Raza Textiles Ltd. vs Income Tax Officer, Rampur on 22 September, 1972

Equivalent citations: AIR1973SC1362, [1973]87ITR539(SC), (1973)1SCC633, AIR 1973 SUPREME COURT 1362, 1973 TAX. L. R. 684, 1973 (1) SCC 633, 1973 SCC (TAX) 327, 87 ITR 539

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Bench: H.R. Khanna, I.D. Dua, P. Jaganmohan Reddy, K.S. Hegde

JUDGMENT

K.S. Hegde, J.

1. This is an original petitioner's appeal by certificate. It arises from a decision of a Division Bench of the Allahabad High Court in a Writ Petition under Article 226 of the Constitution.

2. The Income-tax Officer, Rampur, directed the appellant under Section 18(3B) read with Section 18(7) of the Income-tax Act, 1922 (to be hereinafter referred to as the Act) to pay Rs. 1,39,739/5/- as tax on a sum of Rs. 2,00,000/- remitted by him as selling commission to M/s. Nathirmal and Sons, Djakarta (Indonesia) during the year ending on December 31, 1951. The Income-tax Officer rejected the contention of the appellant that M/s. Nathirmal and Sons is not a non-resident firm. The Income-tax Officer came to the conclusion that the firm in question is a non-resident one and consequently the appellant was statutorily liable to deduct the income-tax payable by that firm and pay the same to the Government.

3. Aggrieved by that order the appellant went up in appeal to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner rejected the appeal on the ground that the same was not maintainable. He took the view that an appeal lay only under Section 30(1A). But before such an appeal can be entertained the appellant must satisfy two conditions, namely, (1) he had deducted the tax due from the non-resident in accordance with the provisions of Sub-section 3(B) and (2) that he had paid the sum deducted to the Government. The appellant having not complied with those two conditions, the Appellate Assistant Commissioner held that the appeal was incompetent. The order of the Appellate Assistant Commissioner was confirmed by- the Tribunal. Thereafter the appellant moved the High Court under Article 226 of the Constitution. That application came up before a single Judge. The single Judge after going into the matter in detail came to the conclusion that M/s. Nathirmal and Sons is not a non-resident firm and that being so the appellant was not required to act under Section 18(3B). He accordingly, set aside the order impugned. The revenue went up in appeal against the order of the learned single Judge to the Appellate Bench. That Bench allowed the appeal with the observations, "In the present case the question before the Income-tax Officer,

Rampur, was whether the firm Nathirmal and Sons was non-resident or not. There was material before him on this question. He had jurisdiction to decide the question either way. It cannot be said that the officer assumed jurisdiction by wrong decision on this question of residence". The Appellate Bench appears to have been under the impression that the Income-tax Officer was the sole judge of the fact whether the firm in question was resident or non-resident. This conclusion, in our opinion, is wholly wrong. No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly The question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion, as the learned single Judge has done in this case, that the Income-tax Officer had clutched at the jurisdiction by deciding a jurisdictional fact erroneously, then the assesses was entitled for the writ of certiorari prayed for by him. It is incomprehensible to think that a quasi-judicial authority like the Income-tax Officer can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen. In our opinion the Appellate Bench is wholly wrong in opining that the Income-tax Officer can "decide either way".

4. It was contended by Mr. Manchanda, the learned Counsel for the revenue, that the appellant had a right of appeal to the Appellate Assistant Commissioner under Section 30(1A). He argued that if only he had deposited the amount computed by the Income-tax Officer, then he would have had a right of appeal to the Appellate Assistant Commissioner. Assuming that Section 30(1A) applied to facts of the case, then before having recourse to that provision a person seeking to file an appeal under that provision must comply with two requirements, namely, that he must have first deducted the tax due from the non-resident assessee and must have paid the same to the Government. This provision cannot apply to the case of a person who contends that the firm to whom he made the payment is not a non-resident firm. If he is right in his contention, then he could not have deducted the tax due from the firm to whom he made the payment.

5. For the reasons mentioned above, we allow this appeal, set aside the order of the Appellate Bench of the Allahabad High Court and remand the case back to that Court for deciding the appeal afresh. It is open to the assessee to urge all the points that he has taken in the case.

6. The costs of this appeal will be the costs in the cause.