

## **Tara Devi Aggarwal vs Commissioner Of Income-Tax, West ... on 27 November, 1972**

**Equivalent citations: 1973 AIR 254, 1973 SCR (2)1035, AIR 1973 SUPREME COURT 254, 1973 3 SCC 482, 1973 TAX. L. R. 150, 1973 ITR 323, 1973 (1) SCWR 548, 1973 SCC (TAX) 318, 1975 (1) SCJ 169, 1973 2 SCR 1035, 88 I T R 323, 1975 (1) ITJ 67**

**Author: P. Jaganmohan Reddy**

**Bench: P. Jaganmohan Reddy, K.S. Hegde, Hans Raj Khanna**

PETITIONER:

TARA DEVI AGGARWAL

Vs.

RESPONDENT:

COMMISSIONER OF INCOME-TAX, WEST BENGAL, CALCUTTA

DATE OF JUDGMENT 27/11/1972

BENCH:

REDDY, P. JAGANMOHAN

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HEGDE, K.S.

KHANNA, HANS RAJ

CITATION:

1973 AIR 254

1973 SCR (2)1035

1973 SCC (3) 482

ACT:

Income-tax Act (11 of 1922) s. 33B.-Power of Commissioner to cancel assessment and re-open-Prejudicial to the interests of revenue', scope of.

HEADNOTE:

Section 33B of the Income-tax Act, 1922, enables the Commissioner to call for and examine the record of any proceeding under the Act and to pass such orders as he deems necessary, as the circumstances of the case justify when he considers the order passed erroneous insofar as it is prejudicial to the interests of the revenue.

In the present case, the assessee-appellant submitted a

return and the income-tax officer, though he was not satisfied about the various sources of, the assessee's income, passed an order of assessment. The Commissioner of income-tax, after notice under s. 33B of the Income-tax Act, 1922, held that inquiries revealed that the assessee neither resided in nor carried on, any business from the address given in the return, that the income-tax officer was not justified in accepting the initial capital, the sale of ornaments, the income from business, the investments etc., without any inquiry or evidence whatsoever, and that there were suspicious circumstances showing connection with the business of the assessee's husband. In the result, he held that the order of the income-tax officer was erroneous and prejudicial to the revenue and directed the income-tax officer to make a fresh assessment, after making inquiries with regard to the jurisdiction and the business carried on by the assessee, the possession of initial capital, acquisition and sale of ornaments, purchase of plot of land and resources, and the money invested in the name of the assessee.

On the question of the jurisdiction of the Commissioner to pass the order the Appellate Tribunal held in favour of the assessee, and the High Court, on reference, in favour of the Revenue.

In appeal to this Court, it was contended that the Commissioner had no jurisdiction under S. 33B to cancel the assessment made by the income-tax officer inasmuch as it cannot be said that where an assessee has been assessed to tax it was prejudicial to the interests of revenue on the ground that no assessment could have been made in respect of the income of which she made a voluntary return.

Dismissing the appeal,

HELD : Even where an income had not been earned and is not assessable, I merely because the assessee wants it to be assessed in his or her hands in order to assist someone else who would have been assessed to a larger amount, an assessment so made can certainly be erroneous and prejudicial to the interests of revenue. If so, the Commissioner, under s. 33B, had ample jurisdiction to cancel the assessment and to initiate proceedings for assessment under the provisions of the Act against some other assessee who, according to the income-tax authorities, is liable for the income thereof. [1040 H; 1041 A-C]

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Rampayari Devi Saraogi v. Commissioner of Income-tax, 87 I.T.R. 84 followed.

Commissioner. of Income-tax v. Rao Thakur Narayan Singh, 56 I.T.R. 234 explained.

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeal No. 2387 of 1969.

Appeal by certificate from the judgment and order dated May 16, 1969 of the Calcutta High Court in Income-tax Reference No. 25 of 1966.

G. C. Sharma, Randhir Chawla, O. P. Dua, R. P. Soni, S. R. Gupta and M. V. Goswami for the appellant.

P. L. Juneja, S. P. Nayar and R. N. Sachthey for the respondents.

The Judgment of the Court was delivered by JAGANMOHAN REDDY, J.-This is an appeal by certificate against the judgment of the High Court of Calcutta rendered on a reference under sub-s.(1) of s.66 of the Indian Income-tax Act, 1922 (hereinafter referred to as the 'Act'). The assessee, it appears, had filed voluntary returns of income for the assessment years 1955-56 to 1959-60 giving her address as 5/A Bysack Street, Calcutta which was then within the jurisdiction of the Income-tax Officer, 'J' ward, District 1 (1) Calcutta. 'Her return for 1958-59 was dated 22nd August 1959 while the assessments for the other years were antedated. It also appears from the order sheet that the Income-tax Officer had directed issue of notice under s.23 (2) in respect of five years on 14th December 1959 which notices were purported to have been received personally by the authorised representative of the assessee on the same date. The cases were heard on 21st and 23rd December 1959 and the assessment for these years was completed by the Income-tax Officer on 23rd December, 1959. It further appears from the records that the assessee had signed a declaration on 15th December 1959 stating inter alia that:-

(i) at the time of her marriage with Sri Ram Prasad Luharwala about 15 years ago, the assessee received presents and dowry and birth day presentations on different occasions in kind as well as in cash to the extent of Rs.

18,000 and also a sufficient quantity of ornaments.

(ii) with this amount of cash, she started business of investment on interest and out of the interest received. she could save about Rs. 600 after meeting her expenses up to March 1950;

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(iii) the sum of money at her disposal in March 1950 was Rs. 13,500 which had been shown as the initial capital for the accounting year 1950-51;

(iv) subsequently she started speculation business, in shares in addition to the investment business and out of the income from this business she made the following investments and acquisition :-

(A) purchase of a piece of land on 14-8-1956 for Rs. 2,299.

(B) investment of two sums of Rs. 50,000 each on 26th November, 1957 and 28th November, 1957 with M/s Kaluram Prahledrai on interest;

(v) she sold some of her ornaments in the year 1955-56 for Rs. 30,600 and the remainder of her ornaments in 1956-57 for Rs. 37,400 and the certificates showing the sale of such ornaments were enclosed with declaration;

(vi) the assessee was doing the aforesaid business in her individual capacity and this business had no connection with the business of her husband,

(vii) she kept, no regular books of account and neither had she any bank account.

The Income-tax Officer, J-Ward District 1(1) Calcutta who made the assessment for the years 1955-56 to 1959-60 accepted the initial capital and the fact that the assessee had been carrying\_ on money lending and speculation business. He made an addition of Rs. 1,000 to the disclosed income of Rs. 4,300 and made an assessment on a total income of Rs. 5,300 for the assessment year 1955-56. Similar short stereo-typed assessment orders were made for each of the years 1955-56 to 1959-60., the income assessed for these years being Rs. 5,500, Rs. 6,000 Rs. 6,900 and Rs. 7,500 respectively.

For the assessment year 1960-61 also a voluntary return dated July 6, 1960 was received by the Income-tax Officer on July 20, 1960 and on November 30, 1960 the Income-tax Officer directed the issue of a notice under s.23(2) fixing the date of hearing on February 25, 1961. Thereafter by her letter dated March 13. 1961 the assessee informed the Income-tax Officer that her place of business had been shifted to No. 1, Gunsala Road Lillooah, Howrah and on the basis of this letter the assessee's file was transferred to the Income-tax Officer 'D' Ward,' Howrah. On July 2, 1961 the Income-tax Officer Howrah again issued notice under s.23(2) of the Act fixing the hearing on July 10, 1961. This notice was also received by the 'assessee's authorised re-

presentative and the assessment for that year was made on the date of hearing, viz., 10th July 1961, when the demand notice, challan and a copy of the assessment order were stated to have been personally served on the said authorised personal representtative on 10th July 1961. In his assessment for the above year the Income-tax Officer Howrah while remarking that the source of income of the assessee during the accounting year was income from speculation and interest on investments stated that neither the assessee was able to produce the details and vouchers of the speculative transactions made during the accounting year nor was there any evidence regarding the interest received by her from different parties on her investments. Notwithstanding these defects he did not investigate into the various sources but assessed the appellant on a total income of Rs. 9,037/-. Thereafter on 7th June 1963 the Commissioner by a notice under s. 33-B of the Act required the assessee to show cause on or before June 25, 1963 why appropriate orders should not be passed under that section in respect of the assessment year 1960-61 as the enquiries revealed that the assessee neither resided nor carried on any business from the address given in the return, that the Income-tax Officer was not justified in accepting the initial capital, the sale of ornaments, the income from business, the investments etc. without any enquiry or evidence whatsoever and that the

order of assessment was erroneous and prejudicial to the interests of revenue. In response to the aforesaid notice, the assessee showed cause on June 24, 1963 and after considering the objections of the assessee, the Commissioner passed an order cancelling the assessment for 1960-61 and directing the Income-tax Officer to make a fresh assessment according to law after making enquiries with regard to the jurisdiction and the business carried on by the assessee, the possession of initial capital, acquisition ; and sale of ornaments, purchase of plot of land and resources and the money invested in the name of the assessee. In his order the Commissioner held that the assessments made by the Income-tax Officer were made in post haste without making any enquiry or investigation into the antecedents of the assessee. He further held that on enquiry it had been ascertained that the Income-tax Officer 'J' Ward , District 1(1) Howrah had no jurisdiction of the assessee, the assessments made by them were ab initio void inasmuch as the departmental enquiries revealed that the assessee never resided nor carried on any business either at premises 5/A Bysack Street, Calcutta or at No. 1 Gunsala Road, Lillooah, Howrah. In fact the assessee had been living with her husband ever since her marriage in 1946 at Raniganj and for that reason he was of opinion that the Income-tax Officer was not justified in accepting the claim of initial capital of Rs. 13,500/- without any evidences placed on record nor was he justified in accepting that the assessee being a married lady was carrying on speculative business at Calcutta. The Commissioner refused to believe the sale of gold ornaments of the value of Rs. 68,000/- during the years 1955-56 and 1956-57 as genuine as no details of such ornaments were given. He further stated that the departmental enquiry had subsequently revealed that the firm of Keshardeo Aggarwal & Co., of 29, Burtolla Street, Calcutta through whom the ornaments were sold was not a genuine firm and that the assessee's husband was a partner in a firm of M/s Kaluram Prahladrail of Asansol in which the assessee is allowed to have made an investment of two sums of Rs. 50,000/- on 26th and 28th November 1957. In the result, having regard to the fact that the assessments for the years 1955-56 to 1959-60 were already beyond time for taking action, he cancelled the assessment for 1960-61 and directed the Income-tax Officer to make a fresh assessment as stated above.

The assessee appealed to the Tribunal against the aforesaid order of the Commissioner and it was urged that under s. 33-B the Commissioner could only call for and examine the proceedings of any particular assessment year if he considered that any order passed therein by the Income-tax Officer was erroneous and prejudicial to the interests of the revenue. This contention was accepted by the Tribunal on the ground that as the assessment orders for the years 1955-56 to 1959-60 could not be interfered with by the Commissioner under s. 33-B, he could not rely on those very orders for coming to a conclusion that the assessment order for 1960-61 was erroneous and prejudicial to the interests of revenue. The Tribunal further held that if the orders for 1955-56 to 1959-60 were left out and the assessment order for 1960-61 was considered by itself, it could not be said that the assessment order was prejudicial to the interests of revenue. It was also observed that the factum of advance of initial capital, realisation of amounts by sale of gold ornaments and the carrying on of the money lending and speculative business had already been accepted and assessed in the previous years, that even in the year of assessment in question the Income-tax Officer had added Rs. 1,499/- to the disclosed income from speculative business and Rs. 1,270/- to the disclosed income from interest and made the assessment on a total income of Rs. 9,037; as such it could not be said that the assessment was prejudicial to the interests of revenue and that at the most it could be said that the assessee could not have carried on any business at the addresses given by her but where an

assessment has been made without territorial jurisdiction it could not be said to be prejudicial to the interests of revenue. On these findings the questions that were referred to the High Court were as follows :-

1. Whether on the facts 'and in the circumstances of the case, in taking action under s. 33-B(1) of the Income-tax Act, 1922 for the assessment year 1960-61, the Commissioner of Income-

tax was entitled to take into consideration the records of the proceedings relating to the assessment of the assessee for the assessment years 1955-56 to 1959-60 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that there were no materials before the Commissioner to justify his finding that the assessment order for 1960-61 was erroneous insofar as it was prejudicial to the interests of the revenue? Apart from these, a further question which will be referred to as the third question, was also referred, at the instance of the assessee, namely, Whether the Commissioner of Income-tax could lawfully initiate proceedings under section 33-B of the Indian Income-tax Act, 1922 on the 25th June, 1963, notwithstanding the repeal of the aforesaid Act by the Income-tax Act, 1961 with effect from the 1st of April, 1962 ?

The High Court declined to answer the first question as in its view it was merely academic. The assessee did not press for an answer on the third question. The only other question, therefore, was the second one which was answered against the assessee on the ground that the Income-tax Officer had no jurisdiction to make the order which itself would have been sufficient for the Commissioner to set aside the assessment. In this view of the matter, it is held that there were materials before the Commissioner to justify his finding that the order of assessment for the year 1960- 61 was erroneous insofar as it is prejudicial to the interests of revenue. It however did not pronounce any opinion on the question whether the Commissioner could have considered materials of the previous year in arriving at his conclusion in respect of the assessment for the year 1960-61.

The learned advocate for the assessee contends that under s. 33B the Commissioner had no jurisdiction to cancel the assessment made by the Income-tax Officer inasmuch as it cannot be said that where an assessee has been assessed to tax it was prejudicial to the interests of revenue on the ground that no assessment could have been made in respect of the income of which she made a voluntary return. This contention in our view is unwarranted by the language of s. 33B. The words of the section enable the Commissioner to call for and examine the record of any proceeding under the Act and to pass such orders as he deems necessary as the circumstances of the case justify when he considers the order passed was erroneous insofar as it is prejudicial to the interest of the revenue. It is not, as submitted by the learned advocate prejudicial to the interests of the revenue only if it is found that the assessment for the year was disclosed on the basis that an income had been earned which is assessable. Even where an income has not been earned and is not assessable, merely because the assessee wants it to be assessed in his or her hands in order to enable someone else who would have been assessed to a larger amount, an assessment so made can certainly be erroneous and prejudicial to the interests of the revenue. If so-and we think it is so-the Commissioner under s.

33B has ample jurisdiction to cancel the assessment and may initiate proceedings for assessment under the provisions of the Act against some other assessee who according to the income-tax authorities is liable for the income thereof. *Rampyari Devi Saraogi v. Commissioner of Income-tax*(1) lends support to this view. In that case this Court in similar circumstances held that the Commissioner had jurisdiction under s. 33B of the Act. It appears the Commissioner of Income-tax West Bengal had on enquiries made by the department stated in the notice to the assessee that he neither resided nor carried on any business declared in the returns and had found that the Income-tax Officer was not justified in accepting the initial capital, the gift received and sale of jewellery and the income from business without any enquiry or evidence whatsoever. It appeared in that case, as in this case, the assessee had given a fictitious address in order to invest the jurisdiction on a particular Income-tax Officer to make the assessment. While agreeing with the High Court that all this material was supporting material and did not constitute the basic grounds on which the order under s. 33B were passed by the Commissioner, this Court held that there was ample material to show that the Income-tax Officer made the assessment in undue hurry; that the assessee was a new assessee and filed voluntary returns in respect of a number of years i.e. from assessment years 1952-53 to 1960-61. The other circumstances also were similar in nature to those in this case.

The learned advocate further referred to the case of *Commr. of Income-tax v. Rao Thakur Nargvan Singh* (2) in support of his submission that past assessments against the assessee were final and cannot be relied upon for the purpose of exercising jurisdiction under s. 33B. A reference to the case cited by him however would show that no steps had been taken under s. 35 to rectify the mistake in the order of the Appellate Tribunal nor was any reference to the High Court sought against that order, but nonetheless, the Income-tax Officer initiated fresh assessment proceedings under s. 34 with respect to interest income and made a fresh assessment to include that income. In these circumstances it was held that where the order of the Appellate Tribunal became final the income-tax Officer could not initiate re-assessment proceedings (1). 87 I.T.R. 84.

(2) 56 I.T.R. 234.

even in respect of interest income which was binding on him a he could not therefore re-open the 'assessment to include that come. "If that were not the legal position", this Court observe it "would be placing an unrestricted power of review in the hand of the Income-tax Officer to go behind the findings given by hierarchy of Tribunals and even those of the High Court Supreme Court with its changing moods." This case therefore of little assistance. In the view we have taken, the answer by the High Court cannot be disturbed and the appeal is accordingly dismissed with costs.

V.P.S.

Appeal dismissed