Padampat Singhania vs Commr. Of Income-Tax, U.P. And ... on 9 April, 1953

Equivalent citations: AIR1985ALL775, [1953]24ITR184(ALL)

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. There is one common question of law referred to us in these three references. The question formulated is as follows :

> "Whether the Income-tax Appellate Tribunai was legally correct in holding that the Appellate Assistant Commissioner was not competent to entertain an objection to the assessment being made under Section 23(4), Income-tax Act, in proceedings other than those through Section 27 of the Act?"

The facts relating to this matter are very simple and are not disputed. In compliance with notices issued under Section 23(2), Income-tax Act, the three assessees, Sir Padampat Singhania, L. Kailashpat Singhania and L. Lakshmipat Singhania, filed their returns. We may mention that these were three separate cases, the three brothers being separate. The notices were issued to them as heads of the Hindu undivided family represented by each. The Income-tax Officer then issued notices under Section 22(4) for production of certain account-books. These notices were not complied with and he then proceeded to make the assessment under Section 23(4), Income-tax Act. No application under Section 27, Income-tax Act was filed on behalf of any of the three assessees for cancellation of assessment under Section 23(4) and making a fresh assessment under Section 23(3). The three assessees, however, straightway filed three appeals before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner went into the question whether the Income-tax Officer was justified in making the assessment under Section 23(4) instead of under Section 23(3) and he came to the conclusion that the Income-tax Officer was not so justified under S, 23(4) and after having recorded that finding he considered the assessment on the merits and made certain adjustments, and so far as Sir Padampat Singhania was concerned the result of the adjustments was that the total income was, reduced by a figure of Rs. 3,85,189/-. This order of the Appellate Assistant Commissioner is dated 16-1-1947.

2. The Income-tax Officer appealed against this order and the Appellate Tribunal came to the conclusion that no application having been filed under Section 27 and there being no appeal before the Appellate Assistant Commissioner against an order under Section 27, in the appeal against the assessment order under Section 23(4) the Appellate Assistant Commissioner had no right to go into the question, whether the assessment was or was not properly made under that section, with the result that it allowed the appeal and held that the assessment made by the Income-tax Officer must be deemed to be best judgment assessment under Section 23(4) and could not be held to be an assessment under Section 23(3).

3. The three assessees then applied that the question be referred along with other questions to this Court for its opinion and that is how the question quoted above came to be referred to us.

4. The point is covered by a recent decision of this Court in -- 'Chhotelal Gobardhan Das v. Commr. of Income-tax, U. P., V. P. and Lucknow', AIR 1953 All 401 (A). In that case an application under Section 27 had been filed and had been disposed of. Thereafter there were two appeals before the Appellate Assistant Commissioner, one against the order under Section 27 and the other against the assessment under Section 23(4). Both the appeals were disposed of by the Appellate Assistant Commissioner. The assesSee then filed one appeal before the Appellate Tribunal against the order of the Appellate Assistant Commissioner in the appeal against the assessment under Section 23(4). He filed no appeal against the order of the Appellate Assistant Commissioner in the appeal filed against the order under Section 27, and the question was whether the Appellate Tribunal could in that appeal go into the question whether the Income-tax Officer was justified in making assessment under Section 23(4). We held that the appeal before the Tribunal related to the quantum of the tax payable and in that appeal the question, whether there was sufficient cause for not complying with ths previous notice, did not arise, no appeal having been filed against the order under Section 27, though an appeal was provided for by the Indian Income-tax Act. Mr. Pathak, on behalf of the assessee, has asked us to reconsider that decision in view of the observations made by their Lordships of the Judicial Committee in --'Commr. of Income-tax. Bombay Presidency and Aden v. Khemchand Ramdas', AIR 1938 PC 175 (E). As that case was not cited before us when we decided the case of Chhotelal Gobardhan Das, we heard counsel on the point and considered the question whether the Privy Council decision made it necessary for us to reconsider our previous judgment. After having carefully considered the matter, however, we do not feel disposed! to change the opinion already expressed by us in -- 'Chhotelal Gobardhan Das's case (A)'. In -- 'Khemchand Ram Das's case (B)', the Income-tax Officer had issued notices under Sections 22(2) and 22(4). When the assessment was made, Section 30, Income-tax Act, had not been amended and there was no appeal against an assessment order made under Section 23(4). An appeal was, however, filed before the Appellate Assistant Commissioner and was considered on the merits but failed. The question was debated whether the assessment was, in fact, made under Section 23(4) or under Section 34 or Section 35. The Appellate Assistant Commissioner of Income-tax had expressed no opinion but their Lordships of the Judicial Committee held :

> "For the order could only be justified, if at all, as one made, not under Section 23(4) but under either Section 34 or Section 35. If it was made, as the Commissioner has found, in purported exercise of the powers given by Section 23(4), the assessee

> nevertheless had a right of appeal to the Assistant Commissioner under Section 33 and the Commissioner was in error when he quashed the proceedings on that appeal."

Their Lordships quoted with approval the observations of Sir Shadi Lal in -- 'Duni Chand v. Commr. of Income-tax, Punjab', AIR 1929 Lah 593 (FB) (C) :

> "The mere fact that the assessment purports to have been made under that sub-section does not shut out an appeal; it must be shown that the circumstances of the case bring it within the scope of that sub-section."

Learned counsel for the assessee has urged that, even if an Income-tax Officer has made the best judgment assessment under Section 23(4), the assessee had a right to file an appeal before the Appellate Assistant Commissioner and urge before him that there were good reasons for his not having been able to comply with the notice under Section 22(4). An appeal, as is now well settled, is a creature of the statute and, if no right of appeal is given, no appeal can be filed. It may be one thing to say that where an order is really under Section 23(3) but is wrongly labelled as an order under Section 23(4), an assessee has a right to file an appeal on the ground that the order has been wrongly labelled and it was really an order under Section 123(3) and he had a right of appeal. Such a case came before this Court in the matter of Gangasagar, AIR 1931 All 417 (D) where the Income-tax Officer made the assessment on the basis of the account-books produced. He, however, said that though he was making the assessment on the basis of the account-books produced yet as the assessee had not complied with the notice under Section 22(4), the assessment order must be deemed to, be an assessment under Section 23(4). The question referred to this Court was as follows :

> "Whether, in the circumstances of this case, the Income-tax Officer was right in calling his assessment an assessment under Section 23(4) of the Act or whether in law the assessment was one under Section 23(3) of the Act, and whether in the latter case the assessee had a right of appeal in the regular way?"

This Court held that when an assessment is in fact made under Section 23(3), merely by requiring the production of some unnecessary books or documents, which were not needed for the assessment, the Income-tax Officer cannot call it an assessment under Section 23(4). With the observations made in that judgment we respectfully agree. If, however, the assessment has in fact been made under Section 23(4) as the best judgment assessment, we find it difficult to hold that even before the amendment of Section 30 the assessee had a right to file an appeal and have the question debated whether he was prevented from making compliance with the notice under Section 22(4) by reason of sufficient cause.

5. Mr. Pathak has urged that in a case where an assessee has already made his submissions why he was not able to comply with the notice under Section 22(4) and the Income-tax Officer had held against him and had come to the conclusion that he had not complied with the notice and had thereafter proceeded to make the assessment under Section 23(4), it would be useless for the

assessee to apply to him again under Section 27 for reconsideration of the question, and in such a case to require him to file an application under Section 27 would be to ask him to do Something which was useless. We do not agree with learned counsel. In some cases it might be that all the facts were already before the Income-tax Officer, and it was not likely that he would change his mind, but in the majority of cases it would be useful for an assessee to have an opportunity to place the facts afresh so that, if the Income-tax Officer was not prepared to change his mind, the Appellate Assistant Commissioner or the Tribunal might be able in the light of the facts to consider whether there was sufficient justification for non-compliance with the notice under Section 22(4). Before the amendment of Section 30, Income-tax Act, the position was that the order of the Income-tax Officer making an assessment under Section 23(4) was final, but if the assessee had made an application under Section 27 that he should not have been assessed under Section 23(4) and the Income-tax Officer had rejected that application, he could file an appeal before the Appellate Assistant Commissioner, go up in appeal to the Appellate Tribunal and even ask for a reference to this Court if a question of law arose. After the amendment of Section 30 the assessee has now got two rights: (1) to question the validity of a reference under Section 23(4) in the same way as before, that is, by an application under Section 27, appeal to the Appellate Assistant Commissioner and further appeal to the Appellate Tribunal, or (2) if he did not challenge his liability to be assessed under Section 23(4) he could appeal against the quantum of the tax imposed to the Appellate Assistant Commissioner and the Tribunal. We have taken this view in -- 'Chholelal Gobardhan Das's case (A)', and it is also supported by a decision of the Calcutta High Court in --'Naba Kumar Singh v. Commr. of Income-tax, Bengal', AIR 1945 Cal 104 (E).

6. We see no reason to change the opinion already expressed and our answer to the question is, therefore, in the affirmative.

7. In these cases the assesses has made applications under Section 66(4) and those applications relate to a sum of Rs. 75,000/- in Miscellaneous Case No. 139 (a) of 1948 and a sum of Rs. 10,000/- each in Miscellaneous Cases Nos. 139(b) and 139 (c) of 1948,

8. As regards the sum of Rs. 10,000/-which arises in the last two cases, the assessee claimed a deduction to that extent which he alleged was interest due from him to the firm Messrs. Juggilal Kamlapat. This he alleged was interest on amounts drawn by him from that firm. It was, however, admitted by the assessee that he had not paid any interest to the firm, nor was there any agreement to pay that interest. The amount was claimed merely on the ground that the Income-tax Officer, while making the assessment of the firm Messrs. Juggilal Kamlapat, had wrongly disallowed a sum of Rs. 30,000/- as not being interest on the money borrowed for purposes of that business. The assessee's claim was that the Income-tax Officer having made a mistake in assessing the firm Messrs. Juggilal Kamlapat, he must be made to make another mistake while assessing the particular assessee so that the two mistakes might neutralise the effect and the assessment might be as it should have been according to the assessee. This is hardly any ground for claiming the reduction. On the facts admitted that no interest was payable or had been paid, the assessee could not claim any deduction. We cannot, therefore, ask for any reference in these two cases --Miscellaneous Cases No. 139(b) and 139(c) of 1948.

9. In Miscellaneous Case No. 139(a) of 1948 the sum involved is Rs. 75,000/-. The Income-tax Officer while making the assessment under Section 23(4), found that the assessee's expenses every year exceeded the income showed by him. He deduced therefrom that there must be some other source of income which enabled the assessee to balance his budget. The Income-tax Officer held that the onus of proving the nature and source of the funds which were utilised for personal expenses lay upon the assessee. If he failed to discharge that obligation and was unable to properly explain or disclose the true source from which they had been made and which was within the peculiar knowledge of the assessee, the Income-tax Officer was entitled to treat the money so spent as income from separate sources. Besides that ground the Income-tax Officer gave three other grounds which were as follows :

> "(2) Expenses incurred on charitable objects and repairs to the extensive house property incurred through the parent firm of the family, Messrs. Juggilal Kamlapat were written off on the closing day of the accounting period through equivalent cash deposits. It is alleged that these deposits were made by the partners out of their personal drawings. But, there is no entry whatever, in the assessee's books showing the alleged remittances to the firm, Messrs. Juggilal Kamlapat.
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> (3) The assessee purchased a decree of Messrs. Anundi Lal Poddar & Co. against Messrs. Ram Kumar Rameshwar Das for Rs. 1,60,000/-. This transaction should have in all circumstances found a place in the assessee's account books.
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> (4) The assessee has a current account with the Imperial Bank of India. It appears from the monthly statements of accounts received from the Bank that a sum of Rs. 41/6/- was deposited by cheque on 8-2-1941. In spite of specific opportunity allowed to the assessee, the particulars of this deposit have not been furnished. The amount involved is a petty one but it proves beyond a shadow of doubt the existence of undisclosed sources of income."

On these facts he held that income from undisclosed sources included the sum of Rs. 75,000/-. The Appellate Assistant Commissioner set this finding aside but the Appellate Tribunal restored it and held that it was undisclosed income and directed the amount to be added back to the taxable income of the assessee. The assessment being under Section 23(4) all that we are required to see is whether the Income-tax Officer's order was a reasonable order or he had made the assessment capriciously (vide our decision in -- 'Singh Engineering Works, Kanpur v. Commr. of Income-tax, U.P., Lucknow', AIR 1953 All 735 (F)).

10. We, therefore, do not feel disposed to direct the Appellate Tribunal to make any reference in this case.

11. The other questions proposed in these applications do not, in our view, arise.

12. The assessee must pay costs to the Department which we assess at Rs. 400/- in each case.