

BOMBAY HIGH COURT

Vadilal Lallubhai Mehta

Vs

Commissioner of Income-Tax

(John Beaumont, Kt., C.J. Rangnekar, J.)

11.09.1934

JUDGMENT

John Beaumont, Kt., C.J.

1. This is an application made to the Court under Sub-section (3) of Section 66 of the Indian Income-tax Act asking the Court to require the Commissioner to state a case and raise certain points of law. In substance the points of law are said to arise in this way. The assessee was assessed as an individual for the year 1932-33 in respect of his income for the previous year. He alleges that in May 1932 a son was born to him, and he says that having regard to the construction of two documents, the business in respect of which he was assessed was, as between himself and his son, a Hindu joint-family business. His contention is that the effect of the two documents is to show that he acquired his share in the business from his own father by a surrender of his interest in certain ancestral immoveable property, and that in that way his interest in this business is the interest of a joint Hindu family. The Income-tax Officer in the first instance, and the Assistant Commissioner on appeal, rejected the claim of the assessee, as I understand it, mainly on the ground that they considered these two documents illusory, and that no Hindu joint family existed. That, no doubt, is a question of fact, and the only point of law which would arise in connection with that finding would be whether there was any evidence to justify the finding. Within sixty days after the decision of the Assistant Commissioner an application was made by the assessee to the Commissioner under Sub-section (2) of Section 66, requiring him to state certain questions of law, and as not infrequently happens, when these applications are made by laymen, the questions of law formulated had not been carefully considered, and were, frankly, unintelligible. The learned Commissioner took the view that no question of law arose, the question at issue being one of fact, and therefore, he refused to state a case. The assessee then made an application under Sub-section (5) of Section 66 asking us to require the Commissioner to state a case. Now the view taken by this Court more than once, and confirmed in the recent decision of *Narayan v. The Commissioner of Income-tax, Bombay*¹ is that we have power under Sub-section (3) of Section 66, to direct the Commissioner to state a case raising questions of law which have not been formulated before him. The learned Advocate

General has drawn our attention to the fact that that view has not prevailed in some of the other High Courts of India, and he has referred particularly to a recent decision of a full bench of the High Court of Rangoon, *The Commissioner of Income-tax, Burma v. C. P. L. E. Chettiar Firm*². In that case, Sir Arthur Page C. J. who delivered the leading judgment, expressed the view that in a reference under Section 66(2) the Commissioner has to state sufficient facts to raise the specific question of law which in the view of the assessee arises, that the ambit of Section 66(3) is not wider than that of Section 66(2), and that in a reference under Section 66 (3) the Court has seisin only of such questions of law as have been raised before the Commissioner and upon which the Commissioner has expressed his opinion. With great deference to Sir Arthur Page, I am not prepared to accept that view, which seems to me to restrict the powers of the Court in a manner unauthorized by the Act Under Section 66(2), the assessee is not required to formulate precise questions of law, a task which few laymen are competent to perform. What he has to do within the required time, is to require the Commissioner to refer to the High Court any question of law arising out of the order or decision of the Assistant Commissioner, and then the Commissioner has, within sixty days, to draw up a statement of the case, and refer it, with his own opinion thereon, to the High Court. In the case of *Narayan v. Commissioner of Income-tax, Bombay*, (supra), this Court laid down that an assessee requiring the Commissioner to refer questions of law to the Court ought to formulate those questions. That is a rule of practice based on considerations of convenience, and designed to protect the Court from unnecessary applications under Sub-section (3) ; but the Commissioner is not bound to refer only the questions so formulated. In practice, in a reference under Section 66(2), the Commissioner seldom refers to the Court questions in the exact terms formulated by the assessee. He raises the questions which in his view arise, and expresses them in his own language. Where the Commissioner refuses to state a case under Sub-section (2) on the ground that no point of law arises, the Court under Sub-section (3), if not satisfied with the correctness of the Commissioner's view, can require the Commissioner to state "the case," that is the case which he ought to have stated under Sub-section (2), and to refer the case to the Court. If the Court thinks that questions of law arise, it ought to indicate to the Commissioner what those questions are, though the actual framing of the questions rests with the Commissioner. But the Court under Sub-section (3) is no more limited than was the Commissioner under sub-s, (2) to the precise questions formulated by the assessee. In the present case, if the view of the Rangoon Court is right, we must either refuse to direct the Commissioner to raise questions of law , which in our view do arise, or direct the Commissioner to raise the questions which the assessee suggested and which may have meant something to him but are unintelligible to a lawyer. Sir Arthur Page thinks that on our interpretation of the Act the assessee may raise frivolous questions before the Commissioner in the hope that the Court will discover some meritorious, point of law. The anticipated danger is not, I think, a real one. If frivolous questions are raised they are soon disposed of, and the assessee has to pay the costs. In any case it is better that the Court should occasionally be moved unnecessarily than that persons should be deprived of the right to raise proper points of law through their inability to express them correctly.

2. Turning now to the circumstances of the present case, I think there are questions of law which arise, and the actual form of the questions will have to be considered by the Commissioner. But substantially, I think, the questions are, first of all, whether on the true construction of these two documents which are dated August 31, 1928, and March 28, 1929, the assessee's share in the partnership firm, C. Doctor & Co., was an undivided Hindu family estate as between himself and his son in which the son acquired an interest at birth, and if so, whether there was any evidence to justify the Assistant Commissioner in coming to the conclusion that those two documents were illusory and should not be given effect to according to their terms: Then if these questions were answered in the affirmative, there would be a third question, which is an important question of general law under the Income-tax Act, whether the birth of the son in May, 1932, affected in any and what way the assessment to which the assessee was liable under the Income-tax Act in respect of the profits of the business. I do not suggest that those questions are in the form in which they ought to be raised, but that is a sufficient indication to the Commissioner of the points of law which, we think, arise, and which we direct him to state in a case to be referred. Costs to be costs in the reference. ' Rangnekar, J.

3. I agree, and have nothing to add.

Cases Referred.

1(1934) 36 Bom. L.R. 818

2(1934) 2 I.T. Rep. 210