

Commr. Of Income-Tax, U.P. And C.P. And ... vs I.D. Varshani on 11 November, 1952

Equivalent citations: AIR1953ALL414, AIR 1953 ALLAHABAD 414

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Bench: V. Bhargava

ORDER

1. On an application under Section 66 (1) of the Income-tax Act made by the Commissioner of Income-tax, U. P., C. P. and Berar, the Appellate Income-tax Tribunals Allahabad, referred to this Court a question of law for its decision on 16-12-1943. The assessee, Mr. I. D. Varshani, was an individual. While the reference was pending the assessee died and it is admitted that death took place on 10-12-1948. In the counter-affidavit filed on behalf of the three sons of the assessee detailed facts are given to show that the Income-tax Officer, Kanpur Circle, was informed of Mr. Varshani's death and in subsequent years the sons of the deceased were assessed to Income-tax. The reference was put up before a Bench of this Court for hearing on 13-9-1949, when Mr. S. N. Katju, learned counsel for the assessee, stated that his client had died on 10-12-1948. The Court directed that "the Commissioner of Income-tax should make an application within one month, giving the names of the legal representatives of the deceased to whom notice may be issued."

The Commissioner, however, did not furnish the information asked for with the result that the legal representatives of the deceased assessee could not be informed of the next date of hearing of the reference. The reference came up again before a Bench of this Court on 26-7-1950, when it passed the following order :

"The assessee died on 10-12-1948, and in spite of the fact that learned counsel for Income-tax Department was given time to bring the legal heirs of the assessee on record he has failed to do so. A point has been raised whether the reference has or has not abated. It is desirable that we should hear the heirs of the assessee on this point. Mr. Walter Dutt wants three weeks' time to make an application for bringing the heirs of the deceased on the record. The time prayed for is granted and the question as to whether or not the reference has abated will be gone into when that application is put up for hearing."

2. Before we proceed further we may mention that though the assessee had died on 10-12-1948, when the reference was put up before a Bench on 13-9-1949, nobody had contended that the reference had abated, nor did the Bench direct that a substitution application should be filed praying for the legal representatives of the deceased assessee to be brought on record. The direction given to the Commissioner of Income-tax was that he should, within one month, furnish the names of the legal representatives of the deceased to whom notice may be issued. Under Chapter 27, Rule 13 of

this Court the Registrar on receipt of a reference under Sub-section (1) or (2) of Section 66, Income-tax Act is required to give notice thereof to the parties. The Rules do not provide that the party which had applied for a reference, should take steps to have notices issued to the opposite party after the reference is made to this Court.

3. So far as we could find, there are no provisions either in the Income-tax Act or in the Rules made thereunder for bringing the legal representatives on the record, nor are there any rules providing for abatement of the reference in case the legal representatives are not so brought within a certain time. In other words, Order 22, C. P. C. has not been made applicable to a reference under Section 66, Income-tax Act. Section 37, Income-tax Act makes portions of the Civil P. C. applicable to proceedings before the Income-tax Officer, He has been given the right to enforce the attendance of any person and examine him on oath. He has also been given the right to compel the production of any document. He can also issue commissions for examination of witnesses etc. The same powers have been granted also to the Appellate Assistant Commissioner and the Tribunal. How a reference is to be dealt with after it is made under Section 66 is provided for in Sections 66(5) and 66A(1) of the Income-tax Act and all that they provide is that a reference shall be heard by a Bench of not less than two Judges. It may be said that since the sections provide for a hearing, it is expected that the Court would before passing final orders on the reference inform the parties interested and hear them if they so desire. Section 66(3), which dealt with appeals to His Majesty in Council and now deals with appeals to the Supreme Court, on the other hand, provides that the relevant provisions of the Civil P. C. are applicable to such applications. Order 22, Civil P. C, not having been made applicable and there being nothing either in the Income-tax Act or the Rules framed thereunder, it cannot be urged that the reference has abated by reason of the fact that the assessee has died.

4. Mr. S. N. Katju, on behalf of the legal representatives of the deceased assessee, has relied on the provisions of Articles 176 and 177, Limitation Act, and has urged that the Commissioner of Income-tax should have made an application within 90 days to bring the legal representatives on the record and not having done so, the application made on his behalf is belated and should be rejected.

5. As directed by a Bench of this Court on 26-7-1950, learned counsel for the Commissioner of Income-tax made an application on 11-8-1950, giving the names of the legal representatives of the deceased assessee and praying that notices be issued to them and they be brought on the record. Notices were duly issued and after service of the notices the application was put up before a learned single Judge on 30-1-1952. The learned Judge brought them on the record but only for the limited purpose of the decision of the question whether the reference has or has not abated. The order of the learned single Judge is as follows :

"The sole opposite party in the reference is dead. No application has been made for bringing on record the names of his legal representatives. The question whether the reference has abated or not was raised before the Bench hearing the reference and the Bench has postponed passing orders on that question. In order to decide the question, it ordered that the legal representatives of the deceased opposite party should be impleaded. Consequently, the applicant applied for bringing them on

record and a notice has gone to them and they have appeared through Mr. S. N. Katju. Now, it is to be decided whether the reference abated or not. Let the names of the three sons of the deceased opposite party be added as 'pro forma' opposite party in the reference and list the reference for orders before the Bench concerned. I make it clear that I have not ordered the names of the sons to be brought on record as legal representatives of the deceased opposite party. The name of the opposite party is still retained on the record and the names of the sons are added in the record as 'pro forma' opposite party, only for the purpose of deciding whether the reference has abated or not."

As a result of this order, we confined the arguments today to the question whether the reference can be deemed to have abated and whether the application made on 11-8-1950, could be said to be barred by limitation. We have already said that we find no provision either in the Income-tax Act or in the Rules making Order 22, C. P. C. applicable to a reference under Section 66, Income-tax Act. There can, therefore, be no question of abatement.

6. Articles 176 and 177, Limitation Act apply to the legal representatives of a deceased plaintiff or a deceased defendant, or the legal representatives of a deceased appellant or a deceased respondent. Even these two Articles cannot be said to be specifically applicable to an Income-tax reference under Section 66 or to the application made on 11-8-1950. It is urged by Mr. Das on behalf of the Commissioner of Income-tax that if any Article of the Limitation Act does apply it is the residuary Article 181, which provides for three years' limitation from the date when the right to apply accrues.

7. It is true that in case the assessee is dead and no one comes forward to represent him in this Court, this Court will be at a disadvantage as it will not have the benefit of hearing counsel for both parties. We can, if such a case arises, direct the Commissioner to supply to the Registrar the names and addresses of the legal representatives to enable the Registrar to issue fresh notices to them, and in case the Commissioner does not comply with the order within a reasonable time, the Court may be entitled to consider whether in the circumstances it will answer the reference at all, but in the absence of any law or any rule having the force of law it is not possible for us to hold that this reference had abated by reason of the Commissioner not having applied to bring the legal representatives of the deceased assessee on the record within 90 days of his death.

8. Mr. S. N. Katju, who had appeared for the assessee and now represents the legal representatives, has asked for ten days' time to take fresh instructions so that he may be able to argue the reference on the merits.

We give him the time prayed for and direct that the case may be listed after ten days.