Anil Kumar Roy Chowdhury And Ors. vs Commissioner Of Income Tax, West ... on 19 November, 1975

Equivalent citations: AIR1976SC772, [1976]102ITR12(SC), (1976)4SCC776, 1976(8)UJ28(SC), AIR 1976 SUPREME COURT 772, 1976 4 SCC 776, 1976 TAX. L. R. 406, 102 ITR 12, 1976 UJ (SC) 28, 1976 UPTC 82

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Bench: A.C. Gupta, R.S. Sarkaria, Y.V. Chandrachud

JUDGMENT

A.C. Gupta, J.

1. These two appeals, brought on certificates granted under Section 66A(2) of the Indian Income-tax Act, 1922, arise out of a common judgment of the Calcutta High Court disposing of two reference, one under Sub-section (1) and the other under Sub-section (2) of Section 66 of the Act. The appellants are members of an undivided family governed by the Dayabhange School of Hindu Law and were assessed as a Hindu Undivided family for the assessment year 1947-49, the relevant previous year being the Bengali Year 1354 which corresponds to the period from April 14, 1947 to April 13, 1949. A sum of Rs. 1,96,045/- was added by the Income-tax Officer to the income of the undivided family in the aforesaid assessment year as income from agricultural activities carried on in Pakistan. The land out of which this income had accrued fell within the territory of Pakistan on the partition of India in 1947. It is not disputed at this stage that following the amendment in 1950 of the definition of "agricultural income" in the Income-tax Act this income which accrued in Pakistan was taxable under the Indian Income-tax Act, 1922.

2. The material facts as appearing from the order of the Appellate Tribunal, summarised in the statements of case drawn up under Section 66 of the Act are as follows. The assessee, that is the Hindu Undivided Family of which the appellants are the members, did not include in its return the aforesaid sum of Rs. 1,96,0450 on the ground that this income did not belong to the Hindu undivided family but to its members in their individual capacity. It appears from an order passed by the Agricultural Income-tax Officer, Pakistan, to which the Income-tax Officer in Calcutta referred and which forms a part of the statement of case, that the Pakistan Income tax Officer had treated the income from the agricultural land as belonging to each member of the Hindu undivided family separately according to their respective shares. The Income-tax Officer, District Calcutta 1(2) Though he appears to have proceeded on the basis of the Pakistan Agricultural Income-tax Officer's order, assessed the income in the hands of the assessee, the Hindu Undivided Family. The appeal preferred by the assessee against this order was dismissed by the Appellate Assistant Commissioner

who did not accept the contention that the income belonged to each appellant individually, and referring to Section 25A of the Income-tax Act found the appellant's claim unsustainable in the absence of any case made by them that their joint properties had been partitioned. On further appeal by the assessee, the Tribunal found that the provisions of Section 25A of the Income-tax Act, 1922 to which the Appellate Assistant Commissioner referred was not relevant and he had failed to appreciate the assessee's case which was not that the land from which the income in question had accrued was originally a joint family property and was subsequently partitioned, that the department had to prove that the agricultural income in Pakistan belonged not to the appellants in severality as appearing from the order of the Agricultural Income-tax Officer of Pakistan to the Hindu undivided family, and the income-tax officer was wrong in assessing this income in the hands of assessee without discharging the onus that lay upon him. On these findings the Tribunal held that the department was not justified in treating the agricultural income in Pakistan as belonging to the Hindu undivided family and allowed the appeal.

3. At the instance of the Commissioner of income-tax, West Bengal II, the Tribunal referred to the High Court the following question.

Whether on the facts and in the circumstances of the case, the Tribunal was justified in placing the burden of proof upon the department and excluding the income from Pakistan agricultural properties from the assessee's income?

Subsequently, on the application of the Commissioner of Income-tax, the High Court required the Appellate Tribunal to refer to it the following additional questions under Section 66(2) of the Act:

> (a) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that Section 25A of the Indian Income-tax Act, 1922, had no application in the present case?
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> (b) If the answer to question No. 1 is in the negative, then whether on the facts and in the circumstances of the case the Tribunal was right in placing the onus upon the department to prove that the agricultural income in Pakistan belonged to the Hindu Undivided Family and still retained that character?
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> (c) If the answer to question No. 2 is in the negative, then whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the agricultural income in Pakistan did not belong to the assessee Hindu Undivided Family and in directing exclusion of the said income from the assessable income of the family?

The two references were heard and disposed of by the High Court by a common judgment. The High Court observed that the question whether the agricultural land in Pakistan belonged to the Hindu Undivided Family or to its members individually were "crucial question of fact" & was of opinion that the Tribunal was wrong in allowing the assessee to raise this question which was not raised before Income-tax Officer. The High Court held that the conclusion reached by the Tribunal that the members of the undivided family owned the property in their individual capacity was not supported

by any fact or evidence." According to the High Court the assessee's claim could succeed only if the requirements of Section 25A were satisfied. The High Court also found that "even the remittance from Pakistan were being absorbed and appropriate to the credit of joint accounts of Hindu undivided family herein India, as already indicated, and there was the fact of blending indicated by that Act" These facts, however, do not appear either from the statement of case or the order of the Tribunal. On the view taken by it, the High Court answered the question referred under Section 66(1) in the negative in favour of revenue. Of the three questions referred under Section 5(2), the High Court answered question (a) in the negative and in favour of the revenue holding that the Tribunal was wrong in saying that Section 25A of the Income-tax Act had no application in the present case. Question (b) was also answered in the negative and in favour of the revenue on the finding that on the facts and. circumstances the Tribunal was wrong in placing the onus upon the department. Question (c) too was answered in the negative and in favour of the revenue.

4. It does not seem to us that the High Court was right in thinking that the assessee's case never was that the agricultural income did not belong to the Hindu undivided family but to its members in severalty. It is true that the argument does not appear to have been made before the Income-tax Officer, but the order of the Pakistan Agricultural Income-tax Officer on which the Income-tax Officer in Calcutta relied shows that the former had assessed the income in the hands of the individual members of the family. It is also true that the order of the Pakistan Agricultural Income-tax Officer was not conclusive on the point because "Hindu Undivided Family" as denned in Section 2(8) of the Bengal Agricultural Income-tax Act, 1944 means a "Hindu Undivided Family governed by Hitakshara law" and does not include a Dayabhage undivided family; therefore, even if the income was of the undivided family, of the appellants, the Pakistan Agricultural Income-tax Officer had to assess it in the hands of the individual members of the family who belong to the Dayabhage school of Hindu Law. But the claim that the income belonged to the appellants in their individual capacity was admittedly made before the Appellate Assistant Commissioner who did not accept it giving reasons for his decision, and the Tribunal in appeal held that these were not valid reasons. No objection however appears to have been taken either before the Appellate Assistant Commissioner or before the Tribunal that the assessee was not entitled to raise the contention which was not specifically raised before the Income-tax Officer. No such question was sought to be raised in the applications under Section 66(1) and 66(2). We do not think that the High Court had jurisdiction in a reference under Section 66 to go being the order of the Appellate Tribunal to investigate what case the assessee had initially made when the agreed statement of case sets out the assessee's claim as family made and considered. Admittedly, there is no evidence that the property from which the income in question accrued was the property of the Hindu undivided family. The person who asserts that a property is a joint family property has to prove that it is so. Nothing appears from the order of the Income-tax Officer or the Appellate Assistant Commissioner or the Tribunal on which a presumption might arise that the property was acquired with the income of some joint propriety which the appellants may have possessed. In the absence of any such evidence the burden cannot shift to the appellants to prove affirmatively that the property in question was acquired with the joint family funds. To the conclusions of fact recorded by the Tribunal cannot therefore be said to be without any basis.

5. In our opinion the approach of the High Court was incorrect and this has vitiated the answers it has given to the questions referred to it. It is well settled that in a reference under Section 66 of the Act, the High Court exercises advisory jurisdiction and does function as a court of appeal. The nature of the High Court's jurisdiction in dealing with reference under Section 66 was explained by this Court in Commissioner of Income-tax, West Bengal v. Calcutta Agency Limited as followed :

> The jurisdiction of the High Court in the matter of income-tax references is an advisory jurisdiction and under the Act the decision of the Tribunal on facts is final, unless it can be successfully assailed on the ground that there was no evidence for the conclusions on facts recorded by the Tribunal. It is therefore the duty of the High Court to start by looking at the facts found by the Tribunal and answer the questions of law on that footing. Any departure from this rule of law will convert the High Court into a fact-finding authority, which it is not under the advisory jurisdiction. The statement of the case under the rules framed under the Income-tax Act is prepared with the knowledge of the parties concerned and they have a full opportunity to apply for any addition or deletion from that statement of the case. If they approved of that statement that is the agreed statement of facts by the parties on which the High Court has to pronounce its judgment.

6. In India Cements Ltd. v. Commissioner of Income-tax, Madras (2), this Court again observed that the High Court must accept the findings of fact made by the Appellate Tribunal and the correctness of these findings of fact cannot be questioned except by applying under Section 66 expressly raising the question about the validity of the findings In Rameshwar Prasad Banla v. Commissioner of income-tax, U.P. (3); this Court reiterated the law stated in Commissioner of Income-tax v. Calcutta Agency Ltd. (1) and India Cements Ltd. v. Commissioner of Income-tax (2).

It is for the Tribunal to decide questions of fact, and the High Court in a reference under Section 66 of the Act cannot go behind' the Tribunal's finding of fact. The High Court can only lay down the law applicable to the facts found by the Tribunal. The High Court and the Supreme Court, in an appeal against the judgment of the High Court given in a reference under Section 66 of the Act, are not constituted Courts of appeal against the order of the Tribunal. These Courts only exercise advisory jurisdiction in such reference. The High Court in a reference under Section 66 of the Act, can, however, go into the question as to whether the conclusion of the Tribunal on a question of fact is based upon relevant evidence.... The fact that the High Court on appreciation of evidence would have arrived at a conclusion of fact different from that of a Tribunal did not warrant interference with the finding of the Tribunal.

On the facts as found by the Tribunal the answer to the question referred under Section 66(1) must therefore be in the affirmative. As regards the three questions referred under Section 66(2), for the reasons already stated, the Tribunal was right in holding that Section 25-A of the Indian Income-tax Act, 1922 had no application in the present case and the answer to the first question must also be in the affirmative. In view of the affirmative answers to these questions, the other two questions referred under Section 66(2) do not really arise; we have however already held that on the facts appearing from the order of the Tribunal the onus was upon the department to prove that the

income in question belonged to the Hindu undivided family.

7. In the result the appeals are allowed but in the circumstances of the case without any order as to the costs.