

Rampyari Devi Saraogi vs Commissioner Of Income-Tax, West ... on 1 May, 1967

Equivalent citations: [1968]67ITR84(SC), AIRONLINE 1967 SC 25, (1968) 67 ITR 84

Bench: J.C. Shah, S.M. Sikri

JUDGMENT

Sikri J.

1. This appeal by certificate of fitness granted by the High Court is directed against the judgment of the Division Bench of the High Court at Calcutta, affirming the judgment of the single judge. This appeal was heard together in this court along with Civil Appeal No. 1421 of 1966 (Kalawati Devi Harlalka v. Commissioner of Income-tax) in which we have just delivered judgment, and apart from the questions involved in that case, the only additional point raised before us in this appeal is that no fair and reasonable opportunity was given to the appellant, Rampyari Devi Saraogi, hereinafter referred to as the assessee, by the Commissioner of Income-tax who passed the order dated March 15, 1963, under section 33B of the Indian Income-tax Act, 1922. Following our judgment in Kalawati Devi Harlalka v. Commissioner of Income-tax we hold that the Commissioner of Income-tax, West Bengal, Calcutta, had jurisdiction under section 33B of the Income-tax Act, 1922, to revise the assessment orders for the years 1952-53 to 1960- 61.

2. To appreciate the additional point raised before us it is necessary to give the relevant facts. On March 8, 1963, the Commissioner of Income- tax, West Bengal, sent a notice under section 33B to the assessee in the following terms :

"On calling for and examining the records of your case for the assessment years 1952-53, 1953-54, 1954-55, 1955-56, 1956-57, 1957-58, 1958-59, 1959-60 and 1960-61, and other connected records I consider that the orders of assessment passed by the Income-tax Officer, 'D' Ward, Howrah, on 30th March, 1961, and 26th April, 1961, are erroneous in so far as they are prejudicial to the interest of revenue for the following reasons amongst others.

2. Enquiries made have revealed that you neither resided nor carried on any business from the address declared in the returns. Also the Income-tax Officer was not justified in accepting the initial capital, the gift received and sale of jewellery, the income from business, etc., without any enquiry or evidence whatsoever.

3. I, therefore, propose to pass such orders thereon as the circumstances of the cases justify after giving you an opportunity of being heard under the powers vested in me under section 33B of the Income-tax Act, 1922. The cases will be heard at 10.30 a.m.

on 15th March, 1963, at my above office when you are requested to produce the necessary evidence in support of your contentions, objections in writing accompanied by the necessary evidence, if any, received on or before the appointment for personal hearing will also be duly considered.

4. Please note that no adjournment of the hearing will be granted."

3. On March 13, 1963, Mr. D.K. Chaudhuri, tax consultant, on behalf of the assessee wrote a letter to the Commissioner stating that the show- cause notice under section 33B was bad in law, illegal and void and without jurisdiction. He further stated that the notice was absolutely vague and did not contain any indications in what respect the assessment orders were erroneous or prejudicial to the revenue. He further pointed out that the assessee was not aware as to what enquiries had been made by the Commissioner and until the copies of such enquiries were made available, the assessee was not in a position to produce any evidence before the Commissioner. The assessee appeared before the Commissioner on March 15, 1963, and on the same day the Commissioner passed an order under section 33B of the Income-tax Act, 1922. In the concluding paragraph of the order he stated :

"Having regard to all the facts and circumstances of the case as I consider that the assessments made by the Income-tax Officer, D Ward, Howrah, Shri N. Biswas, by his orders dated 30th March, 1961, for the assessment years 1952-53 to 1957-58 and orders dated 26th April, 1961, for the assessment years 1958-59 to 1960-61 are erroneous and prejudicial to the interests of revenue, I cancel the said assessments and direct the Income-tax Officer to do fresh assessments according to law, after making proper enquiries and investigation in regard to the jurisdiction, carrying on of the business, possession of initial capital, gifts received and the sources of the moneys invested in the name of the assessee."

4. The assessee filed a writ petition under article 226 of the Constitution on April 11, 1963, praying, inter alia, that the order dated March 15, 1963, be quashed. The Division Bench overruled the contention of the assessee that she was denied opportunity of showing cause against the grounds and material on which the Commissioner proceeded for the purpose of taking action under section 33B.

5. In our view, the High Court was right in overruling the contention of the assessee. The order of the Commissioner is a detailed order. There is no doubt that he does mention some facts which were not indicated or communicated to the assessee and which the assessee had had no opportunity of meeting. For instance, in paragraph 9 it is stated : "It has been ascertained that the Income-tax Officer, D Ward, Howrah, had no jurisdiction over the assessee and hence all the assessments made by him are ab initio null and void. It has also been learnt from local enquiries that the assessee never resided nor carried on any business from 7, Haragenj Road, Salkia, Howrah, and that the assessee's father-in-law, Shri Sagarmal Saraogi, and his sons have been doing business of foodgrains, besides owning a rice factory and flour grinding machine from 90, Fider Road, Belgharia, 24-Parganas." He further observed : "Moreover, the name of the assessee is Rampiyari Devi Saraogi, and as the Income-tax Officer, D Ward, Howrah, who has made the assessments, had only jurisdiction over

cases of new assesseees, whose names began with the alphabetical letters from 'S' to 'Z', with a view to camouflage the name and make it appear to fall within the jurisdiction of the Income-tax Officer, the name has been given in the reverse order by putting the surname first and her own name afterwards, as will be apparent from the returns filed. In the return of income for the assessment year 1961-62, the assessee has given her residential address as 90, Feeder Road, Belgharia, Calcutta, while in that for 1962-63, the office address has been given as 90, Feeder Road, Balgharia, Calcutta." He then concluded : "It is apparent that with a view to fall within the jurisdiction of this particular Income-tax Officer, i.e., Income-tax Officer, D-Ward, Howrah, a fictitious address was given and the order of the names reversed. Hence, all the assessments made are without jurisdiction ab initio null and void." We agree with the High Court that all this material was supporting material and did not constitute the basic grounds on which the orders under section 33B were passed by the Commissioner. There was ample material to show that the Income-tax Officer made the assessments in undue hurry. 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 return for the assessment year 1953-54 is undated. The returns for the assessment years 1952-53 and 1954-55 to 1957-58 are dated March 21, 1961, and those for the assessment years 1958-59 to 1960-61 are dated April 26, 1961. On March 21, 1961, the assessee made a declaration giving the facts regarding initial capital, the ornaments and presents received at the time of marriage, other gifts received from her father-in-law, etc., which should have put any Income-tax Officer on his guard. But the Income-tax Officer without making any enquiries to satisfy himself passed the assessment order on March 30, 1961, for the assessment years 1952-53 to 1957-58 and on April 26, 1961, for the assessment years 1958-59 to 1960-61. No bank account or any proper books of accounts were maintained by the assessee or produced before the Income-tax Officer. A short stereotyped assessment order was made for each assessment year. As a sample, the Commissioner has reproduced the assessment order for the assessment year 1952-53 in his order. Profit from speculation was shown as Rs. 3,085 and interest Rs. 600, and Rs. 500 was added for want of books of account and evidence. No evidence whatsoever was produced in respect of the money-lending business done and interest income shown to have been received by the assessee. No names were given as to the parties to whom the loans were advanced, with amounts and rate of interest and as to when the interest income was received.

6. It is not necessary to further detail the reasons given by the Commissioner because on the face of the record the orders were prejudicial to the interest of the revenue, and even if the facts which the Commissioner introduced regarding the enquiries made by him had been indicated to the assessee, the result would have been the same. The assessee, in our view, has not in any way suffered from the failure of the Commissioner to indicate the results of the enquiries, mentioned above. Moreover, the assessee will have full opportunity of showing to the Income-tax Officer whether he had jurisdiction or not and whether the income assessed in the assessment orders which were originally passed was correct or not.

7. It may be further mentioned that the assessee did not appeal to the Appellate Tribunal against the order passed under section 33B. The reason given by the learned counsel for not filing an appeal was that he could not raise before the Appellate Tribunal the constitutional question which was raised before the High Court and he could not pursue two remedies concurrently. But, in our view, there was nothing to prevent the assessee from filing the appeal and asking the Appellate Tribunal to go

only into the question of the lack of opportunity given to the assessee.

8. In the result the appeal fails and is dismissed with costs.