W.O. Holdsworth And Ors. vs State Of U.P. Through Commr. Of ... on 6 December, 1955

Equivalent citations: AIR1956ALL392, AIR 1956 ALLAHABAD 392, 1956 ALL. L. J. 146

JUDGMENT

Mootham, C.J.

1. This is an application under Article 133(1) of the Constitution for leave to appeal to the Supreme Court from a judgment of this Court dated 19-4-1955, answering adversely to the applicants a reference made to it by the Revision Board under Section 24 of the United Provinces Agricultural Income-tax Act, 1948.

2. The applicants had been assessed to Agricultural Income-tax under that Act, and an appeal made by them under Section 21 of the Act against the order of the assessing authority had been dismissed.

Sub-section (2) of Section 24 provides that in such circum stances an assessee may within the time prescribed and upon payment of the requisite fee apply to the Revision Board to refer to the High Court any question of law arising out of the appellate order, and Sub-section (7) so far as it is relevant, then provides that "The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall send to the Revision Board a copy of such judgment under the seal) of the Court and the signature of the Registrar; and the Revision Board shall dispose of the case accordingly ....."

3. Now an appeal will lie to the Supreme Court under Article 133(1) only from "a judgment, decree or final order in a civil proceeding" of a High Court, and the Preliminary question arises whether the pronouncement of this Court is "a judgment ..... in a civil proceeding" within the meaning of that clause.

We have not had the advantage of hearing arguments on behalf of the State, which does not oppose the application, but Sri G. S. Pathak who appears for the applicants has placed the authorities before us and we are much obliged to him for the assistance which he has given us.

4. The relevant provisions of Sub-section (7) of Section 24 of the Act are in all material respects the same as those of Sub-section (3) of Section 51 of the Indian Income-tax Act of 1918, and in -- 'Tata fron and Steel Co., Ltd. v. Chief Revenue Authority, AIR 1923 PC 148 (A), the Privy Council held that a judgment of the High Court under that provision of the Indian Income-tax Act was not a "final judgment decree or order" within the meaning of Clause 39 of the Letters Patent of the Bombay High Court.

This decision was applied by the Supreme Court in --'Premchand Satramdas v. State of Bihar', AIR 1951 SC 14 (B), in which the Court held that no appeal lay to the Supreme Court from an order of a High Court dismissing an application under Section 21(3) of the Bihar Sales Tax Act 1.944 to direct the Board of Revenue Bihar to state a case and refer it to the High Court. Section 21 of the Bihar Sales Tax Act was in the same terms as Section 24 of the United provinces Agricultural Income-tax Act, and with regard to the former section Fazl Ali J, who delivered the judgment of the Court, said at p. 804 "All that the High Court is required to do under Section 21 of the Bihar Sales Tax Act is to decide the question of law raised and send a copy of its judgment to the Board of Revenue. The Board of Revenue then has to dispose of the case in the light of the judgment of the High Court. It is true that the Board's order is based on what is stated by the High Court to be the correct legal position, but the fact remains that the order of the High Court standing by itself does not affect the rights of the parties, and the final order in the matter is the order which is passed ultimately by the Board of Revenue".

The learned Judge summed up the matter at page 805 in these words:

> "The crux of the matter therefore is that the jurisdiction of the High Court was only consultative and was neither original nor appellate."

Sri 'G. S. Pathak however argues that as in Clause (1) of Article 133 of the Constitution the relevant words are "judgment, decree or final order", and not (as in the Letters Patent) "final judgment, decree or order", the necessary effect of the transposition of the word "final" from its controlling position at the commencement of the clause to a place immediately before the word "order" is to give a far more extended meaning to the word "judgment" than was formerly the case.

This view commended itself to a Bench of the Madras High Court in -- 'P. A. Raju Chattiar & Bros. v. Commissioner of Income-tax, Madras', AIR 1951 Mad 590 (C) & -- 'Sriram Gulabdas v. Board of Revenue, (M.P.), Nagpur', AIR 1954 Nag 1 (FB) (D) the Nagpur High Court held that the word 'judgment' in the corresponding phrase in Article 132(1) included any decision on a question at issue between the parties to any proceeding properly before the Court which finally determines the rights of the parties so far as the Court is concerned, and that a decision under Section 23(5) of the C. P. and Berar Sales Tax Act, 1947, or under Section 66(5) of the Indian Income-tax Act was a "judgment". With great respect we do not think these views to be well founded.

5. The phrase "judgment, decree or final order" is to be found in Sub-section (1) of Section 205 of the Government of India Act, 1935, which provided that, in the circumstances therein mentioned, an appeal would lie to the Federal Court "from any judgment, decree or final order" of a High Court; and the meaning of the terms used in that phrase has been judicially considered by the Federal Court in -- 'Kuppuswami Rao v. The King', AIR 1949 FC 1 (E) and -- 'Mohammad Amin Brothers Ltd. v. Dominion of India', AIR 1950 FC 77 (F).

In the former of these cases the Federal Court, in a judgment delivered by Kania, C. J., held that the word "judgment" in Section 205 of the Government of India Act, 1935, means; as in England, "the determination of the rights of the patties in the matter brought before the Court."

In 'Mohammad Amin Brothers' case (F)', the question was whether an appeal lay to the Federal Court from the decision of a Bench of the Calcutta High Court by which an order of a learned single Judge directing the Compulsory winding-up of the appellant company was set aside and the case sent back to the trial Court to be heard at a future date in accordance with the directions contained in the order.

The Federal Court held that the judgment of the appellate Bench was not a judgment or final order within the meaning of Section 205, as it did not dispose of the rights of the parties to the suit Dealing with the argument that if the order appealed against was not a final order it could still be regarded as a judgment and as such come within the purview of Section 205 of the Government of India Act, Mukherjea, J., delivering the judgment of the Court referred with approval to 'Kuppuswami Rao v. The King (E)', and said "If the order which is made in this case is an interlocutory order, the judgment must necessarily be held to be an interlocutory judgment and the collection of the words "judgment, decree or final order" in Section 205(1) of the Government of India Act makes it clear that no appeal is provided against an interlocutory judgment or order".

With great respect we agree with this statement of the law and we think it concludes the matter. A similar view as to the meaning to be given to the word "judgment" in Clause (1) of Ant 133 of the Constitution was taken by the Punjab High Court in -- "Pehlad Rai & Co. v. Commissioner of Income-tax', AIR 1952 Punj 299 (G) (although the report of that case erroneously states that the words used in Article 133(1) are "final judgment, decree or order"), and by the Bombay High Court in --'Jamnadas Prabhudas, Bombay v. Commissioned of Income-tax, Bombay City', AIR 1952 Bom 479 (H), where the question was exhaustively considered by Chagla, C.J.

In our opinion the expression judgment as used in Clause (1) of Article 133 means a final declaration or determination of the rights of the parties, and does not include a judgment given by the Court in a consultative or advisory capacity. It follows there fore that this application is incompetent, and it is dismissed but there will be no order as to costs.