

## PATNA HIGH COURT

Kamakshya Narain Singh

Vs

Commr. of Income-Tax

(Ramaswami, C.J. Choudhary, J.)

25.08.1954

### JUDGMENT

#### **Ramaswami, J.**

1. In this case the assessee is Raja Bahadur Kamakshya Narain Singh of Ramgarh. The assessment years are 1941-42 and 1942-43. For these two years the Income-tax Officer estimated the rent of the house properties to be Rs. 970/- and Rs. 1738 and odd and held that the Raja Bahadur was liable to be taxed in his individual capacity as the holder of an impartible estate. The matter was taken in appeal and the Appellate Assistant Commissioner held that in view of the decision of the Privy Council in '*Commr. of Income-tax Punjab v. Krishna Kishore*'<sup>1</sup>, the income from the house property could not be assessed in the hands of the Raja Bahadur. The view taken by the Privy Council was that the impartible estate was owned by the joint family and the income from the house property could not be charged in the hands of the holder of the impartible estate though according to the legal position in the Hindu law the holder of an impartible estate had complete right of disposal over the income from the house property. The matter was taken in appeal on behalf of the Income-tax Department to the Income-tax Appellate Tribunal who affirmed the view of the Appellate Assistant Commissioner and held that income from the house property should be taxed not upon the Raja Bahadur but upon the Hindu undivided family. Thereafter the Income-tax Officer took proceedings under Section 34 of the Act and assessed the income from the house property under Section 12 of the Act. The assessee preferred an appeal to the Appellate Assistant Commissioner and on 24-5-1947 the Appellate Assistant Commissioner rejected the appeal holding that the assessment made by the Income-tax officer under Section 12 was proper. The assessee took further appeal to the Appellate Tribunal. The appeal was actually filed on 14-8-1947. But on 8-9-1948 an important event took place. On that date the Dominion Legislature enacted the Income-tax Amending Act (Act 48 of 1948) with retrospective effect. By Section 4 of that Act a new Sub-section (4) was added to Section 9, Income-tax Act. Section 4 states-

"In Section 9 of the said Act, after Sub-section (3), the following sub-section shall be

added, namely:--(4) for the purposes of this section, the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate".

Section 1 of the Amending Act of 1948 provided-

"(1) This Act may be called the Income-tax and Business Profits Tax (Amendment) Act, 1948.

(2) Sections 3 to 12 shall be deemed to have come into force on the 30th day of March 1948, and the amendment made in the Indian, Income-tax Act 1922 (11 of 1922) by Section 2 shall be deemed to be operative so as to apply in relation to all assessments subsequent to the assessment for the year ending on the 31st day of March 1948. Sections 13 to 15 shall be deemed to have come into force on the day on which the Business Profits Tax Act, 1947 (21 of 1947) came into force".

The Appellate Tribunal took up the appeals for hearing after the Amending Act came into force. On 10-3-1950 the Tribunal dismissed the appeals holding that in view of the amendment of Section 9 (4) by the Amending Act it was not open to the assessee to contend that the income from the house property should be taxed upon the Hindu undivided family and not upon the holder of an impartible estate.

2. In this state of facts the Appellate Tribunal has submitted the following question of law for the opinion of the High Court-

"Whether on the facts and circumstances of the case the rent income from the house property is assessable in the hands of the holder of the impartible estate under Section 9 (4) ?"

(2a) Two points were argued upon the hearing of this reference (1) whether the Tribunal were right in applying the provisions of Section 9 (4) as enacted by the Income-tax Amendment Act of 1948 in disposing of these appeals; & (2) Whether the Tribunal were right in taking the view that the Amendment Act of 1948 affected the assessment for the years 1941-42 and 1942-43 and made the Raja Bahadur taxable for the income from the house property for these two assessment years.

3. On the first point we are definitely of opinion that the Tribunal adopted the correct procedure in taking into account the legal change brought into effect by the Income-tax Amendment Act of 1948. The powers of an Appellate Tribunal in hearing an appeal are stated in Section 33 (4), Income-tax Act. Section 33 (4) states-

"The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such

orders to the assessee and to the Commissioner".

It is clear that the powers conferred on the Tribunal under Section 33- (4) are of an extensive character. These powers are more extensive than the powers, of an Appellate Court conferred by Section 107, Civil P. C.

Section 107 states-

"(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power (a) to determine a case finally; (b) to remand a case; (c) to frame issues and refer them for trial; (d) to take additional evidence or to require such evidence to be taken. (2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein."

In *Lachmeshwar Prasad v. Keshwar Lal*<sup>2</sup>, the Federal Court examined the powers of an appellate court and held that under the procedural law of India the hearing of an appeal was in the nature of re-hearing and therefore in moulding the relief to be granted to the parties of an appeal, the appellate court was entitled to take into account even facts and events which had come into existence after the decree appealed, against. Consequently the appellate Court, was competent to take into account legislative changes since the decision in appeal was given and its powers were not confined only to see whether the lower Court's decision was correct according to the law as it stood at the time when its decision was given. At page 13 of the report Varadachariar, J. states-

"As stated in -- *Shyamkant Lal v. Rambhajan Singh*<sup>3</sup>, there is no reason to suppose that the powers of this Court when acting as a court of appeal are less extensive than those of the High Courts when hearing an appeal; and it has been a principle of legislation in British India at least from 1861 that a court of appeal shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Civil Procedure Code on courts of original jurisdiction: see Act No, 23 of 1861, Section 37; Act No. 10 of 1877, Section 582; Act No. 14 of 1882, Section 582; and Act No. 5 of 1908, Section 107 (2). The very words of O. 58, R. 5 of the Rules of the Supreme Court, on which Bowen L. J. laid stress in -- *Quilter v. Mapleson*<sup>4</sup>, and Lord Gorell in -- *Attorney-General v. Birmingham, Tame and Rea Drainage Board*<sup>5</sup>, namely that the court of appeal has power to make such further or other order as the case may require, have been reproduced in O. 41, R. 33, Civil P. C. of 1908; and even before the enactment of that Code, the position was explained by Bhashyam Iyengar J. in -- *Kristnama Chariar v. Mangammal*<sup>6</sup>, in language which makes it clear that the hearing of an appeal is under the processual law of this country in the nature of a re-hearing. The Indian Codes have from 1859 conferred upon a court of appeal the power given by Order 58, Rule 4, Supreme Court Rules, to allow further evidence to be adduced; and though the English rule does

not in terms impose the same limitations on this power as the Indian Codes do, these limitations are implied in the reference to 'special grounds' in the English rule and have in effect been insisted on even in England as a matter of practice: see -- *Nash v. Rochford Rural Council*<sup>8</sup>, In view of these provisions, it seems to me to make no difference that it is not explicitly stated in the Indian statutes (as in Order 58, Supreme Court Rules) that an appeal is by way of re-hearing. It is also on the theory of an appeal being in the nature of a re-hearing that the courts in this country have in numerous cases recognised that in moulding the relief to be granted in a case on appeal, the court of appeal is entitled to take into account even facts and events which have come into/existence after the decree appealed against."

Applying a similar line of reasoning to this case we think that the Appellate Tribunal was entitled to take into account the legislative change brought into effect by the Amendment Act of 1948, in disposing of the appeals preferred by the assessee.

4. The second and more important point is whether the Tribunal were right in the construction they have placed on the material provisions of the Income-tax Amendment Act of 1948. The view taken by the Tribunal was that the provisions of the Amendment Act were retrospective and that the income from the house property for the two assessment years (1941-42 and 1942-43) was taxable in the hands of the Raja Bahadur as the holder of an impartible estate. Mr. Mazumdar on behalf of the assessee put forward the argument that the view taken by the Tribunal was erroneous and that the provisions of the Amendment Act of 1948 were not retrospective to the extent imagined by the Tribunal. It was argued by the learned counsel that Section 4 of the Amendment Act was made retrospective only with effect from 30-3-1948 and that was the backward limit from the point of view of time up to which Section 4 of the Amendment Act should be given retrospective effect. In our opinion the argument of the learned counsel is correct. The language of Section 4 and Section 1 of the Amendment Act must be carefully examined in order to find out what is the extent of the retrospective effect of these provisions. Section 4 of the Act states:

"In Section 9 of the said Act, after Sub-section (3), the following sub-section shall be added, namely: (4) For the purposes of this section, the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate'."

We do not think that this section has any retrospective force standing by itself. The section does not say, for instance, that the holder of an impartible estate shall 'always' be deemed to be the individual owner of all the properties comprised in the estate. If the expression 'always' had been used in Section 4, it might have been contended, with justification on the part of the Income-tax Department that Section 4 had express retrospective effect and that the assessments for 1941-42 and 1942-43 were affected by the Amendment Act. We think that the expression 'deemed' has not been used in Section 4 for producing any retrospective effect. The expression 'deemed' has been used to create the legal fiction that the holder of the impartible estate is treated as owner for the

purpose of imposing the tax though, the legal position in the Hindu law is that the holder of an impartible estate has not the legal title of the owner. That is the real meaning of the expression 'deemed' in the newly substituted Sub-section (4) of Section 9, Income-tax Act. It is therefore manifest that Section 4 of the Amendment Act has not by itself any retrospective character. But a limited retrospective effect is given to the provisions of Section 4 by the language of Section 1(2) of the Amendment Act. Section 1(2) states that: "Sections 3 to 12 shall be deemed to have come into force on the 30th day of March 1948 and the amendment made in the Indian income-tax Act, 1922 (11 of 1922) by Section 2 shall be deemed to be operative so as to apply in relation to all assessments subsequent to the assessment for the year ending on the 31st day of March 1948." It is clear that Section 1 confers on Section 4 of the Act a limited retrospective effect and according to Section 1 (2), Sections 3 to 12 shall be deemed to have come into force on 30-3-1948.

We think that the intention of the Dominion Legislature in enacting Section 1(2) was that for the assessment year 1947-48 the provision of Section 9(4) should be applied and for the assessment of that year the holder of an impartible estate should be taxed as an individual owner of all the properties comprised in the estate. To put it in other words, Section 1(2) of the Act makes the provision of Section 9(4) retrospective only so far as the assessment for the year 1947-48 is concerned and the Act does not affect retrospectively the assessments made for the previous assessment years. The correctness of this view is also borne out if we compare the language of the first part of Section 1(2) with the language of the latter part of that sub-section. The first part of the sub-section states that "Sections 3 to 12 shall be deemed to have come into force on the 30th day of March 1948" and the second part states that "the amendment made in the Indian Income-tax Act, 1922, by Section 2 shall be deemed to be operative so as to apply in relation to all assessments subsequent to the assessment for the year ending on the 31st day of March 1948." It is manifest that the Dominion Legislature intended that Section 1(2) should apply to the assessment made subsequent to the assessment year 1947-48 and that Sections 3 to 12 shall apply to the assessment year 1947-48 and subsequent years. If the view that we have expressed is a correct view as to the legal effect of Section 1 and Section 4, Income-tax Amendment Act of 1948 it follows that the assessee in this case is not liable to be taxed as the holder of an impartible estate for the income from the house property for the assessment years 1941-42 and 1942-43,

5. For the reasons we have expressed we hold that the question referred to the High Court should be answered in favour of the assessee and against the Income-tax Department. The assessee is entitled to the costs of this reference. Hearing fee Rs. 250.

#### Cases Referred.

- 1 AIR 1941 PC 120 (A)
- 2 AIR 1941 FC 5 (B)
- 3 AIR 1939 PC 74 (C)
- 4 (1882) 9 QBD 672 at p. 678 (D)
- 5 1912 AC 788 at p. 801 (E)

626 Mad 91 at pp. 95, 96 (FB) (F)  
71917-1 KB 384 (O)