

# BOMBAY HIGH COURT

N.V Khandvala

Vs

Commissioner of Income-Tax

(Kania, J.)

12.03.1946

## JUDGEMENT

### **Kania, J.**

( 1. ) THIS rule is taken out by the petitioners inviting the Court to raise four questions of law mentioned in the rule.

( 2. ) THE assesseees are stock brokers. THEy were assessed for Samvat year 1933 (November 15, 1936, to November 3, 1937) by the Income-tax Officer on their total estimated income and ordered to pay Rs. 16,07,622 under Section 23 (4) of the Indian Income-tax Act. THE amount was reduced on appeal to the Tribunal, by about four lakhs. It was pointed out before the Income-tax Officer that the books of account kept by the assesseees were not reliable. It was further contended that the method of accounting adopted by the assesseees did not correctly show their profits and income, and therefore under the proviso to s. 17 of the Income-tax Act the computation had to be made upon such basis and in such manner as the Income-tax Officer might determine. THE assesseees contended that this did not entitle the Income-tax Officer to adopt any unjust or arbitrary method. THE assesseees applied to the Tribunal to state a case for the opinion of the Court, but that application was rejected. THE assesseees thereupon took out a notice of motion for an order asking the Tribunal to state a case. That was disposed of on July 26 1944, when a bench of this Court directed the Tribunal to state a case. According to the practice of our Court the questions of law were not formulated by the Court. THEy were left to be raised by the Tribunal. Acting upon that judgment, the Tribunal has prepared a case and submitted for the Court's opinion one question of law. The assesseees are dissatisfied with that action of the Tribunal. This petition was therefore filed by the assesseees praying for an order that the Tribunal do state for the Court's opinion four more questions of law. Those questions are set out in detail in the rule which the assesseees obtained on the petition. A preliminary objection is raised on behalf of the Commissioner. It is contended that before the case stated by the Tribunal is brought before the Court for disposal, it is not open either to the assessee or the Commissioner to ask the Court to call upon the Tribunal to state either further facts or raise further questions of law. It is argued that when the statement of case is before the Court for disposal, if the Court finds that proper questions on the case have not been raised, the Court may formulate the questions and dispose them of. It is not disputed that if the questions of law submitted for the Court's opinion require a further statement of facts from the referring authority, the Court has power to call for

such further statement under Section 66 (4) of the Indian Income-tax Act. The objection is to an attempt to obtain an order, before the statement of case and the question of law raised by the Tribunal are before the Court for disposal. The objection is to the stage at which an application should be made by the aggrieved party. For the present discussion it makes no difference whether the aggrieved party is the assessee or the Commissioner. Having read in detail Section 66 of the Indian Income-tax Act, it appears to us that the objection of the Commissioner is proper. It is not right to allow parties to rush to Court and invite it to ask the Tribunal to send a further statement of facts, or to submit a question of law, before the Court has an opportunity to consider the case actually submitted by the Tribunal for its consideration. It seems to us that the most convenient way to deal with the situation is this. "when a statement of case, with the question of law framed by the Tribunal, is filed in Court for disposal, if a party is aggrieved and wants to contend that certain further facts ought to be stated, or certain questions of law should be raised, he can make an application by way of notice of motion. That should be heard along with the case stated by the Tribunal for the Court's opinion. At that time the Court will consider whether the statement of case is complete for the question of law raised by the Tribunal. The Court can also consider whether on the case stated by the Tribunal the proper question is raised or not. That is the proper time for an aggrieved party to bring to the notice of the Court that certain further and other facts are necessary to be stated or certain further or other questions of law arise and should be brought for decision by the Court.

( 3. ) AS this is the first case in which this argument is advanced and the Court is invited to express its opinion on the procedure, we direct that the present rule do stand over to the hearing of the case stated by the Tribunal in pursuance of the order made by the Court on July 26, 1944. Costs of this hearing will be costs in the reference. . ;