BOMBAY HIGH COURT

Bhailal Amin

Vs.

R.P. Dalal

O.C.J. Appeal No. 106 of 1952

(Chagla, C.J. and Shah, J.)

27.02.1953

JUDGMENT

Chagla C.J.

1. This is an appeal from a decision of Mr. Justice Tendolkar who dismissed the petition preferred by the appellants for an order upon the Income Tax Tribunal to make a reference to the High Court under Section 66(1), Indian Income-tax Act.

2. The petitioners are a company incorporated in Baroda and they were assessed to income-tax in Baroda under the Baroda State Income Tax Act on 30-5-1949, for the assessment year 1947-48, which corresponded to the accounting year 1946. The petitioners then filed an appeal in the Court of the Huzur Adalat, which right of appeal was given to them under the Baroda law. In March 1949 the State of Baroda merged with India, and on 31-12-1949, the Taxation Laws (Extension to Merged States and Amendment) Act, 1949, was passed. Under this Act, by Section 3 of the Act, the Indian Income-tax Act of 1922 was brought into operation and extended to all the merged States as from 1-4-1949. By Section 7 of the Act it was provided :

> "If, immediately before the 26th day of August, 1949, there was in force in any of the merged States any law relating to income-tax, super-tax or business profits tax, that law shall cease to have effect except for the purposes of the levy, assessment and collection of income-tax and super-tax in respect of any period not included in the previous year for the purposes of the assessment under the Indian Income-tax Act, 1922, as extended to that State by Section 3, or as the case may be, the levy, assessment and collection of business profits tax for any chargeable accounting period ending on or before the 31st day of March, 1948, and for any purposes connected with such levy, assessment or collection."

The first proviso to this section was to the following effect:

> "Provided that any reference in any such law to an officer, authority, tribunal or Court shall be construed as a reference to the corresponding officer, authority, tribunal or Court appointed or constituted by or under the Indian Income-tax Act, 1922, or, as the case may be, the Business Profits Tax Act, 1947, as extended by Section 3 to that merged State."

And the Second proviso to that section was to the following effect: 'Provided further that if any question arises as to who such corresponding officer, authority, tribunal or Court is, the decision of the Central Government thereon shall be final."

3. The Central Government issued an order on 25-7-1950, by which it provided that :

> "(1) for the first appeal under the Baroda Income Tax Act, the corresponding Authority should be the Appellate Assistant Commissioner, provided that where the first appeal under the State Law is to be the Huzur Adalat i.e., the former State Privy Council, such appeal shall be to the Appellate Tribunal, and
> (2) where under the Baroda Law provision has been made for the second appeal, such appeal shall now be to the Appellate Tribunal." Therefore, the position under the Act to which reference has been made and the order issued by the Central Government was that the appeal of the petitioners which was pending before the Huzur Adalat under the Baroda law was to be heard and disposed of by the Appellate Tribunal, a Tribunal which has been constituted under the Indian Income-tax Act. The appeal was heard and disposed of by the Tribunal. Then the petitioners applied to the Tribunal under Section 66(1) to make a reference to the-High Court on a point of law and the Tribunal held that it had no jurisdiction to make a reference under Section 66(1). Thereupon the petitioners came to this Court for a writ to compel the Tribunal to exercise jurisdiction which, it is said, it possessed and which it had refused to exercise.

4. The question that we have to consider is whether the Appellate Tribunal has to exercise the jurisdiction which is conferred upon it under the Indian Income-tax Act, or it has to discharge the same duties and perform the same functions that the Huzur Adalat would have done under the Baroda law. It must be borne in mind that the appeal of the petitioners was pending before the Huzur Adalat, and if the Huzur Adalat had disposed of that appeal, admittedly no further right of appeal or right of reference would have arisen to the petitioners. For historical reasons the Huzur Adalat was abolished and some Tribunal had to be provided for disposing of those matters which were pending before the Huzur Adalat, and by the Taxation Laws (Extension to Merged States and Amendment) Act of 1949 and the order passed by the Central Government, the Appellate Tribunal was constituted to take the place of the Huzur Adalat which was abolished. In the Act which abolished the Huzur Adalat, no right of appeal is given to the petitioners. Their rights continue to be governed by the Baroda law. It is important to note that the assessment of the petitioners for the year 1947-48 was under the Baroda law and the assessment was to be

determined according to that law. Under the Baroda law they had a right of appeal to the Huzur Adalat and they exercised that right and under that law they had no further right of appeal or reference. Therefore, what we have to consider is whether there is anything in the Act passed, to which reference has been made, which has conferred upon the petitioners a right which they did not possess under the Baroda law. The Indian Income-tax Act was only made applicable from 1-4-1949, and therefore the petitioners' assessment could not be determined under that Act. Under Section 7 the Baroda Income Tax Law ceased to have effect except for the purposes mentioned in that section, and those purposes were the purposes of the levy, assessment and collection of income-tax and supertax. Therefore, to the extent that any question arose with regard to the levy, assessment or collection of income-tax from the petitioners, the question had to be determined according to the Baroda law. In this context, obviously, "assessment" is used in its widest connotation. An assessment in this context is not merely the ascertainment of the amount due or payable by the assessee, but it also means all the procedure that has to be followed for the purpose of arriving at the amount for which the assessee is liable, and when the matter was pending before the Huzur Adalat of the Baroda Court it was in the course of the assessment of the petitioners, and until the Huzur Adalat had given its final decision, the assessment of the petitioners would not be complete. Therefore, the procedural law with regard to assessment continued to be the same with regard to the petitioners as it was under the Baroda law and the procedural law under the Indian Income-tax Act was net substituted in place of the Baroda law. But the Legislature had to provide for the difficulty that arose by reason of the fact that the Tribunals under the Baroda law, which would have ordinarily and normally dealt with assessments, had ceased to function by reason of the merger and that is why the first proviso was enacted. As officer, authority, tribunal or Court under the Baroda law had to be considered as substituted by a corresponding officer, authority, tribunal or Court appointed or constituted under the Indian Income-tax Act and the correspondence was to be finally determined by the Central Government and that was done by the order to which reference has been made by which the Income Tax Appellate Tribunal corresponded to the Huzur Adalat under the Baroda law.

5. Now, it is difficult to understand how it can possibly be contended that the petitioners were given any additional right by their appeal being disposed of by the Income-tax Appellate Tribunal, the additional right being to come to the High Court on a reference made by the Appellate Tribunal. It is not as if under this Act, Act 67 of 1949, the appeal of the petitioners which was pending was referred for disposal to the ordinary tribunal of the land. If that had been done, it could have been contended that the ordinary tribunal of the land must dispose of the appeal with all the incidents of procedure of that Court attaching to the appeal. But all that Act 67 of 1949 did was to indicate a tribunal which should take the place of the tribunal under the Baroda law with this express provision that in all matters of procedure the Baroda law was to apply and not the Indian Income-tax Act. A right to come to the High Court on a reference is a law of procedure with regard to assessment. An assessee who is governed by the Indian Income-tax Act has a right to have the opinion of the High Court in matters of his assessment. That right an assessee under the Baroda law did not have. Therefore, the contention of the petitioners comes

to this that although in terms Act 67 of 1949 provided that in matters of assessment the Baroda law would apply even so because the Appellate Tribunal took the place of the Huzur Adalat, the petitioners were given the right to come to the High Court, a right which could only arise under the Indian Income-tax Act and not under the Baroda law

6. Various authorities were referred to a the bar, but when we look at them, the principle that is to be deduced is clear and the particular decisions based on that principle do not really apply to the facts of this case. The first decision which is relied on is the case of - *'National Telephone Co. Ltd. v. Postmaster General*[1]*',* Under the Railway and Canal Traffic Act of 1888 there was set up a Railway and Canal Commission which was

[1] No.2, 1913 AC 546

established as a Court of record and from whose decisions an appeal lay to the Court of Appeal except in certain matters. Under an agreement between the Telephone Co. and the Postmaster General, disputes with regard to the value of the plant which the Telephone Co. agreed to sell to the Postmaster General was to be referred to the Railway and Canal Commission, if that Commission should be authorized to determine the same, and Parliament then passed the Telegraph (Arbitration) Act of 1909 by which any difference between the Postmaster General and any body or person under any agreement relating to telephones should, if the parties agreed, be referred to the Railway and Canal Commission, who were bound to determine it. and a difference having arisen between the Telephone Co. and the Postmaster General, at the request of the parties it was referred to the Commission and the question that arose before the House of Lords was whether the reference to the Railway and Canal Commission was a reference them as arbitrators or as a Court of record, and the House of Lords held that the reference was to them as a Court of record and that an appeal from its decision lay to the Court of Appeal, and Lord Haldane at p.552 observe:

> "...When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches." Therefore, we must have under a law certain matter referred to the established Court of the land, and if that is the only provision in the law, then if an appeal is provided from that Court by reason of the ordinary incidents of the procedure of that Court, the party would have a right of appeal notwithstanding the fact that the law in terms does not confer any such right. The position here is entirely different. The appeal of the petitioners has not been referred by any law to any established Court of the land. The appeal was pending before the Huzur Adalat Court and under the rules of procedure of that Court there was no right of reference or no further right of appeal. That appeal was not transferred to the Appellate Tribunal under the Indian Income-tax Act, but what the law provided was that the Appellate Tribunal should perform the same functions and exercise the same jurisdiction which the Huzur Adalat was doing. Therefore, far from there being the case here of a matter being referred to an established Court of the land, we have a case here where the

matter is pending before a foreign Court, as it were, and that foreign Court being abolished a Court of the land is called upon to discharge the duties of the foreign Court. The ordinary Court, the Appellate Tribunal, is not exercising its ordinary jurisdiction; it is exercising the jurisdiction which the Huzur Adalat would have exercised if it had not been abolished.

7. The next case referred to is the one reported in - *'James C. and Bros. Ltd. v. National Sewing Thread Co. Ltd*[2]*.',* There our Court of appeal was called upon to consider whether there was a further appeal under clause 15 of the Letters Patent from an appeal to a Single Judge of the High Court disposing of an appeal under Section 76(1), Trade Marks Act of 1940, and at p.149 delivering the judgment of the Court of appeal I pointed out that

> "...It is well established, as we shall presently point out, that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court."

[2] AIR 1951 Bom 147

Therefore, in that case under Section 76, Trade Marks Act it was provided that the appeal should lie to a Court already established and we were then called upon to consider whether under the practice and procedure of that Court an appeal would lie from a decision of a single Judge to a division bench. Therefore, in that case also we start with the basic fact that a reference is made by the law of the land of a dispute to the established Court of the land and then the question arises as to what is the procedure attaching to that particular Court. In the case before us that very basic fact is lacking. There is no reference by the law of any matter to the Tribunal.

8. It may also be useful to look at another decision of the Privy Council reported in - *'Adaikappa Chettiar v. Chandrasekhara*[3]*',* There the Privy Council is enunciating the same principle: Where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute, the Courts are governed by the ordinary rules of procedure applicable thereto, and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal. In this case the ordinary Courts of the country were not seized cf any dispute. It was the Huzur Adalat which was seized of the dispute and it was by reason of the abolition of that Court that the Tribunal was called upon to take the place of the Huzur Adalat. Therefore, we have got to look to the ordinary rules of procedure applicable to the Huzur Adalat and not the ordinary rules of procedure applicable to the Appellate Tribunal.

9. Sir Jamshedji has attached considerable importance to the language used in the first proviso to Section 7

> "...that any reference in any such law to an officer, authority, tribunal or Court shall be construed as a reference to the corresponding officer, authority, tribunal or Court

appointed or constituted by or under the Indian Income-tax Act, 1922, or, as the case may be, the Business Profits Tax Act, 1947, as extended by Section 3 to that merged States",

and what Sir Jamshedji says is that it was to the Tribunal as constituted under the Indian Income-tax Act that the appeal was transferred and therefore we must look to the provisions of the Indian Income-tax Act to determine what are the rules of procedure that apply to the Tribunal. In our opinion no special significance attaches to the expression "constituted by or under the Indian Income-tax Act, 1922". These words are merely descriptive of the Tribunal, and all that the proviso does is to set up a correspondence between the tribunals under the Baroda law and the tribunals under the Indian Income-tax Act. Sir Jamshedji says that once the Appellate Tribunal constituted under the Income-tax Act is called upon to dispose of the appeal of the petitioners, the Tribunal will have all the incidents of its jurisdiction, and one of the important incidents of its jurisdiction is the application to make a reference to the High Court. But the fallacy underlying the argument is that the appeal of the petitioners has not been transferred to the Appellate Tribunal constituted under the Indian Income-tax Act to hear appeals from assessments to which the Indian Income-tax Act applies. In hearing and disposing of the appeal the Tribunal was not acting in its usual capacity; it was not discharging its usual function; it was acting as and in place of the Huzur Adalat and the incidents of jurisdiction which

[3] AIR 1948 PC 12

attached were not the incidents laid down in the Indian Income-tax Act but in the Baroda Taxation Law.

10. Reference was also made to the Judicial Committee Integrated States Order, and it is pointed out that when the Legislature wanted to deprive a party of a further appeal or reference, the language used was clear and conclusive. Under this Order a Judicial Committee was set up consisting of two Judges of the Bombay High Court chosen by the Chief Justice and to this tribunal all civil and criminal appeals, applications and other proceedings pending on the appointed day before the Ruler of any State or any other tribunal by whatever name called or designated were transferred, and it was further provided that the Judicial Committee shall have full power and jurisdiction to decide all such appeals, applications or proceedings according to the law in force in the respective State, and the decision so given by the Judicial Committee shall be final and conclusive. The Judicial Committee set up by this Order was a special tribunal and therefore the procedure attaching to this tribunal had to be provided for in this Order, and the procedure that was provided was that there should be no right of appeal from the Judicial Committee and its order shall be final and conclusive. It was unnecessary so to provide in the Act which we have been considering because the rules of procedure were already to be found in the Baroda Taxation Law and therefore it was entirely unnecessary to state that the decision of the Appellate Tribunal acting in place of the Huzur Adalat shall be final and conclusive. The Baroda law itself made the decision final and conclusive and that Baroda law still operated upon the rights of the petitioners.

11. In my opinion, therefore, the learned Judge below was right when he came to the conclusion that the Appellate Tribunal had no jurisdiction to make a reference to the High Court under Section 66(1), Indian Income-tax Act.

12. The result is that the appeal fails and must be dismissed with costs.

Shah J.

13. Prior to the merger of the Baroda State with the Indian Union, there was in operation in that State the Baroda State Income-tax Act of S.Y. 1896. Under that Act the petitioners were assessed to income-tax by an officer designated as 'Sarveradhikari'. That officer having assessed the petitioner's to income-tax, an appeal was preferred to the Huzur Adalat, i.e., the Privy Council of the Baroda State. That appeal was permissible under a notification issued by the Baroda State Government. Before the appeal could be heard by the Huzur Adalat the State of Baroda merged with the State of Bombay and after that date there was no authority corresponding to the Huzur Adalat of the Baroda State, which could hear the appeal. After the merger of the Baroda State, the Indian Parliament passed the Taxation Laws (Extension to Merged States and Amendment) Act, 1949, which provided by Section 7(1) :

> "If, immediately before the 26th day of August, 1949, there was in force in any of the merged States any law relating to income-tax, super-tax, or business profits tax, that law shall cease to have effect except for the purposes of the levy, assessment and collection of income-tax, and super-tax in respect of any period not included in the previous year for the purposes of the assessment under the Indian Income-tax Act..."

The rest of the section is not material for the purposes of the present case. The effect of Section 7(i), therefore, was to wipe out the provisions of all statutes relating to income-tax, super-tax or business profits tax which were in operation prior to 26-8-1949, in any of the merged States, but for purposes of levy, assessment and collection of income-tax and super-tax in respect of the period not included in the previous year, i.e., the year 1947-48, those statutes were kept in operation. By the first proviso to Section 7(1) it was provided that where there was any reference in the law which ceased to have effect to an officer, authority, tribunal or Court, it should be deemed to have reference to the corresponding officer, authority, tribunal or Court appointed or constituted by or under the Income-tax Act. The effect of that proviso was therefore to make officers appointed under the Indian Income-tax Act officers who were entitled to deal with matters of levy, assessment and collection of income-tax under the provisions of the statutes which ceased to have effect. Under the second proviso to that section it was provided that where any dispute arose as to who the corresponding officer was, the decision of the Central Government on that question was to be final. As I stated earlier, the appeal of the petitioners was pending before the Huzur Adalat, i.e. the Privy Council of the Baroda State, and corresponding to the Privy Council of the Baroda State there was no officer or authority or tribunal constituted

or appointed under the Indian Income-tax Act. The Central Government, therefore, issued a notification on 25-7-1950, whereby it was provided 'inter alia' that,

> "where the first appeal under the State Law is to the Huzur Adalat, i.e. the former State Privy Council, such appeal shall be to the Appellate Tribunal."

On the footing that the hearing of the appeal preferred by the petitioners was in the stage of "assessment", the appeal filed by the petitioners came to be heard by the Appellate Tribunal and that appeal was disposed of. After the appeal was disposed of the petitioners applied to that Tribunal to refer under Section 66(1), Indian Income-tax Act a question of law which they claimed arose on the decision of that Tribunal, to this Court. The Appellate Tribunal having refused to refer a case, a petition was lodged in this Court claiming a writ of mandamus against the officers constituting the Tribunal.

14. Now, the whole argument of the petitioners is that once the appeal was heard by the Appellate Tribunal it was resorted to by the petitioners as an ordinary Court constituted under the Indian Income-tax Act and that to that decision the normal incidents relating to reference attached. In my view the argument proceeds upon a fallacy. The Appellate Tribunal was not approached as an ordinary tribunal constituted under the Indian Income-tax Act for deciding questions which arose under the Indian Income-tax Act, but it was approached as a tribunal which was performing the functions of the Huzur Adalat of the Baroda State under the Baroda State Income-tax Act. The Baroda State Income-tax Act provided no right of reference or appeal against the decisions of the Huzur Adalat and if no appeal or reference lay against the decisions of that tribunal, the mere fact that the Appellate Tribunal is called upon to neiform the duties which the Huzur Adalat would have but for the merger performed, cannot in my view enable the petitioners to avail themselves of a right to obtain a reference to this Court by resorting to the provisions of the Indian Income-tax Act. The rights of the petitioners have to be adjudged by reference to the provisions of the Baroda Act and not by reference to the Indian Income-tax Act. It is as a matter of convenience that the Central Government has provided that the Appellate Tribunal should decide appeals which may have been filed before the Huzur Adalat or which could have been filed before the Huzur Adalat. It was open to the Central Government to provide that any person A, B, C, by name should be designated for the purpose of hearing those appeals; and it was also open to the Central Government to constitute any other officer appointed under the Indian Income-tax Act or any other Act a Tribunal for hearing appeals pending before the Huzur Adalat, and obviously no application for reference could lie against the decision of that person or officer, to this Court. The mere fact that the Appellate Tribunal is constituted under the Indian Income-tax Act a tribunal for hearing appeals pending before the Huzur Adalat cannot therefore avail the petitioners in obtaining a right of obtaining reference which is expressly provided for by the Indian Income-tax Act, but which was not provided for by the Baroda Act. In my view, therefore, the petitioners were not entitled to obtain a reference claimed by them. I agree, therefore, that the appeal fails.

Appeal dismissed.