

PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax

Vs

Punjab National Bank

(Sabina, J.)

04.10.1951

JUDGMENT

Sabina, J.

1. The Judgment of the Court was delivered by FALSHAW, J. - These are two petition by the Commissioner of Income-tax, Delhi, under Section 66(2) of the Income-tax Act asking this Court to require the Delhi Bench of the Income-tax Appellate Tribunal to state a case and refer certain questions to this court, the applications of the commissioner under Section 66(1) having been rejected by the Tribunal. Briefly the facts giving rise to the applications are that the respondent Bank, the Punjab National Bank Limited, had its head office at Lahore until towards the end of June, 1947, when the Bank shifted its head office to Delhi in view of the approaching partition of the Province of the Punjab. Prior to that the Bank had been for purposes of income-tax assessment within the sphere of the Income-tax Officer, E Ward, Lahore, who had dealt with the Banks assessments to income-tax for the years 1945-45 and 1945-46 on the March 28, 1945, and the August 19, 1946, respectively. The Bank had filed appeals against these orders both of which were decided by the appellate Assistant Commissioner by his orders dated October 25, 1946, and December 31, 1946, respectively. Although the Bank had partially succeeded in these appeals it was not satisfied, and it had filed appeals in both cases before the Allahabad Bench of the Income-tax Tribunal, which then had jurisdiction over the Punjab. These appeals were still pending on the August 15, 1947. It may be mentioned that before that date the Bank in addition to removing its head office from Lahore to Delhi had also requested the Income-tax authorities at Lahore to transfer to Delhi the records relating to its head office from Lahore to Delhi had also requested the Income-tax authorities at Lahore to transfer to Delhi the records relating to its income-tax affairs and this was done though it is not clear exactly when. It seems that these appeals, and probably others which had been filed relating to income-tax assessments at Lahore, were sent by the Allahabad Bench to the Presidents Bench at Bombay, which apparently was of the opinion that the appeals should be heard by the Pakistan Tribunal set up after the partition and a date for hearing in these appeals was actually fixed in March, 1948, when it seems the Pakistan Bench declined to hear and decide them on the ground that the records had been sent to

India. Thereafter the appeals came up for hearing before the Delhi Bench of the Tribunal, which had apparently been constituted by that time, and they were heard and decided on the December 13, 1949. The appeal regarding the assessment year 1945-46 was accepted in toto and that relating to the assessment year 1944-45 was accepted in part. It seems that in these appeals when they were heard by the Delhi Tribunal notice was issued to the Income-tax Officer of the appropriate circle of Delhi and that he was represented in the appeals by counsel who opposed them and that no question at all was raised in the appeals either regarding whether the proper respondent had been impleaded and whether the Income-tax Officer, Companies Circle, Delhi, could properly be substituted as a respondent for the Income-tax Officer, E Ward, Lahore, or whether the Delhi Tribunal or indeed any branch of the Tribunal in India had jurisdiction to hear the appeals. After the decisionst, however, these points were raised in applications filed on behalf of the commissioner of Income-tax, Delhi, under Section 66(1) before the Delhi BEncH which was asked to make a statement of the case and refer the following two questions to the High Court :-

"(1) Whether the Income-tax Appellate Tribunal, Delhi Bench, had jurisdiction to hear the appeal arising out of the order of the Income-tax Officer, E Ward, Lahore;

(2) Whether the Tribunal was legally correct in showing the Income-tax Officer, in one case Private Salary Circle, Delhi, and in the other case Companies Circle, New Delhi, as respondents despite the fact that the assessment under appeal was made by the Income-tax Officer, E Warde Lahore."

In the case relating to the assessment year 1944-45 another question was added :-

"Was the Tribunal legally justified in showing the two Income-tax Officer as respondents while the assessment under appeal was framed by only one of them."

The Tribunal dismissed the applic August, 1950, being of the opinion that the confusion which had crept in regarding the substitution of different respondents in the two cases was immaterial, as the Department had accepted notice and had been properly represented in the appeals, and that the substantial points raised in the two questions which are first mentioned above did not arise ouv of the orders of the Tribunal in the appeals, since the points involved therein had never been raised at all or argued. The learned members of the Tribunal were of the opinion that the applications were merely an attempt to regale out of the effect of the appellate orders of the Tribunal by invoking want of jurisdiction to hear the appeals on the part of the Tribunal by invoking want of jurisdiction to hear the appeals on the part of the Tribunal, and that the Department by properly instructing a representative to appear on its behalf and oppose the appeals on the merits, had agreed by its conduct to abide by the decision of the Tribunal. Substantially the contention advanced by Mr. Sikri on behalf of the petitioner is that a point of

law to be the subject of a reference to the High Court under Section 66 need not necessarily be one which has been raised and discussed in the appellate order of the Tribunal, and that fundamental question such as want of jurisdiction is one which must be said to arise out of the order of the Tribunal whether it has been raised in the appeal and discussed in the appellate order or not. On this point he relied principally on the decisions of the Privy Council and Bombay High court reported as Commissioner of Income-tax, Bombay Presidency v. Khemchand Ramdas and Madanlal Dharnidharka v. Commissioner of Income-tax, Bombay City. The decision of the Privy Council related to a time before the Income-tax Appellate Tribunal came into existence, and the authority which was to refer any matter to the High Court under Section 66 was then the Commissioner of Income-tax. The case was from Sind and Commissioner of Income-tax, Sind, had refused to state a case and refer certain matters to the Sind Chief Court, one of his grounds being that no appeal lay to the Assistant Commissioner from the order of the Income-tax Officer on account of the fact that the assessment had been made under Section 23(4) of the Act under the directions of the Commissioner himself. The assessee had, however, filed an appeal before the Assistant Commissioner who had dismissed it on the merits without apparently even considering the question whether any appeal was competent against the order of the Income-tax Officer, and although it is not apparent from the judgment that the question whether a point of law can be said to arise out of an order in which the point is not discussed at all was one of the main questions involved in the appeal before their Lordships of the Privy Council, or was argued before them as separate and distinct question, due weight must obviously be given to the observations of Lord Romer who delivered the judgment, on page 178, that one of the questions of law arising out of the order of the Assistant Commissioner was whether the appeal to him was competent in view of the proviso to Section 30(1) and that by deciding this question himself adversely to the respondents the commissioner could not deprive the respondents of the right of having the question decided by the Court. In the circumstances this must be regarded as a good authority for the proposition that for a point of law to arise out of a judgment, it is not necessary that it should have been discussed in the judgment. In the Bombay case two questions had been framed by the Appellate Tribunal and referred to the High Court under Section 66 and the argument was raised by the learned Advocate-General representing the Commissioner of Income-tax that a point involved in one of the two questions had not been discussed and dealt with by the Tribunal in its appellate order. Regarding this objection Chagla, C.J., made the following observations :-

"Now, looking at the plain language of the section apart from any authority, I should have stated that a question of law arose out of the order of the Tribunal if such a question was apparent on the order itself or it could be raised on the facts found by the Tribunal and which were stated in the order. I see no reason to confine the jurisdiction of this Court to

such questions of law as have been argued before the Tribunal or are dealt with by the Tribunal. The section does not say so and there is no reason why we should construe the expansion arising out of such order in a manner unwarranted by the ordinary grammatical construction of that expression."

Even he went on to dissent from a contrary view expressed in some other decision and to rely on the decision of Beaumont, C.J., and Rangekar, J., in *Vadilal Lallubhai v. Commissioner of Income-tax, Bombay*, and of Stone, C.J., in *New Piecegoods Bazar Co., Ltd. v. Commissioner of Income-tax*. It is, however, to be noted in this case that Tendolkar, J., who delivered a separate judgment, did not express full agreement with his learned brother on this point. He agreed that as the Tribunal had stated the case and framed certain questions, it was for the High Court to answer these questions, but he went on to say that he did not consider it necessary to express any opinion on the wider question as to the correct meaning placed on the words "question of law arising out of such order." He observed that there had been a wide divergence of judicial opinion on the interpretation of these words and the various High Courts had taken various views which were difficult to reconcile. "These words would", he said, "in my opinion fall to be determined only when an application under Section 66(2) is made requiring the Tribunal to state a case. I, therefore, refrain from expressing any opinion on the correct interpretation to be placed on these words." There are undoubtedly several decisions in which it has been held that questions of law arising out of orders of the Appellate Tribunal only include those questions which have been raised and discussed in the order. It is, however, questionable whether any of these decisions really qualifies to be regarded as a weighty authority. It would seem from the decision cited by Mr. Pathak that the first of the decisions, *Jamna Dhar Potdar & Co. v. Commissioner of Income-tax Punjab* is the case on which most of the later decisions have relied. This was a decision of Addison and Sale, JJ., in which the following passage occurs in a very brief judgment :-

"As regards the second question it may also be the case that a question of law is involved, but this question was not raised in the appeal to the Assistant commissioner and therefore does not arise out of the order under Section 31. The petitioner therefore had no right to demand that the Commissioner of Income-tax should refer this question."

There is no discussion whatever of the question a point of law can be said to arise which has not been discussed in the orders, and it seems to have been regarded as axiomatic that such a point of law does not arise. It seems to me that the number of decisions which can be cited in support of the argument that under no circumstances can a point of law arise which has not been discussed in the order in question is rather due to the uncritical acceptance of the dictum of Addison and Sale, JJ., by other High court than to any serious attempt at a discussion of the points involved, and in none of the cases cited, although some of them are of recent years, does it appear that the

attention of the learned Judges was ever drawn to the decision in Commissioner of Income-tax, Bombay Presidencd v. Khemchand Ramdas which, even if not treated as a conclusive authority on the point, might at least have led to some more careful consideration of the matter. Thus on the whole I am of the opinion that it cannot be said definitely that under no circumstances can a point of law be said to arise out of an order simply because the point has not been raised and discussed in the order itself. It does not necessarily follow from this, however, that we should accept the present applications and require the Tribunal to state a case and refer the questions formulated by the Commissioner of Income-tax. It is astonishing to me that the Income-tax Department should have waited until after the decisions of the appeals by the Tribunal on the merits in order to raise these question of jurisdiction and the substitution of the Income-tax Officers at Delhi for the Income-tax Officer at Lahore as the respondents in the appeals. These considerations must clearly have been present in the minds of the officers of the Department when they accepted their substitution in the appeals as respondentu and instructed counsel to appear before the Tribunal and oppose the appeals on the merits, particularly in view of the fact that these appeals had once already been sent to the Tribunal in Pakistan and had been returned by that Tribunal to the Tribunal in India. The question of the jurisdiction of the Tribunal is obviously a difficult and complicated one which involves not only the consideration of various orders and laws which were passed about the time of the partition, but also of a number of facts not all of which are apparent on the face of the record. It is perhaps worthy of note that as regards the place of suing it has been provided in Section 21 of the Code of Civil Procedure that no objection can be raised in any appellate or revisional Court regarding the place of suing unless such objection was taken in the Court of first instance at the earliest possible opportunity and unless there has been a consequent failure o justice. Our attention has been drawn to a passage at page 439 of volume 13 of the Second Edition of Halsburys Laws of England which reads :-

"The absence of a condition necessary to found the jurisdiction to make an order, or give a decision, deprives the order or decision of any conclusive effect; but it is otherwise where the order is good on its face and the Court adjudicating has jurisdiction to determine the existence or not of the condition, and the party denying its existence has neglected his opportunity of raising the objection at the hearing."

This observation is based on the decision given in River Ribble Joint committee v. Croston Urbab District Council. My own view of the matter is that although the mere fact that the points involved in the questions framed are not necessarily precluded from being raised at this stage simply because they were not raised in the appeals before the Tribunal, the nature of the questions in such, involving matters of fact as well as law, that I do not think they ought to be allowed to be raised at this stage. I would accordingly dismiss the applications with costs, which

I would accordingly dismissed applications with costs, which I would assess at Rs. 150 in each case.

KHOSLA, J. - I agree.

Application dismissed.