CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs

Krishwanti Punjabi

(Sabyasachi Mukharji, C.J. S M Guha, J.)

02.04.1981

JUDGMENT

Sabyasachi Mukharji, J.

1. In this reference under Section 256(1) of the I.T. Act, 1961, the following question has been referred to this court:

> " Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the order of assessment for the assessment year 1964-65, made by the Income-tax Officer, was invalid and illegal?"

The assessee is an individual and the relevant assessment year was 1964-65. The ITO computed the total income at Rs. 13,086, after making an addition of Rs. 11,000 as income from other sources. This sum was found to have been invested by the assessee in the firm of M/s. Mahabir Prosad Om Prakash in which he was a partner.

2. Being aggrieved by the order of assessment, the assessee went up in appeal before the AAC. Finding that the assessment was completed without giving proper opportunity to the assessee and ignoring the evidence already on record, the AAC set aside the assessment with the direction to the ITO to dispose of the matter in accordance with law. On behalf of the assessee, a ground was taken that the assessment appealed against had become time-barred by operation of law as the ITO did not sign the demand notice nor the order within time. The AAC did not agree with this submission. According to him, as the ITO had computed the income, the question of limitation would not arise merely because the demand notice and the challan were not signed by the ITO in time.

3. Being dissatisfied with the aforesaid order of the AAC, the assessee preferred a further appeal before the Appellate Tribunal. It was contended by the assessee that though the assessment order was signed, the demand notice, challan and assessment Form No. I.T. 30 did not bear any

signature of the ITO and, hence, the assessment order was invalid. According to the assessee, the expression " assessment " had a comprehensive meaning and if there was any omission at any stage in the completion of the assessment, in terms of the provisions of Section 143(3) of the I.T. Act, 1961, which included the signing of the papers mentioned above, namely, the demand notice, chal-lan and assessment form, such an assessment should be held to be illegal and void provided the necessary time-limit for completion of such assessment expired before the rectification of the lapses so committed by the ITO. In support of this contention, reliance was placed on certain decisions, to some of which our attention was drawn, and which we shall presently note. On the other hand, on behalf of the Revenue, it was urged that the absence of signature of the ITO was merely an irregularity which could have been made good by him and proper opportunity should have been given to him for so doing in view of certain decisions to which references were made before the Tribunal.

4. The Tribunal observed after considering the rival contentions that, in the instant case, the notice of demand was not signed by the ITO though it bore the official seal. According to the Tribunal, this was a curable defect in the sense that there was no time-limit prescribed under the law for issuing a notice of demand after the completion of the relevant assessment and, hence, if the assessee so wanted, he could have demanded a notice of demand duly signed by the ITO, This was not done in this case. On the other hand, an appeal was preferred to the AAC by meeting all procedural formalities except for the notice of demand. As to the validity of the assessment, the Tribunal observed as follows :

> " There was no dispute that the relevant assessment order was passed within the time-limit prescribed under the law, that is to say, before March 31, 1969."

As we shall presently notice, from the narration of the subsequent facts, the Tribunal was not using the expression " assessment order " in the strict sense of the term under Section 143(3) of the Act, otherwise the relevancy of the question in the subsequent controversy becomes irrelevant. The Tribunal, further, observed that non-signing of the notice of demand or the challan did not in any manner make the assessment order illegal and invalid because this could have been cured. The Tribunal was of the view that the important aspect of the issue rested with the signing, of the assessment form, namely, I.T. 30. The claim so put forward by the assessee that I.T. 30 was not signed by the ITO was not controverted by the Revenue and on inspection of the record it was found that Form No. I.T. 30 was not duly signed by the ITO. A reference was made to certain decisions to which we shall also refer. The Tribunal held that in view of the decision of this court in the case of *B.K. Gooyec v. CIT*[1] *it* was obligatory that the Form No. I.T. 30 should have been signed by the ITO because, according to the Tribunal, otherwise it could not be held that the relevant assessment was completed before March 31, 1969, and also because the ITO after that date could not rectify the mistake so committed. The Tribunal was further of the view that the aforesaid decision supported the holding of the AAC regarding the competency of the appeal. The Tribunal considered whether it was incumbent upon the ITO to sign the I.T. 30, the

assessment form, for completing the relevant assessment.

5. Reliance was placed on several decisions about the meaning of the expression "assessment". Also a reference was made to the decision of the Calcutta High Court in the case of *Sushil Chandra Ghose v. ITO*[2]. The Tribunal was of the view that the effect of the said decision, by implication, is that the ITO should sign the computation of tax in the form known as I.T. 30, and as in the instant case this was not done, according to the Tribunal, before March 31, 1969, the relevant assessment order was invalid and illegal and, therefore, the Tribunal set aside and cancelled the assessment. In that view of the matter, the Tribunal felt itself not obliged to go into the merits of the ground pertaining to the addition of Rs. 11,000. In the aforesaid background, the aforesaid question, "which we have indicated before, has been referred to this court.

6. In order to determine this question, it would be necessary to refer to the provisions of s, 143 of the I.T. Act, 1961, which reads as follows :

> " 143. Assessment.--(1) Where a return has been made under Section 139 and the Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that the return is correct and complete, he shall assess the total income or loss of the assessee, and shall determine the sum payable by him or refundable to him on, the basis of such return.
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> (2) Where a return has been made under Section 139 but the Income-tax Officer is not satisfied without requiring the presence of the assessee or the production of evidence that the return is correct and complete, he shall serve on the assessee a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which the assessee may rely in support of the return.
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> (3) On the day specified in the notice issued under Sub-section (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as the assessee may produce and such other evidence as the Income-tax Officer may require on specified points, and after taking into account all relevant material which the Income-tax Officer has gathered, shall, by an order in writing, assess the total income or loss of the assessee, and determine the sum payable by him or refundable to him on the basis of such assessment."

Reference may also be made in this connection to Section 153 of the Act, Sub-section (1) of which provides that:

"(1) No order of assessment shall be made under Section 143 or Section 144 at any time after-

(a) the expiry of--.. " and thereafter certain time-limits of different clauses have been mentioned.

Therefore, the question is whether the order of assessment under Section 143 or Section 144 in this case had been made within the time contemplated by Section 153 of the Act.
In this connection reference may be made to Section 23 of the Indian I.T. Act, 1922, as well as to Section 34 of the said Act. Sub-section (3) of Section 23 provides as follows :

"Section 23(3). On the day specified in the notice issued under subsection (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such person may produce, and such other evidence as the Income-tax Officer may require, on specified points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment."
Similarly, Sub-section (3) of Section 34 is on the following terms :

" Sub-section (3) of Section 34. No order of assessment or reassessment, other than an order of assessment under Section 23 to which Clause (c) of Sub-section (1) of Section 28 applies or an order of assessment or reassessment in cases falling within Clause (a) of Sub-section (1) or Sub-section (1A) of this Section shall be made after the expiry of four years from the end of the year in which the income, profits or gains were first assessable ;

Provided that where a notice under Clause (b) of Sub-section (1) has been issued within the time therein limited, the assessment or reassessment to be made in pursuance of such notice may be made before the expiry of one year from the date of the service of the notice even if at the time of the assessment or reassessment the four years aforesaid have already elapsed : Provided further that nothing contained in this section limiting the time within which any action may be taken or any order, assessment or reassessment may be made, shall apply to a reassessment made under Section 27 or to an assessment or reassessment 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 31, Section 33, Section 33A, Section 33B, Section 66 or Section 66A."
Both under Sub-section (3) of Section 23 as well as Section 143(3), the assessment to be completed, must be to determine not only the total income but also the tax payable. Section 153 uses the expression "assessment" as such though it refers to the order of assessment as mentioned in Section 143 and Section 144 of the Act. It appears to us that the correct position seems to be that though the order of assessment as such may not contain an actual determination of the amount of tax payable, yet in order to complete the assessment, there must be a determination of the amount of tax payable and not merely, the determination of the total amount of income. Therefore, essentially it is necessary, to find out whether the assessment, as contemplated under Sub-section (3) of Section 143, has been completed within the time stipulated under Section 153. We have not found any statutory requirement to the effect that there should be a determination of the amount" of tax payable, signed by the ITO, in Form No. I.T. 30, though in the case of *Shushil Chandra Ghose v. ITO*[3] at page 385, Mr. Justice Sinha, as the learned Chief Justice then was, observed as follows :

" Firstly, the very premises are wrong. The Income-tax Act and the the Rules require that the assessment order together with the computation in a particular form be served upon the assessee. In this form, in which it is served on the assessee, the computation has not to be signed. But the original computation, which is in the form known as I. T. 30, requires the signature of the Income-tax Officer and in this case, it was duly signed. The petitioner, therefore, has been moving under a misconception, thinking that the assessment order as served upon him contains a true copy of the original computation. Why, there should be this discrepancy in these two forms is more than I can say. But, I am satisfied that the assessment order has been made in accordance with law. These are the three points taken in this case or allowed to be taken and they all fail."

These observations in the context of the facts found in that case were obiter so far as the signature on Form No. I.T. 30 is concerned. It is true that in that case the Form No. I.T. 30, was duly signed. It is also true that His Lordship mentioned that the original computation, which was in Form No. I.T. 30, " requires the signature of the Income-tax Officer". We have not been shown any statutory requirement, either in the Act or in the Rules, that Form No. I.T. 30 should be signed by the ITO. As a matter of fact, apart from this, that there should be a computation and determination of the tax payable, there is no reference to the fact that there should be any particular Form No. I.T. 30. Reference was made to the case of C. A. Abraham v. ITO and our attention was drawn to the observations of the Supreme Court at page 429, in aid of the proposition that the expression " assessment " was sometimes used in the widest possible term, where the Supreme Court referred to the decision in the case of *CIT v. Khemchand Ramdas*[4] *I*n view of the fact that Section 153 specifically refers to assessment as contemplated by Section 143 of the I.T. Act, we need not embark upon the question as to in which amplitude the expression " assessment " should be construed. It is sufficient for us to determine whether there was an assessment in terms of Sub-section (3) ot Section 143. In the case of *B. K. Gooves v. CIT [1966] 62 ITR 109 (Cal)(supra),* the court was concerned with the question whether the notice under Section 34 of the 1922 Act, had to be signed by the ITO in order to be a regular notice though we are not concerned with that controversy. In that case, our attention was drawn to certain observations of the court at pages 114-15 of, the report. But, as Section 34 is the very basis of the power of the ITO to reopen the assessment, it is not necessary for us in the present context to refer to the said decision. On the proposition that if an expression, in I.T. law has been understood by judicial decisions for a long time, in a particular manner it should not be departed from, reliance was placed on the case of CIT v. Balkrishna Malhotra . In this connection, learned advocate for the assessee sought to urge that there has been some change in the I.T, Rules, 1962, compared to the 1922 Rules. Under r. 20 of the Indian I.T. Rules, 1922, a notice of demand under Section 29 of the 1922 Act, requires that the amount due and payable should be specified in the notice in the attached form, as indicated in the form to which our attention was drawn. That, it was said, was not the position in the instant case. Our attention was also drawn to certain observations in the case of S. Mubarik Shah Naqshbandi v. CIT . There also, the context in which those observations were made were different. But the court emphasized that the assessment included the determination of the tax payable. This, in our opinion, follows as a

statutory requirement in terms of Sub-section (3) of Section 143. The Tribunal, however, have proceeded solely on the basis that the I.T. Form was required to be signed. We have found no such statutory requirement. Therefore, in order to decide whether the tax was determined within the time contemplated minder Section 153, the Tribunal must advert its attention to that question before it could be said whether the assessment was barred or not. As the Tribunal has not done so, we remand the case to the Tribunal to determine whether within the time stipulated under Section 153 of the I.T. Act, there was an actual determination, by the ITO, of the tax payable and make a further statement of the case to this court irrespective of whether Form No. I.T. 30 was signed by the ITO. The Tribunal will submit a fresh statement of case within the period of six months from the date of service of this order on the Tribunal after giving an opportunity to both parties to adduce such further a vide nee, as the Tribunal consider fit and proper.

7. There will be no order as to costs.

Sudhtndra Mohan Guha, J.

8. I agree.

Cases Referred.

1[1966] 62 ITR 109
2[1959] 35 ITR 379
3[1959] 35 ITR 379 (cal)
4[1938] 6 ITR 414