T. S. Balaram, Income Tax ... vs M/S. Volkart Brothers, Bombay on 5 August, 1971

Equivalent citations: 1971 AIR 2204, 1972 SCR (1) 30, AIR 1971 SUPREME COURT 2204, 1971 TAX. L. R. 1508

Author: K.S. Hegde

Bench: K.S. Hegde, A.N. Grover

PETITIONER:
T. S. BALARAM, INCOME TAX OFFICER,COMPANY CIRCLE IV, BOMBAY

Vs.

RESPONDENT:
M/S. VOLKART BROTHERS, BOMBAY

DATE OF JUDGMENT05/08/1971

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
GROVER, A.N.

CITATION:
1971 AIR 2204 1972 SCR (1) 30

ACT:
Income tax Act, 1961, s. 154-Mistake apparent from the record must he a patent mistake on which there can be no two opinions-Whether s. 17(1) of Income-tax Act, 1922 applied to firms is not a question on which there can be no two opinions.

HEADNOTE:
The respondent firm was duly registered under the Income-tax Act, 1922 as well as the Income tax Act, 1961. In the original assessments of the firm for the years 1958-59, 1960-61, 1961-62 and 1962-63 assessments were made on the slab rates prescribed under the respective Finance Acts applicable to registered firms. In the individual assess-ments of the partners, their respective shares in the income of the firm were included and assessed at the maximum rates since their assessment,,; were made in the status of

nonresident. On February 1, 1965 the respondent firm was served with notices dated January 29, 1965 by the Income-tax Officer intimating to it that in its assessments for the four years in question there were mistakes apparent from the record inasmuch as the firm had not been charged at the maximum rates of tax under s. 17(1) of the Income tax Act, 1922 and that therefore he proposed to rectify those assessments under s. 154 of the Income tax Act, 1961. Thereafter the Income-tax Officer assessed the respondent firm by applying the provisions of s. 17(1) of the 1922 Act. The respondent challenged the validity of She said orders in a writ petition under Art. 226 of the Constitution. The High Court held that there was no obvious and patent mistake in the original assessment orders and therefore the Income tax Officer was not competent to pass the impugned orders under s. 154. In appeal by certificate,

HELD:A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. [34E]

The applicability of s. 17(1) to the respondent would depend an the decision of the question whether a firm can be considered as a 'person' within the meaning of that section. The term 'person' was defined in the 1922 Act as including a Hindu Undivided Family and a local authority. In the 1961 Act the definition has been expanded and includes firm. It is a matter for consideration whether the new definition contained in s.. 2(31) of the Income-tax Act, 1961 is an amendment of the law or is merely declaratory of the law that was in force earlier. To pronounce upon this question it may be necessary to examine various provisions in the Act as well as its scheme. The Income-tax Officer it) the present case was not justified in thinking that there could be no two

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opinions about the applicability of s. 17(1) . He was therefore wholly wrong in holding that there was a mistake apparent from the record of the assessments of the respondent. [33F-34D]

Satyanarayan Laxminarayan Hegde & Ors. v. Milikarjiun Bhava-nappa Thirumale, [1960] 1 S.C.R. 890 and Sidhrainappa v. Commissioner of Income-tax, Bombay, 21 T.I.R. 333 referred to

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1170 of 1968.

Appeal from the judgement and order dated February 3, 6, 1967 of the Bombay High Court in Misc. Petition No. 104 of 1965.

S.Mitra J. Ramamurthi, R. N. Sachthey and B. D. Sharma for the Appellant.

M. C. Chagla, N.A. Palkhivala, Bhuvanesh Kumari, J. B. Dadachanji and Ravinder Narain for the respondent. The Judgment of the Court was delivered by Hegde, J.-This appeal by certificate arises from the decision of the High Court of Bombay in Misc. Petition No. 104 of 1968 on its file. That was a petition under Art. 226 of the Constitution. Therein the respondents challenged the validity of the orders of rectification made by the Income- tax Officer, Company Circle, Bombay in the assessments of the respondents for the assessment years 1958-59, 1960-61, 1961-62 and 1962-63 under S. 154 of the Income-tax Act, 1961. Respondents Nos. 2 and 3 are the partners in the first respondent-firm. The first respondent-firm was duly registered under the Indian Income-tax Act 1922 as well as under the Income-tax Act 1961. In the original assessments of the firm for the concerned assessment years assessments were made on the salb rates prescribed under the respective Finance Acts applicable to registered Firms. In the individual assessments of the partners for their respective share in the income of the firm was included and assessed at the maximum rates since their assessments were made in the status of non-resident. On February, 11, 1965, the first respondent firm was served with notices dated January 29, 1965 by the Income-tax Officer intimating to it that in its assessments for the assessment years 1958-59, 1960-61 , 1961-62 and 1962-63, there are mistakes apparent from the record inasmuch as the firm had not been charged at the maximum rates of income-tax under S. 17(1) of the Indian Income-tax Act, 1922 and therefore he proposes to rectify those assessments under S. 154 of the Income-tax Act, 1961. The respondents in their reply to those notices denied that there was any mistake apparent or otherwise in those orders of assessment. They disputed the Income-tax Officer's authority to make any correction. The Income-tax Officer did not accept the contention of the respondents and assessed them by applying the provisions of S. 17(i) of the 1922 Act. The respondents challenged the validity of the orders rectifying the assessments, before the High Court of Bombay as mentioned earlier. The High Court took the view that the original assessments made on the respondents were prima facie in accordance with law and at any rate as there was no obvious or patent mistake in those orders of assessment, the Income- tax Officer was incompetent to pass the impugned orders. The first question that we have to decide is whether oil the facts and in the circumstances of the 'case. The Income-tax Officer was within his 'powers in making the impugned rectifications. He purported to make those rectifications under s. 154 of the Income-tax Act, 1961. That section to the extent material for our present purpose reads:

> "154 (1) With a view to rectifying any mistake apparent from the record
>
> (a) the Income-tax Officer may amend any order of assessment or of refund or any other order passed by him:
>
> The corresponding section in the Indian Income-tax Act, 1922 is S. 35.
>
> We have now to see whether the Income-tax Officer was justified in opining that in the original orders of ass- essment, there was any apparent mistake. As seen earlier in the original assessments of the firm for the relevant assessment years, the Income-tax Officer adopted the slab rates applicable to registered firms. The question for

decision is whether the first respondent's firm came within the mischief of S. 17(1) of the Indian Income-- tax Act, 1922. Section 17(1) reads:

"Where a person is not resident in the taxable territories and is not a company, the tax, including super-tax, payable by him or on his behalf on his total in come shall be an amount equal to

(a) the income-tax which would be payable on his total income at the maximum rate, plus

(b) either. the super-tax which would be payable on his total income at the rate of nineteen per cent, or the super-tax which would be payable on his total income if it were the total income of a person resident in the taxable territories whichever is greater....". (Provision to the section is not relevant for our present purpose).

Section 17(1) can apply to a "person". The expression "Person" is defined in s. 2(9) of the Indian Income-tax Act, 1922 thus:

" "Person" includes a Hindu undivided family and a local authority".

Unless a firm can be considered as a "Person", S. 17(1) cannot govern the assessment of the first respondent. In the Income-tax Act, 1961 [S. 2(31)]., the expression person is defined differently. That definition reads:

"person" includes-

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) a local authority and

(vii) every artificial juridicial person, not falling within any of the preceding sub clauses., It is a matter for consideration whether the definition contained in S. 2(31) of the Income-tax Act, 1961 is an ,amendment of the law or is merely declaratory of the law that was in force, earlier. To pronounce upon this question, it may be necessary to examine various provisions in the Act as well as its scheme.

Section 113 of the Income-tax Act, 1961 corresponded to S. 17(1) of the Indian Income-tax Act, 1922 but that section has now been omitted with effect from April 1, 1965 as a result of the Finance Act, 1965.

From what has been said above, it is clear that the question whether S. 17(1) of the Indian Income-tax Act, 1922 was applicable to the case of the first respondent is not free from doubt. Therefore the Income-tax Officer was not justified in thinking that on that question there can be no two opinions. It was not open to the Income-tax Officer to go into the true scope of the relevant provisions of the Act in a proceeding under S. 154 of the Income-tax Act, 1961. A mistake apparent on the record must be an obvious and patent mistake and not ,something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. As seen earlier, the High Court of Bombay opined that the original assessments were in accordance with law though in our opinion the High Court was not justified in going into that question. In Satyanarayan Laxminarayan Hegde and ors. v. Millikarjun Bhavanappa Tirumale(1) this Court while Spelling out the scope of the power of a High Court under Art. 226 of the Constitution ruled that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on a debatable point of law is not a mistake apparent from the record-see Sidhamappa v.. Commissioner- of Income-tax, Bombay(2). The power of the officers mentioned in S. 154 of the Income-tax Act, 1961 to correct "any mistake apparent from the record" is (1) [1960] 1 S.C.R. 890.

(2) 21 I.T.R. 333.

undoubtedly not more than that of the High Court to entertain a writ petition on the basis of an "error apparent on the face of the record". In this case it is not necessary for us to spell out the distinction between the expressions 66 error apparent on the face of the record" and "mistake apparent from the record". But suffice it to say that the Income tax Officer was wholly wrong in holding that there was a mistake apparent from the record of the assessments of the first respondent.

For the reasons mentioned above we dismiss this appeal with costs.

G.C. Appeal dismissed.