

Commissioner Of Income-Tax vs Shamsher Jang Bahadur on 21 September, 1950

Equivalent citations: AIR1951ALL461, [1951]20ITR31(ALL), AIR 1951 ALLAHABAD 461

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is an application under Section 66 (3), Income-tax Act. An order of assessment was passed against the assessee by the Income-tax Officer of Moradabad, on 15-3-1945. An appeal against that order was filed by the assessee before the Appellate Assistant Commissioner who decided it on 28-11-1945. An appeal under Section 33, Income-tax Act, was filed before the Income-tax Appellate Tribunal.

2. The appeal involved consideration of several items about which the assessee had raised objections. The Tribunal dealt with each item separately. As regards the first item of Rs. 12,046 it held that the income from grazing fees was exempt from income-tax. As regards the next item of Rs. 403 the Tribunal said that this should be excluded and observed: "This income will, therefore, be deleted from the assessment." The Tribunal took up next the item of Rs. 2,173, which was interest on arrears of rent. It was of the opinion that this should not have been included in the assessment and said that this item will also be deleted. When it came to the next item it found the materials before it insufficient and asked the Income-tax Officer to make further investigations and make a report within three months of the receipt of its order dated 31-8-1946.

3. After the receipt of the Income-tax Officer's report, the Tribunal did not deal with the first three items mentioned above but dealt with other matters that were in dispute and finally held as follows: "The appeal partially succeeds and is partly allowed. The assessment will be modified in terms of this order." This order is dated 25-4-1947. The Income-tax Commissioner within sixty days of the date of service of notice of the order dated 25-4-1947, filed an application under Section 66 (1) that certain questions of law, which it was admitted did arise, should be referred to this Court for opinion. The question of law formulated by the Commissioner related, however, to an item about which the Appellate Tribunal had expressed its opinion in its order dated 31-8-1946. An objection was taken on behalf of the assessee that this application was barred by time, not having been filed within sixty days of the service of the order dated 31-8-1946. This objection found favour with the

Appellate Tribunal which dismissed the application as barred by time. It is against that order that this application was filed under Section 66 (3), Income-tax Act.

4. The point urged is that the order dated 31-8-1946, was not an order under Section 33 (4), Income-tax Act and the time must be reckoned from the date of the service of notice of the order dated 25-4-1947. Against the order of the Appellate Assistant Commissioner there was an appeal before the Appellate Tribunal. Section 33 (4) must be deemed to refer to an order by the Tribunal which disposes of the appeal against the order of the Appellate Assistant Commissioner. When, as in this case, the Appellate Tribunal expresses its opinion on certain points argued before it and calls for further material to decide the rest of the appeal and passes the final order after hearing the arguments of those points, the first order, dated 31-8-1946, can, in no sense, be deemed to be an order under Section 33 (4) disposing of the appeal. The appeal was still pending before the Appellate Tribunal and it was not finally disposed of till 25-4-1947. In that view of the matter, the opinion of the Appellate Tribunal was clearly wrong and the application was within time as limitation had to be calculated from the date of the service of notice of the order dated 25-4-1947. It is admitted that from that date the application was within time.

5. We, therefore, grant this application, and require the Tribunal to treat the application as made within the time allowed under Sub-section (1), Section 66, Income-tax Act. The department will be entitled to its costs which we assess at Rs. 100.