Madhavanagar Cotton Mills Co. Ltd. vs Union Of India And Ors. on 23 February, 1967

Author: Chief Justice

Bench: Chief Justice

JUDGMENT

(1) This appeal arises from the decision of Grover, J. in Civil Writ No. 857-D of 1962 on the file of the Delhi Circuit Bench of the Punjab High Court. The appellant who was the petitioner therein prayed that the Court may be pleased to quash the notices issued by the second respondent on November 30th, 1962, under section 148 of the Indian Income-tax Act, 1961, pertaining to its assessment for assessment years 1946-47 and 1947-48 on the ground that he had no competence to issue those notices. The learned judge who tried the case accepted the contention of the appellant that the second respondent had no competence to issue the impugned notices but at the same time, he thought that the reliefs prayed for cannot be granted as he was of the opinion that the dispute was as regards the place of assessment which according to him has to be dealt with at the administrative level. Aggrieved by that decision, the appellant has come up with this appeal.

(2) The facts material for the purpose of deciding the contentions arising in this appeal are these: Madhavanagar Cotton Mills Ltd. the appellant herein, was registered as a Private limited company in the erstwhile Miraj (Jr) State on March 25, 1944. It manufactures textile goods. It was converted into a public limited company in September, 1962. But that aspect is not relevant for our present purpose. In about February, 1948, the erstwhile State of Miraj (Jr) acceded to the Dominion of India as a result of which it became a part of the province of Bombay. By the Taxation Laws (Extension of Merged States and Amendment Act 1949) the Indian Income-tax Act, 1922, to be hereinafter referred to as the Act, along with other statutes was extended to the merged States including the State of Miraj (Jr).

On February 1, 1952, the Income-tax Officer, Satara South, Sangli, issued two notices to the appellant under section 34 of the Act relating to the assessment years 1946-47 and 1947-48. In pursuance of those notices, the appellant filed its returns of income for the assessment years in question on March 8, 1952. Therein it showed that no income had accrued or arisen or been received by it in the then British India during those assessment years. After some enquiry the Income-tax Officer, Satara South, Sangli, cancelled the notices were issued by the Income-tax Officer, B-Ward, Sangli, on December 11, 1954, under section 34 of the Sangli Income-tax Act relating to the very assessment years mentioned earlier. Those notices were again cancelled as per the orders of that very officer dated February 1, 1955, and February 7, 1955. Very soon after, the said officer issued another set of notices in respect of assessment years 1946-47 and 1947-48 under section 34 of the Act.

In its return the appellant took the stand which it had taken earlier. During the pendency of the proceedings arising from those notices, the Central Board of Revenue transferred the appellant's case from the Income-Tax Officer, B-Ward, Sangli to the Income-tax Officer, Section 1 (Central) Bombay, as per its order under sub-section (7A) of section 5 of the Act, dated November 15, 1955. By this letter dated November 25, 1955, the Additional Income-tax Officer, Section 1 (Central) Bombay (to be hereinafter referred to as the Income-tax Officer, Bombay) intimated to the appellant about the transfer of its case to him by the Central Board of Revenue. Accordingly the appellant appeared before that officer. Thereafter by his orders dated February 24, 1956 and March 22, 1956, he completed the assessments for the two years in question. For the assessment year 1946-47., the Income-tax Officer determined the total income of the appellant in the taxable territories at R.12,23,988/- and for the assessment year 1947-48 at Rs.13,40,500/-.

The appellant took up the matter in appeal to the Appellate Assistant Commissioner of Income-tax who, by his order dated February 13, 1961 set aside the order of the Income-tax Officer, Bombay, on the sole ground that the Income-tax officer, Bombay, could not act on the basis of those notices. Thereafter, the Income-tax Officer, Bombay did not issue any fresh notice to the appellant under Section 34. But the second respondent (Income-Tax Officer, Central Circle Iv, New Delhi) issued notices to the appellant under Section 148 of the 1961 Act on November 30, 1962 (which is equivalent to section 34(1) of the Act)relating to those very years, viz., three assessment years 1946-47 and 1947-48. This he purported to do in pursuance of the central Board of revenue's Notification No. 44 I.T. dated July 1, 1962, as amended by Notification No. 9 dated January 24, 1955. The relevant item therein is Item No 78A.

The notification in question had been issued under sub-section (6) of section 5. Item No.78A of that notification provides thus: "Companies, not assessed through statutory agents under section 43, the control and management of whose affairs was, during any previous years falling wholly or partly within the period ;beginning on the 1st day of September, 1939 and ending on the 31st day of March, 1946, not directed wholly from any area situated wholly in the taxable territories as defined in sub-clauses (a), (b) and (c) of clause (14A) of section 2, in respect of assessment or re-assessment for any period prior to the 1st April, 1949 shall be assessed by the Income-tax Officer, Central Circle Iv, Delhi."

As mentioned earlier, the appellant challenges the validity of the notices issued by the second respondent on the ground that he had no competence to issue those notices. In the writ petition, Grover, J. came to the conclusion that in view of the order of the /central Board of Revenue dated November 15,1955, under sub-section (7A) of section 5, transferring the petitioner's case to the Income-tax Officer, Section 1 (Central) Bombay, the second respondent was incompetent to initiate assessment proceedings against the appellant. But yet, the learned Judge thought that as the Income-tax Officer, B-Ward, sangli had no jurisdiction to initiate proceedings under section 34, the assessment made by the Bombay Income -tax Officer are invalid assessments; at any rate, those assessments had been set aside by the Appellate Assistant commissioner; therefore, it was open to the authorities to initiate fresh proceedings under section 34. He further held that the question as regards the place of assessment is not justiciable and hence the appellant is not entitled to any relief at the hands of the High Court.

(3) Sri Kohla, the learned counsel for the appellant assailed the decision of the learned single Judge on two grounds. His first contention was that in view of the notification issued by the Central Board of Revenue on November 15, 1955, under sub-section (7A) of section 5, no officer other than the Income-tax Officer, Bombay, could have initiated assessment proceedings against the appellant. His second contention was that as the appellant did not question the competence of the Income-tax Officer, Sangli, to proceed against it, the Sangli Income-tax Officer has jurisdiction to assess the appellant in view of the provisions contained in section 64 of the Act. Consequently, the Income-tax Officer, Bombay was competent to assess the appellant in pursuance of the notices issued by the Sangli Income -tax Officer.

He further told us that his client did not, at any stage, question the competence of the sangli Income-tax Officer to issue notices under section 34; nor did it question the competence of the Bombay Income-tax Officer to assess it on the basis of those notices; at all stages, the only earned no income in British India during the assessment years in question and therefore it was not ;liable to be taxed; and hence the finding of the appellate Assist-Officer, sangli had no competence to issue notices under section 34A finding not reached at the instance of the appellant- is legally unsound. He pleaded that if the department was aggrieved by that decision, it should have taken up the mater in appeal, Proceeding further, he argued that even if the finding of the Appellate Commissioner that single Income-tax Officer had no competence to initiate proceedings under section 34 is correct the only course open was for the Income-tax Officer, Bombay to start fresh proceedings under section 34.

(4) We shall first take up the contention of Sri Kohla that in view of the notification issued by the central Board of Revenue on November 15, 1955, no income-tax Officer other than the income-tax Officer other than the Income-tax Officer, Bombay was competent to initiate assessment proceedings against the appellant.

(5) Section 64 deals with the place of assessment. Sub-section (1) of section 64 provides that where an assessee carries on a business, profession or vocation at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business, profession or vocation is carried on in more places than one, by the Income-tax Officer of the area in which the principal place of his business, profession or vocation is situate. Sub-section (2) of that section lays down that in all other cases, an assessee shall be assessed by the, Income-tax Officer of the area in which he resides. In Bidi Supply Co. v. The Union of India, the supreme Court laid down that ordinarily an assessee had a right to be assessed by the Income-tax Officer in which his place of business is situate.

It may be noted that the focus of section 64(1) and (2) is on the place of assessment and not on the officer who is to assess. It is clear form the language of sub-sections (1)and (2) of section 64 that if there are more Income-tax Officers than one in any particular area, each of them is competent to assess the assessee concerned. The marginal note to S. 64 speaks of "Place of Assessment". Sub-section (3) of that section stipulates:

"Where any question arises under this section as to the place of assessment, such question shall be determined by the commissioner, or where the que stion is between places in more States than one, by the Commissioners concerned or, if they are not in agreement, by the Central Board of Revenue.

The second and the third p[provisos to that section lay down as to who shall decide as to the place of assessment in case of dispute. From the scheme of section 64 as well as from its language, it is clear that the question as to the place of assessment of an assessee has to be decided by the authority mentioned therein. That position is made clear by the decision of the federal Court in wallace Bros and co, Ltd. v. commissioner of Income tax, Bombay. Therein proper place of assessment is a matter more of administrative convenience than of jurisdiction and in any event it is not one for adjudication by the court. In that case the Court further held that the scheme of the Act does not contemplate an assessment after the assessment has been made. That is also the view taken by a Division Bench of the punjab High Court in U.C Rekhi v. Income-tax Officer, New Delhi.

In fact it is this decision of the Punjab High Court that had influenced Grover, J. to refuse the appellant the reliefs prayed for by it. We shall presently see whether that decision or the decision of the federal Court in Wallace Bros. Case, has any bearing on the question under consideration. At this stage, all that we need remind ourselves is that those decisions deal with the place of assessment. Further they merely dealt with the scope of sub-section's (1) to (3) of section 64. They did not consider either the scope of sub-section (5) or (6) or (7A) of section 5.

(6) Sun-section (5) of section 64 specifically says that the provisions of sub-section (1) and sub-section (2) shall not apply and shall be deemed never at any time to have applied to any assessee.

" (a) on whom an assessment or re-assessment for the purposes of this act has been, is being or is to be made in the course of any case in respect of which a commissioner of Income-tax appointed without reference to area under sub-section (2) of section 5 is exercising the functions of a Commissioner of Income-tax or

(b) Where by any direction given or any distribution or a location or work made by the commissioner of Income-tax under sub-section (5) of section 5, or in consequence of any transfer made under sub-section (7A) of section 5, a particular Income-tax Officer has been charged with the function of assessing that assessee, or

(c) who or whose income is included in a class of persons or class of incomes specified in any notification issued under sub-section (6) of section 5, but the assessment of such person, whether the proceedings for such assessment began before or after the 1st day of April. 1949, shall be made by the Income-tax Officer for the time being charged with the function of making such assessment by the Central

> Board of revenue or by the Commissioner of Income-tax to whom he is subordinate, as the case may be."

In view of these provisions, cases falling within sub-section (5) of section 64 are taken out from the scope of sub-sections (1) and (2) of that section. In respect of those cases, the place of assessment has no relevance.

(7) Now we come to sub-section (6) and (7a) of section 5, We have earlier seen that section 64 deals with the place of assessment. Section 5 is found in Chapter Ii of the Act. That Chapter deals with the Income-tax Authorities. Sub-Sections (2) to (5) of section 5 prescribe the authorities who are ordinarily to assess an assessee, sub-section (6) of section 5 says: "The Central Board of revenue may, by notification in the official gazette empower commissioner of Income-Tax, Appellate of Inspection assistant commissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income or such area as may be specified in the notification, and thereupon the functions so specified shall cease to classes of income or area by the other authorities appointed under sub-sections (2) and (3)."

The notification No.44 I.T. dated July 1, 1952, referred to earlier, was issued under this sub-section. It may be noted that under sub-section (6) of section 5 the Central Board of Revenue can only empower one of the authorities mentioned therein to perform some functions in respect of classes of persons or classes of income or in respect of any area or areas. By having recourse to that power, the Central Board of revenue cannot transfer a case of an individual assessee from one Income-tax Officer to another. It is needless to say that sub-section (6) of section 5 is an exception to the provisions contained in sub-sections (1) and (2) of section 64. As seen earlier, that much is made clear by sub-section (5) of section 64.

(8) If the Central Board of revenue desires to transfer the case of an individual assessee, it ought to act only under sub-section (7A0 of section 5. That sub-section as it originally stood merely read: "The commissioner of Income-tax may transfer any case from, one Income-tax Officer subordinate to him to another, and the central Board of Revenue may transfer any case from any one Income-tax Officer to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the reissue of any notice already issued by the Income-tax Officer from whom the case is transferred ....."

The scope of this provision came up for consideration before the Supreme Court in Bidi Supply Co's case . To which reference has already been , Therein the Court held that the expression "case" found in sub-section (7A) of Section 5 meant the assessment proceedings in respect of an assessment year and not all the proceedings pending against an assessee. In that views, the Court struck down the order of transfer impugned in that case which had been expressed in general terms without any reference to any particular 5 year and without any limitation as to time. In view of that decision, the Parliament by means of Section 2 of the Indian Income-tax (Amendment) Act, 1956 (No.26 of 1956) inserted an explanation of sub-section (7A) of section 5.

That explanation reads: "In this sub-section 'case' in relation to any person whose name is specified in the order or transfer means all proceedings under this Act in respect of any year which may be pending on the date of the transfer, and includes all proceedings under this Act which my be commenced after the date of the transfer in respect of any year."

The Supreme Court referred to the scope of this sub-section in the course of its judgment in Pannalal Binjraj v. Union of India (sic). The Court observed thirein: "Reading Section 5(7A) and the explanation thereto, it is clear that when any case of a particular assessee which is pending before an Income-tax Officer is transferred from that officer to another Income-tax Officer whether within the state or without it , all proceedings which are pending against him under the act in respect of the same year as also previous years are meant to be transferred simultaneously and all proceedings under the act which may be commenced after the date of such transfer in respect of any year whatever are also included therein so that the Income-tax Officer to whom such case is transferred would be in a position to continue the pending proceedings and also institute further proceedings against the assessee in respect of any year. The proceedings pending at the date of transfer can be thus continued but in the case of such proceedings the provision in regard to the issued of notices contained in the main body of section 5 (7A) would apply and it would not be necessary to re-issue any notice already issued by Income-tax Officer from whom the case is transferred....."

It may be noted that though the main sub-section (7A) speaks of "transfer of any case from any one Income-tax Officer to another " the explanation to that sub-section makes it clear that once a pending assessment proceedings is transferred from on Income-tax Officer to another, all proceedings under the act in relation to that assessee stand transferred to that Income-tax Officer.

(9) Sri A.N. Kirpal, the learned counsel for the Department contended that in view of the Central Board of revenue's notification NO.44 I.T dated July 1. 1952 the assessment proceedings against the appellant in respect of the assessment years 1946-47 and 1947-48 had already stood transferred to Income-tax Officer, Central circle IV. Delhi. Therefore Central Revenue Board's order dated November, 15, 1955, which purported to transfer the appellant's case from the Income-tax Officer, Sangli to the Bombay Income-tax Officer cannot be said to cover those proceedings. It is not denied that it was the Income-tax Officer. Sangli who had jurisdiction to assess the appellant in respect of the assessment years 19848-49 onwards.

It is not clear from the records, whether assessment proceedings against the appellant in respect of those years had been initiated or not, by the time the transfer order in question was made. But that aspect is immaterial for out present purpose because Explanation to sub-section (7A) of section 5 says that the word "case" in relation to any person whose name was specified in the order of transfer not only means all proceedings under the Act in respect of any year which may be pending on the date of the transfer but also proceedings that may be commenced after the date of the transfer in respect of any year. From that it follows that all proceedings under the Act pending against the appellant-before whomsoever they may be pending-were transferred to the Income-tax Officer, Bombay. Hence the fact that there is no specific order transferring the proceedings against the appellant pending before the Income-tax Officer. Central Circle Iv, Delhi will not affect the legal position.

Sub-section (7A) of Section 5 as it now stands prescribes that whenever an assessee's case is transferred, all proceedings under the Act against him must be dealt with only by the Officer to whom his case is transferred. Once there is transfer under that sub-section, there is no question of some proceedings against the assessee being dealt with by one Officer and other proceedings by other officers. The Object behind that provision appears to be not only to facilitate proper assessment but also to avoid all unnecessary inconvenience to the assessee.

(10) It was not denied by the learned counsel for Department that all proceedings under the act against the appellant in respect of the assessment year 1948-49 and thereafter were transferred from the Income-tax Officer, sangli to the Income-tax Officer, Bombay. As a result of that transfer by operation of law, all proceedings under the act pending or deemed to be pending before the second respondent also stood transferred to the Income-tax Officer, Bombay. Thereafter, the second respondent had no competence to issue the impugned notices. Hence the impugned noti ces are invalid. Therefore, they are liable to be struck down.

(11) The grievance of the appellant in this case is not that there was any contravention of sub-section (1) and (2) of section 64, but that the second respondent had no jurisdiction to issue the impugned notices. That being so , we are of the opinion that the learned single judge was not right in thinking that the facts of present case were governed by the rule laid down by the federal Court in Wallace Bros. Case (sic) and by the Punjab High Court in U.C. Reikhi's Case, (sic).

(12) Before leaving this question, we would like to deal with one other aspect; The second respondent is said to have issued the impugned notices in pursuance of the transfer of the appellant's case under Notification No.44 I.T. dated July 1, 1952. Under that notification, a class of cases was transferred to him and not the case of any particular assessee. In other words, that notification dealt with a class of cases. But the notification transferring the appellant's case to the Income-tax Officer, Bombay, dealt with the case of some particular assesses. If that transfer is held to include all proceedings under the act in relation to the appellant were taken out of the scope of the notification No.44 I.T. In that view also, the second respondent had no competence to issue the impugned notices.

(13) Though it is not necessary for us, in view of the above conclusion, to examine the correctness of the contention of Sri Kohla that the Sangli Income-tax Officer had jurisdiction to issue notices under Section 34 to the appellant in respect of his income for the assessment years 1946-47 and 1947-48, yet in view of the fact that considerable arguments had been advance on that question, we shall briefly examine the validity of his contention. Whether the sangli Income-tax Officer had originally jurisdiction to assess the appellant in respect of the assessment years 1946-47 and 1947-48 or not about which there is considerable controversy-there can be no doubt that he lost jurisdiction in respect of the same in view of Notification No.44 I.T. Therefore, the Sangli Income-tax Officer was not competent to initiate any proceedings under the Act against the appellant relating to the assessment years 1946-47 and 1947-48. That notification removed those proceedings from the scope of sub-sections (1) and (2) Section 64. Therefore, the fact that the appellant did not question the competency of the Income-tax Officer, Sangli, to assess him becomes immaterial. That aspect would have been material only if there had been no notification under sub-section (6) of section 5. Hence

we are unable to accept the contention of Sri Kohla that the notices issued by the Sangli Income-tax officer under Section 34 are valid notices. But yet in view of our earlier finding that the second respondent was incompetent to issue the impugned notices, the appellant is entitled to succeed in this appeal.

(14) We accordingly allow this appeal and quash the impugned notices. The appellant is entitled to his costs both in this appeal as well as in the writ petition. Advocate's fee Rs.250 both in this appeal as well as in the Writ petition.