PATNA HIGH COURT

Maharaj Kumar Kamal Singh

Vs

Commissioner of Income Tax

Misc. Judicial Case No. 326 of 1951

(Ramaswami and Sinha, JJ.)

01.04.1954

JUDGMENT

Sinha, JJ.

1. In this case Maharaja Bahadur Ramran Vijay Prasad Singh was assessed to income-tax in the first instance by an order of the Income-tax Officer dated 12-12-1944. The assessee had shown in his return a gross figure of Rs. 87,910 as interest on arrears of rent from the agricultural land. But the Income-tax Officer excluded this amount from the total assessable income on the basis of a Full Bench decision of the Patna High Court holding that the interest on the agricultural income was not liable to be taxed under the Indian Income-tax Act. The decision of the Patna High Court was reversed by the Judicial Committee some time in the year 1948. The Judicial Committee took the view that interest on arrears of rent was not agricultural income and was liable to be taxed under the provisions of the Indian Income-tax Act. After the decision of the Judicial Committee was pronounced the Income-tax Officer started a proceeding against the Maharaja under Section 34. The proceeding was started on 25-9-1948. The provisions of Section 34 were later amended and though the actual date of the amendment was 8-9-1948 the amendment was made with retrospective effect from 30-3-1948. In view of the amendment of Section 34 the Income-tax Officer started a fresh proceeding on 18-3-1949. On 30-9-1949 the Income-tax Officer granted certain deductions and held that the amount of Rs. 76,921 should be added to the assessable income of the Maharaja of Dumraon. The Maharaja died on 13-11-1949 and his son Maharaj Kumar Kamal Singh has been substituted in his place in the proceedings of the Income-tax authorities. An appeal was taken against the order of the Income-tax Officer to the Appellate Assistant Commissioner. The contention of the assessee was that the decision of the Judicial Committee was not tantamount to definite information or discovery within the meaning of Section 34 and the Income-tax Officer had no jurisdiction to start a proceeding. The argument was rejected by the Appellate Assistant Commissioner and the appeal was dismissed. The Assessee thereupon preferred an appeal to the Income-tax Appellate Tribunal. Two arguments were addressed on his behalf. In the first place, it was argued that the old Section 34 and not the amended section was applicable to the case and notices should have been issued under the provision of the old section. In the second place, it was argued that the decision of the Judicial Committee was not definite information which led to any discovery that the income had escaped

assessment within the meaning of Section 34.
On the first point the Appellate Tribunal held that it was not necessary to consider whether the old or the amended section applied for assuming in favour of the assessee that the old Section 34 applied the Appellate Tribunal took the view that the more stringent requirements of the old Section 34 with respect to 'definite information' and 'discovery' have been satisfied. On the second point the Appellate Tribunal held that the argument put forward on behalf of the assessee was not valid and the reversal of the Patna view by the Judicial Committee was tantamount to definite information which led to discovery that the income had escaped assessment within the meaning of the old Section 34. The appeal of the assessee was therefore dismissed by the Income-tax Appellate Tribunal.

2. The assessee made an application to the Tribunal under Section 66(1), Income-tax Act, requiring the Appellate Tribunal to state a case to the High Court on certain questions of law. In this application the assessee referred only to two questions of law which they had argued before the Tribunal and prayed that these questions should be referred to the High Court under Section 66 (1). The application was rejected by the Appellate Tribunal on the ground that the questions raised were not questions of law and that there was no case made out for reference to the High Court. The assessee thereupon filed an application to the High Court under Section 66 (2), Income-tax Act. Paragraph 7 of the application states-

> "That the petitioner by an application under Section 66 (1), Income-tax Act, dated 11-10-1950, moved the Appellate Tribunal which was numbered as R. A. No. 550 of 1950-51, that in the said application the petitioner had prayed to the Tribunal to refer the following questions of law arising out of their order in I. T. Appeal No. 2933 of 1949-50, dated 21-8-1950, for the opinion of this Hon'ble Court: (a) Whether Section 34, Income-tax Act, 1922, as amended by Act 48 of 1948, is applicable to the facts and circumstances of this case? (b) Whether the decision of the Privy Council in the case of Raja Bahadur Kamakshya Narain Singh and others is a definite information within the meaning of Section 34 as it stood before the amendment of 1948? (c) If the answer to the question (a) be in the affirmative, whether the decision of the Privy Council is an information within the meaning of the amended Section 34 of the Act to entitle the Income-tax Officer to reassess?"

In paragraph 9 the assessee prayed that the High Court should ask the Tribunal to state a case on the following question of law-

> "Whether in the circumstances of the case the assessment under Section 34, Income-tax Act, of the interest on arrears of rent was legal?"

3. The application was admitted by the Division Bench of the High Court who ordered the Appellate Tribunal to State a case on the following question of law –

> "Whether in the circumstances of the case, the assessment under Section 34 of the Act of the interest on arrears of rent is legal?"

4. When the argument of this case commenced Mr. S. N. Dutt appearing on behalf of the assessee conceded that the decision of the Privy Council overruling the Patna view that interest on arrears of rent was not taxable would be definite information leading to discovery of the escape of income within the meaning of Section 34(1), Income-tax Act, as it stood before the amendment of 1948. But counsel put forward the argument that the assessment under Section 34 was actually made by the Income-tax Officer on 30-4-1949 beyond the period of four years from the close of the assessment year 1944-45 prescribed under Section 34(3) of the Act. The argument of the learned counsel was therefore that the assessment was not legal because there was contravention of Section 34(3) and no assessment under Section 34 in a case of this description could be made after the expiry of four years from the close of the assessment year. Mr. Dutt conceded that this point was not taken before the Appellate Tribunal on behalf of the assessee and that the point was also not taken in the application made under Section 66 (1) of the Act to the Appellate Tribunal. Counsel further conceded that the point was not taken in the application made to the High Court under Section 66 (2) of the Act. In this state of facts the question arises whether the High Court is competent to answer the question of law upon which the Appellate Tribunal has stated this case.

5. The answer to this question depends upon the correct interpretation of Section 66(1) and Section 66 (2), Income-tax Act. Section 66(1) states –

> "Within sixty days of the date upon which he is served with notice of an order under sub-section (4) of Section 33, the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court: Provided that, if, in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application and, if he does so, the fee paid shall be refunded."

Section 66(2) provides –

> "If on any application being made under sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, may, within six months from the date on which he is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly."

Rule 22-A of the rules prescribed under Section 59, Income-tax Act, prescribes the form of the

application under Section 66(1); and this form requires the petitioner to specifically state the questions of law arising out of the order of the Tribunal which the petitioner desires to be referred to the High Court. If the language of Section 66(1) and Section 66(2) and of R. 22-A is closely examined it is clear in the first place that the question of law which the High Court is invited to answer must arise out of the order of the Appellate Tribunal, and, secondly, that the assessee must have required the Appellate Tribunal under Section 66(1) by an application in the prescribed form to refer the particular question of law. It is in the third place necessary that in the application made under Section 66(2) before the High Court the assessee should mention the particular question of law upon which he desires the High Court to call for a statement of the case. All these conditions must be strictly fulfilled before the High Court is competent to decide the question of law under Section 66(2), Income-tax Act. In other words, the special advisory jurisdiction of the High Court under Section 66(2) depends upon the strict fulfilment of these preliminary conditions.

In the present case the admitted position is that the question of limitation raised by Mr. Dutt was not argued before the Appellate Tribunal who had no opportunity to discuss the point or to pronounce upon it. Mr. Dutt contended that the expression "any question of law arising out of such order" in Section 66(1) should be construed to mean that the question of law should fairly arise out of the facts appearing from the order and not necessarily that the question of law should have been actually argued before the Tribunal or dealt with in the Tribunal's order. In our opinion this argument is not valid. The provisions of Section 66(1) and Section 66(2) do not confer upon the High Court a general jurisdiction to correct or to decide a question of law that may possibly arise out of the income-tax assessment. The section, on the contrary, confers a special and limited jurisdiction upon the High Court to decide any specific question of law which has been raised between the assessee and the Department before the Income-tax Tribunal and upon which question the parties are at issue. That is the scheme underlying the statutory provisions of Sections 66(1) and (2) which is in contrast to the position in English law where the High Court has jurisdiction to answer any question of law which may arise out of the facts set out in the statement of the case. In our opinion the correct interpretation of Section 66(1) is that the question of law which the assessee seeks to refer must be a question of law which has been actually raised before the Tribunal or actually dealt with by it in its order. That is the view taken by this High Court in - 'In the matter of Chatturam Horilram Ltd.', AIR 1951 Patna 174. That is also the view expressed by the Madras High Court in - *'Abboy Chetty v. Commissioner of Income Tax[1]',* and by the Calcutta High Court in - *'Commr. of Excess Profits Tax, West Bengal v. Jeewanlal Ltd[2].',* (C). There are two further difficulties in the way of Mr. Dutt, for the other conditions imposed by Section 66 (2) have also not been satisfied in this case. It is conceded that in the application made to the Appellate Tribunal under Section 66(1) the assessee did not ask that the question of limitation should be referred to the High Court for decision. It is further conceded that in the application made to the High Court under Section 66(2) the assessee did not require that the question of limitation should be referred. Since these preliminary conditions have not been satisfied it is manifest that the High Court has no jurisdiction to answer the question of law propounded by Mr. Dutt.

6. This view as regards the legal interpretation of Section 66(2), Income-tax Act, is borne out by authorities. In - *'Hukmi Chand Hardat Rai v. Commissioner of Income Tax, B. and O[3].',* an application was made by the assessee under Section 66(2), Income-tax Act, for a reference to the High Court more than a month after the passing of the order under Section 31. The application was rejected on the ground that no question of law arose and on an application under Section

66(3), the High Court without their attention being drawn to the dates in the case, directed the Commissioner to state a case. A preliminary objection was raised to the hearing of the reference. It was held by Dawson Miller, C.J., that the assessee was not entitled to apply to the High Court under Section 66(3) of the Act and the assessment must therefore be confirmed. The same view has been taken by the Special Bench of five Judges of the Madras High Court in - *'Subbiah Iyer v. Commr. of I. T*[4]*.',* It was held in that case that neither under Section 66 (1), Income-tax Act, nor under Section 45, Specific Relief Act, could an assessee move the High Court to direct the Commissioner to refer a question of law not raised by the assessee before the Commissioner by an application under Section 66 (2) of the Act. It was further held that the assessee was not entitled to argue before the High Court a question of law though arising out of the assessment order which the assessee did not ask the Commissioner to refer. A similar view has been taken by a Division Bench of this Court in - *'Ramji Soman Choudhary v. State of Bihar*[5]*',* In that case the assessee did not make an application to the Board for making a reference within sixty days of the dismissal of the application for revision. The Board refused to make a reference on the ground of limitation, but the High Court, on the application of the assessee, called for a statement of case under Section 21(3), Bihar Sales Tax Act. When the case came up for final hearing it was held by the Division Bench that the Board was justified in refusing to make a reference and that the case should never have been stated under Section 21(3) and the High Court was not compelled to express its opinion on the question of law referred by the Board of Revenue. To a similar effect is the decision of the Supreme Court in - *'Commissioner of Income-tax, Madras v. Arunachalam Chattiar*[6]*',* The question at issue in that case was whether the High Court was right in holding that the reference made by the Income-tax Appellate Tribunal under Section 66(2) was competent. The Supreme Court held that the High Court had no jurisdiction to call for a reference. It was observed that the jurisdiction given to the High Court under sub-section (2) of Section 66 was conditional on an application under sub-section (1) being refused by the Appellate Tribunal. This clearly-presupposed that the application under sub-section (1) was otherwise a valid application. If, therefore, an application under sub-section (1) was not well-founded in that there was no order which could properly be said to be an order under sub-section (4) of Section 33 then the refusal of the Appellate Tribunal to state a case on such misconceived application on the ground that no question of law arises will not authorise the High Court, on an application under sub-section (2) of Section 66, to direct the Tribunal to state a case. The reason was that the jurisdiction of the Tribunal and of the High Court was conditional on there being an order by the Appellate Tribunal which may be said to be one under Section 33(4), Income-tax Act, and a question of law arising out of such an order. In view of the principle underlying these authorities it is clear that we cannot
permit Mr. Dutt appearing on behalf of the assessee to raise the question whether the
order of the Income-tax Officer under Section 34 was barred by limitation. Mr. Dutt said that he would not press the objection taken before the Appellate Tribunal that here was no definite information leading to discovery within the meaning of Section 34 of the Act. Even if Mr. Dutt had pressed this question we should have rejected his argument in view of the decision in - 'AIR 1951 Patna 174'. It was held in that case that Section 34 could not be invoked merely because the Income-tax Officer changed his mind about the interpretation of the law but the section would operate if the Income-tax Officer was informed that a case had been overruled or that a statute or a regulation had been passed which had not been brought to his attention before. In the face of this decision Mr. Dutt wisely decided not to press his objection regarding the applicability of Section 34 on the facts of this case. Mr. Dutt however argued that the question should be read in a restricted sense and should be confined only to the point whether the assessment order under

Section 34 was valid in view of the limitation of four years prescribed in Section 34 (3) of the Act. For the reasons we have already stated we cannot permit Mr. Dutt to argue the question in this form.

7. The result is that we decline to answer the question in the form proposed by the assessee. The assessee must pay the cost of the reference to the Income-tax Department. We assess the hearing fee at Rs. 250.

Order accordingly.

Cases Referred.

[1] AIR 1948 Mad 181
[2]1951-20 ITR 39 (Cal)
[3]2 ITC 140 (Pat)
[4] AIR 1930 Mad 449
[5] AIR 1953 Pat 249
[6] AIR 1953 SC 118