal to stay proceedings for recovery of penalty or tax due or to treat the assessee as not being in default. The Supreme Court held as follows (p. 819):

"The right of appeal is a substantative right and the questions of fact and law are at large and are open to review by the Appellate Tribunal. Indeed, the Tribunal has been given very wide powers under Section 254(1), for, it may pass such orders as it thinks fit after giving full hearing to both the parties to the appeal. If the Income-tax Officer and the Appellate Assistant Commissioner have made assessments or imposed penalties raising very large demands and if the Appellate Tribunal is entirely helpless ia the matter of stay of recovery, the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside. It is difficult to conceive that the legislature should have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion. The assessee, as has

been pointed out before, has no right to even move an application when an appeal is pending before the Appellate Tribunal under Section 220(6) and it is only at the earlier stage of appeal before the Appellate Assistant Commissioner that the statute provides for such a matter being dealt with by the Income-tax Officer. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (Sutherland's Statutory Construction, third edition, articles 5401 and 5402). The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective."

At page 822 :

"Section 255(5) of the Act does empower the Appellate Tribunal to regulate its own procedure, but it is very doubtful if the power of stay can be spelt out from that provision. In our opinion the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. This is particularly so when Section 220(6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner, but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. It could well be said that when Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings as will prevent the appeal if successful from being rendered nugatory."

The Supreme Court noted the decision of the Andhra Pradesh High Court in the case of Pollisetti Narayana Rao [1956] 29 ITR 222, but did not make any observation as to the correctness or otherwise of the said decision.

(c) Jaipur Mineral Development Syndicate v. CIT . The facts in this case were that, in a reference, a notice was sent to the applicant, the assessee, to file paper books within three months of the receipt therof. The said notice was misplaced and consequently the paper books were not filed. When the reference came up for hearing no one appeared for the assessee and the High Court passed an order declining to answer the questions referred. Subsequently, the assessee discovered the mislaid notice and filed an application to the High Court for permission to file paper books and for rehearing of the reference. The High Court dismissed the application on the ground that by its earlier order declining to answer the reference it had become functus officio. On appeal to the Supreme Court, it was held that the High Court was not functus officio in entertaining the application for rehearing of the reference and disposing of the matter on merits. The Supreme Court observed as follows (p. 657):

"We find it difficult to subscribe to the view that whatever might be the ground for non-appearance of a party, the High Court having once passed an order declining to answer the question referred to it because of the non-appearance of that party, is functus officio or helpless and cannot pass an order for disposing of the reference on merits. The High Court in suitable cases has, as already mentioned, inherent power to recall the order made in the absence of the party and to dispose of the reference on merits. There is nothing in any of the provisions of the Act which, either expressly or by necessary implication, stands in the way of the High Court from passing an order for disposal of the reference on merits. The courts have power, in the absence of any express or implied prohibition, to pass an order as may be necessary for the ends of justice or to prevent the abuse of the process of the court. To hold otherwise would result in quite a number of cases in gross miscarriage of justice.....It is to meet such situations that courts can exercise in appropriate cases inherent power. In exercising inherent power, the courts cannot override the express provisions of law. Where, however, as in the present case, there is no express or implied prohibition to recalling an earlier order made because of the absence of the party and to directing the disposal of the reference on merits, the courts, in our opinion, should not be loath to exercise such power provided the party concerned approaches the court with due diligence and shows sufficient cause for its non-appearance on the date of hearing."

(d) L. Bansi Dhar and Sons v. CIT , In this case, an application had been filed by the assessee before the Delhi High Court under Section 151 of the CPC in two I.T. References, inter alia, praying for an injunction restraining the Commissioner from enforcing and/or realising a demand raised in the assessment years involved in the reference and from taking any steps for the recovery thereof till the disposal of the pending references. The High Court considered the decision of the Andhra High Court in the case of Polisetti Narayana Rao [1956] 29 ITR 222 as also an earlier decision of this court in Hukum Chand Boid v. Kamalanand Singh [1906] ILR 33 Cal 927. It was noted that the High Court in a reference under the I.T. Act had a special jurisdiction of an advisory or consultative nature and did not exercise any original, appellate or revisional jurisdiction. It was, however, held that it was well settled that the High Court, as a "court", had inherent jurisdiction to act ex debito justitiae if the circumstances of a case so demanded. Such inherent jurisdiction or power was inherent because the High Court was a "court" and such power was unrelated to and independent of the nature of its particular jurisdiction exercisable in the case before it. Though a High Court obtained seisin in the case because of the reference, it was still a court in dealing with the case. It was held further that in a reference under the I.T. Act, the High Court had inherent jurisdiction or power to stay the recovery of the tax pending disposal of the reference in a proper case.

(e) Manorama Dasi v. Sabita Dasi, , where it was held by a Division Bench of this court that the

High Court exercising its inherent jurisdiction could make an order of injunction restraining the disposal of the property, the subject-matter of a ponding suit, where an application for permission to sue as a pauper was pending and the suit had not been filed. It was observed as follows (p. 358):

"The question which, therefore, arises is whether the court has such inherent power. As regards this I have no doubt. Section 151, Civil Procedure Code, saves certain powers of the court and permits the court to make orders ex debito justitiae where there is no express provision in the Code for making such orders and where there is no prohibition in the Code against the making of such orders. It seems to me that pending the decision of the pauper application the court cannot be left powerless to protect the interest of the pauper. It has inherent power to pass an order of the nature of the present one if the ends of justice require the passing of such an order."

15. Mr. Ajit Sengupta, learned counsel for the revenue, contended on the other hand that the jurisdiction exercised by the High Court under the I.T. Act was a special and a limited jurisdiction and the power of the High Court in exercising such jurisdiction was circumscribed by the provisions of the statute. He drew our attention to Section 265 of the I.T. Act and submitted that irrespective of the pendency of a reference the payment of tax was obligatory. In support of his contentions, Mr. Sengupta cited a large number of cases which we shall briefly note hereafter in their chronological order.

(a) Kajori Mal Kalyan Das v. CIT [1929] 4 ITC 60. In this cise, the Allahabad High Court held that an application for review of a judgment in a reference under Section 66 of the Indian I.T. Act, 1922, was not maintainable. It was held that the judgment of the High Court delivered on a reference being neither a decree nor an order, there was no scope for application of Section 114 of the CPC.

(b) CIT v. Hunger ford Investment Trust Ltd. [1935] 3 ITR 188 (Cal). In this case, an application had been made by the Commissioner, Bengal, for a certificate that the questions involved in the reference before this court made it a fit case for appeal to the Privy Council. The petition was out of time as prescribed by the High Court Rules and an objection was taken as to the maintainability of the application on that ground. It was contended on behalf of the revenue that the Original Side Rules of the High Court had no application to income-tax appeals as they were governed only by the CPC. In adjudicating on the controversy the High Court observed that the jurisdiction conferred upon the court by Section 66 of the Indian I.T. Act, 1922, was a special jurisdiction and formed no part of the High Court's original or appellate jurisdiction. It was further observed that the High Court was not a court of appeal in income-tax cases, its functions being confined strictly to the disposal of references and points of law.

(c) Seth Mathuradas v. CIT [1940] 8 ITR 412 (Nag). In this case, an application was made before the Allahabad High Court for review of its judgment passed in an I.T. Reference. It was held by a Division Bench of the High Court that such an application was not maintainable as the High Court under Section 66 of the Indian I.T. Act, 1922, did not operate as a civil court so as to attract the provisions of the CPC.

(d) Sir Rajendra Narayan Bhanja Deo v. CIT [1940] 8 ITR 495 (PC). This decision was cited for the following observations of the Privy Council (p. 500):

"The function of the High Court in cases referred to it under Section 66 of the Act is advisory only, and is confined to considering and answering the actual question referred to it."

(e) Seth Premchand Satramdas v. State of Bihar . In this case on an appeal to the Supreme Court from an order of the High Court of Patna declining to direct the Board of Revenue to state a case under Section 21(3) of the Bihar Sales Tax Act, 1944, the Supreme Court observed, inter alia, that in a reference under Section 66 of the Indian I.T. Act, 1922, the jurisdiction of the High Court was only advisory.

(f) CIT v. Scindia Steam Navigation Co. Ltd. . This decision was cited for the following observation of the Supreme Court (p. 608):

"But then there are certain features, which distinguish the jurisdiction under Section 66, and they have to be taken into consideration in ascertaining the true import of the words, 'any question of law arising out of such order'. The jurisdiction of a court in a reference under Section 66 is a special one, different from its ordinary jurisdiction as a civil court. The High Court, hearing a reference under that section, does not exercise any appellate or revisional or supervisory jurisdiction over the Tribunal. It acts purely in an advisory capacity, on a reference which properly comes before it under Section 66(1) and (2). It gives the Tribunals advice, but ultimately it is for them to give effect to that advice. It is of the essence of such a jurisdiction that the court can decide only questions which are referred to it and not any other question."

(g) K. S. Venkataraman and Co. (P.) Ltd. v. State of Madras .

In this case, the Supreme Court construed the judgment of the Privy Council in Raleigh Investment Co. Ltd. v. Governor-General in Council [1947] 15 ITR 332, observed as follows (p. 130):

"Section 66 is in two parts. Under Section 66(1), within the prescribed time on an application made by an assessee or the Commissioner, the Appellate Tribunal shall refer to the High Court

any question of law arising out of such order ; if the Appellate Tribunal refuses to state a case, on an application filed by either of them, the High Court may require the Appellate Tribunal to state the case and to refer the same to it accordingly. On a reference made by the Appellate Tribunal to the High Court, the High Court shall decide the questions of law raised thereby and pass its judgment thereon and thereafter the Appellate Tribunal may pass such orders as are necessary to dispose of the case conformably to such judgment. It has been held by this court that the jurisdiction conferred upon the High Court by Section 66 of the Income-tax Act is a special advisory jurisdiction and its scope is strictly limited by the section conferring the jurisdiction. It can only decide questions of law that arise out of the order of the Tribunal and that are referred to it. Can it be said that a question whether a provision of the Act is ultra vires of the legislature arises out of the Tribunal's order ? As the Tribunal is a creature of the statute, it can only decide the dispute between the assessee and the Commissioner in terms of the provisions of the Act. The question of ultra vires is foreign to the scope of its jurisdiction. If an assessee raises such a question, the Tribunal can only reject it on the ground that it has no jurisdiction to entertain the said objection or decide on it. As no such question can be raised or can arise on the Tribunal's order, the High Court cannot possibly give any decision on the question of the ultra vires of a provision. At the most the only question that it may be called upon to decide is whether the Tribunal has jurisdiction to decide the said question. On the express provisions of the Act it can only hold that it has no such jurisdiction. The appeal under Section 66A(2) to the Supreme Court does not enlarge the scope of the said jurisdiction. This court can only do what the High Court can."

(h) Surajmull Choteylal v. CIT . In this case, an application for review and reconsideration of an order passed by this court in an I.T. reference was held to be not maintainable under Section 151 of the CPC as reconsideration was not being sought for correcting any accidental slip or omission under Section 152 thereof or in respect of an error or a mistake under Order 47, Rule 1, of the Code. The application was also found to be belated.

16. The point in controversy before us being of some importance and having come up before this court for the first time we had invited Mr. P. P. Ginwalla, Barrister-at-Law, a senior advocate of this court, to assist us in this matter as amicus curiae. Mr. Ginwalla drew our attention to the fact that this court sitting in reference jurisdiction like any other court exercising any other jurisdiction had some necessary inherent powers. Such inherent powers were confined to the matters of convenience and practice, e.g., rehearing of the matter when hearing was concluded, correcting accidental omissions and errors in its judgment, etc. According to him, a power to issue an order of injunction was not part of the inherent, jurisdiction of a reference court. The jurisdiction of this court founded originally by the Charter of 1774 had been continued by

subsequent enactments being the Letters Patents, the Government of India Act, 1935, and finally the Constitution. The power to issue injunction, permanent or temporary, was a power exercised under its equity jurisdiction, i.e., where the court was to apply the principle of equity in a given set of circumstances. Such equity jurisdiction was inherited from the English law and the principles for exercise of this jurisdiction were well-settled. In this connection, Mr. Ginwalla drew our attention to pages 807, 812, 814, 847 and 852 of the 4th Edn. of Halsbuyy's Laws of England, volume 16. Mr. Ginwalla further drew our attention to the fact that in a reference this court exercised its jurisdiction conferred under Section 256 of the I.T. Act, 1961, and not any other jurisdiction including jurisdictions conferred by arts. 226 and 227 of the Constitution.

17. After due consideration of the submissions made on behalf of the parties as also those of Mr. Ginwalla as amicus curiae and the decisions on the issue, the law on the point, appears to us to be as follows :

(a) It is well settled that a court and in particular this court in exercising its jurisdiction as a "court" has certain inherent powers.

(b) Such inherent powers are complementary to the powers which are conferred by the CPC or other statutes.

(c) Such inherent powers are to be exercised in very exceptional circumstances for which no particular provisions are laid down by the statute concerned and they can only be exercised if they are not in conflict in any way with any express statutory provisions or against the intentions of the Legislature as can be culled out from the legislation concerned.

18. See Manohar Lal Chopra v. Raja Seth Hiralal, ; Padam Sen v. State of U.P., ; Arjun Singh v. Mohindra Kumar, .

19. It was held in Raja Soap Factory v. S. P. Shantharaj, , inter alia, as follows (headnote) :

"The jurisdiction to try a suit, appeal or proceeding by a High Court under the power reserved by Section 24(1)(b)(i) of the Code of Civil Procedure arises only if the suit, appeal or proceeding is properly instituted in a court subordinate to the High Court, and the suit, appeal or proceeding is hi exercise of the power of the High Court transferred to it. Exercise of this jurisdiction is conditioned by the lawful institution of the proceeding in a subordinate court of competent jurisdiction, and transfer thereof to the High Court. Power to try and dispose of a proceeding after transfer from a court lawfully seized of it does not involve a power to entertain a proceeding which is not otherwise within the cognizance of the High Court.

Section 151 preserves the inherent power of the court as may be necessary for the ends of justice or to prevent abuse of the process of the court. That power may be exercised where there is a proceeding lawfully before the High Court; it does not, however, authorise the High Court to invest itself with jurisdiction where it is not conferred by law.

The High Court is not competent to assume to itself jurisdiction which it docs not otherwise possess, merely because an 'extraordinary situation.' has arisen. By 'jurisdiction' is meant the extent of the power which is conferred upon the court by its constitution to try a proceeding ; its exercise cannot be enlarged because an extraordinary situation requires the court to exercise it."

20. In the facts before us, even if we assume that sitting as a reference court we have certain inherent powers, it is still necessary to examine whether this court sitting as a reference court under the I.T. Act, 1961, has the jurisdiction in exercise of such inherent powers to issue orders of injunction and stay. Consideration of the provisions of the I.T. Act leaves us in no doubt that no jurisdiction has been conferred by the Act on this court to issue orders for stay of collection or recovery of taxes, The jurisdiction of this court under Section 256 of the I.T. Act, 1961, is strictly confined to decide questions of law raised in a reference by its judgment. Only after the judgment is delivered the Tribunal has to pass necessary orders to dispose of the case in conformity with the judgment under Section 260 of the Act. It. follows, therefore, that the High Court, in disposing of a reference under Sections 256 to 260 of the Act, has a very limited jurisdiction. It does not dispose of the entire matter but its decision is confined only to the questions of law as do arise from the order of the Tribunal. In this view, there is no scope for the High Court to exercise its equity jurisdiction.

21. It is also to be noted that in exercising its jurisdiction under Section 256 the High Court is not acting as a court of appeal as the Income-tax Appellate Tribunal does under Section 254 of the Act. The High Court in disposing of the reference can only answer the questions actually referred. It cannot even raise a question by itself. The finding of fact by the Tribunal is final so far as the High Court is concerned and only on limited grounds such findings of fact can be challenged.

22. For the above reasons, it cannot also be said that the High Court exercises its general jurisdiction under Article 227 of the Constitution in entertaining a reference. There is no procedure by which the two jurisdictions can be combined.

23. It is also to be noted that in order to exercise its powers under equity jurisdiction and to grant a temporary injunction or a stay the High Court will have to ascertain and to go into facts on which such orders would be based, the provisions of the I.T. Act, 1961, do not provide for the

mechanism by which this court can ascertain such facts.

24. Lastly, it appears that orders permitting collection or recovery of tax or staying such collection or recovery if made under exercise of inherent powers will result in extension of the jurisdiction of the High Court under Section 256 of the I.T. Act, 1961. As decided in the case of Raja Soap Factory, , a court is not permitted to invest itself with such additional jurisdiction by invoking its inherent powers.

25. We have considered the decision of the Supreme Court in the case of M. K. Muhammed Kunhi [1969] 71 ITR 815 (SC). It has been contended on behalf of the assessee that in this decision the Supreme Court has tacitly approved the decision of the Andhra High Court in Polisetti's case [1956] 29 ITR 222. It has been contended on behalf of the revenue that the Supreme Court only noted the two different views taken by the same High Court in two different cases. From the judgment of the Supreme Court, it cannot be said that the Supreme Court either approved or disapproved of the principles laid down in Polisetti's case [1956] 29 ITR 222 (AP). The Supreme Court was not called upon in that case to decide the powers of the High Court to stay recovery of taxes. Law has been laid down clearly by the Supreme Court in other cases where the scope of inherent powers of a court has been considered.

26. For the above reasons we hold that this court in seisin of a reference under the I.T. Act cannot exercise its inherent jurisdiction and issue an order of temporary injunction or stay of proceedings which is an injunction in an indirect form in respect of recovery of taxes. With respect we are unable to agree with the view taken by the Delhi Court in the case of L. Bansi Dhar and Sons [1978] 111 ITR 330.

27. We have also considered the application on its merits. No ground has been made out on which the petitioner can be said to be entitled to obtain a stay as prayed for. For the above reasons, we discharge the rule. AH interim orders are vacated. There will be no order as to costs.

28. We record our appreciation of the assistance rendered to us by Mr. P. P. Ginwalla as amicus curiae.

29. There will be a stay of operation of this order for two weeks.

C.K. Banerji, J.

30. I agree.