

Mishrimal Gulab Chand vs The Commissioner Of Income-Tax on 2 May, 1950

Equivalent citations: AIR1952ALL548, [1951]20ITR91(ALL)

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Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This application was filed on 25-1-1950 and was for leave to appeal to the Federal Court under Section 66A (a), Income-tax Act. There is an office report that the application was one day beyond time. It does not appear that there is any period fixed, under the Income-tax Act, for an application for leave to appeal under Section 66A (2). Section 66A (3) is as follows :

"The provisions of the Code of Civil Procedure, 1908 (V [5] of 1908), relating to appeals to His Majesty in Council shall, go far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court."

It is by reason of this provision that it has been assumed that Article 179, Limitation Act, is applicable, which provides for a period of ninety days for an application under the Code of Civil Procedure, 1908, for leave to appeal to His Majesty in Council, now to the Supreme Court. Strictly speaking, Article 179, Limitation Act, does not seem to be applicable, but that is the provision which is always applied in this Court and we find from the case of Commr. of Income-tax, Bengal v. Shaw Wallace & Co., 59 Cal. 251, that the same Article is applied in Calcutta also. If Art. 179 is applicable then the period of limitation is ninety days and the question arises whether the time taken in obtaining a certified copy of the order of this Court can be deducted from this period of ninety days. The application for a certified copy of the judgment was made on 27-10-1949, and the copy was ready on 16-11-1949. Section 67A, Income-tax Act provides that "In computing the period of limitation prescribed for an appeal under this Act or for an application under Section 66, the date on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded."

Even this provision, strictly speaking, is not applicable as the case before us is not an appeal under the Income-tax Act, nor is it an application under Section 66. It purports to be an application under Section 66A (2) for a certificate that the case is a fit one for appeal to "The Federal Court." To such a case, the Calcutta High Court has held, in the case mentioned above, that Section 12, Limitation Act,

is applicable and the time requisite for obtaining a copy of the judgment has to be deducted. In *Gurmukh Rai v. Secy. of State*, 57 ALL. 306, which was an application for leave to appeal to His Majesty in Council from an order passed by this Court, on a reference under Section 66, Income-tax Act, it was held that under Section 12 (2), Limitation Act, the assessee was entitled to the exclusion of the time requisite for obtaining a copy of the order appealed from, but not of the whole time requisite for obtaining the copy of the judgment that was pronounced. Be that as it may, as we are dismissing the application on the ground that it is not a fit case for appeal, we need not consider further the question of limitation.

2. This was a reference by the Appellate Tribunal and two questions of law were referred to us. The questions were as follows :

"1. Whether in the circumstances of the case the sum of Rs. 25,391 should have been ignored in determining the assessee's income from business in the previous year relevant to the assessment year 1944-46, or whether that sum should have been deducted from the assessee's income from business in the previous year relevant to the assessment year 1944 45 ?

2. Whether the first proviso to Section 24 (1), Income-tax Act, could apply to assessments made for the year 1944-45 ?"

The answer to the second question was in favour of the assessee. The answer to the first question was that the sum of Rs. 25,391, which was the loss sustained by the assessee in business carried on by him in an Indian State, should be ignored in determining the assessee's income from business in the previous year relevant to the assessment year 1944-45.

3. Section 66A (2) requires that the High Court should certify that the case is a fit one for appeal. The words are exactly similar to the language of Section 109(c), Civil P. C., where the High Court is required to certify, where the valuation is not above Rs. 10,000, that the case is a fit one for appeal to "His Majesty in Council." In a case coming under Section 109(c), Civil P. C., their Lordships of the Judicial Committee have held in *Radha Krishna Das v. Bai Krishna Chand*, 28 Ind. App. 182, that the mere fact that the case involved a question of law was not enough to justify a certificate on the ground of fitness. The matter again came up for decision before their Lordships of the Judicial Committee in *Radhakrishna Ayyar v. Swaminatha Ayyar*, 48 Ind. App. 31 and after having discussed *Radha Krishna Das'* case and other cases their Lordships said that :

"It is not necessary to examine them again for the principle which they establish is plain and cannot be questioned. That principle is this ; that as an initial condition to appeal to His Majesty in Council, it is essential that the petitioners should satisfy the Court that the subject matter of the suit is Rs. 10,000, and in addition that in certain cases there should be added some substantial question of law. This does not cover the whole grounds of appeal, because it is plain that there may be certain cases in which it is impossible to define in money value the exact character of the dispute ; there are questions, as for example, those relating to religious rights and ceremonies, to caste

and family rights, or such matters as the reduction of the capital of companies as well as questions of wide public importance in which the subject-matter in dispute cannot be reduced into actual terms of money."

To satisfy the requirements of Section 109(c), Civil P. C., or Section 66A (2), Income-tax Act, we shall have to be satisfied that the case raises questions of wide public importance." If the view given by this Court is correct, then in all cases of assessment after the year 1944, when Section 24, Income-tax Act, was amended, the assessment will have to be made in accordance with the provisions of the amended section. Our decision can only apply to cases prior to 1944. Moreover, after the merger of the Indian States no question similar to the question that arose before us can arise. The only point which we had seriously to consider in considering the question whether the case should or should not be certified to be a fit case was the fact that there appeared to be some difference of opinion between the views expressed in the decision of this Court and in a case decided by the Bombay High Court in the year 1948 in Commissioner of Income-tax, Bombay v. Murlidhar, 1948-16 I.T.R. 146 (Bom.). Section 14 (2). (c) is not mentioned in the judgment of the Bombay High Court. It is only towards the end of the judgment that it has been said that all businesses wherever carried on constitute one head which falls under Section 10 of the Act and in order to determine what are the profits and gains under Section 10 an assessee is entitled to show all his profits and set off against these profits all losses incurred by him under the same head. We have, on the other hand, expressed an opinion that if a business is carried on outside British India, so that the profits of that business are not taxable by reason of the provisions of Section 14 (2)(c), then the profits or losses of that business cannot be taken into account under Section 10, Income-tax Act. The point does not seem to have been argued on the lines on which it was argued before us and there does not appear to be any other case on the point.

4. We might mention that in every Income-tax reference it is only on questions of law that the Department wants the opinion of this Court, and every answer that we give in a reference is likely to govern not only the case in which the reference has been made, but all cases on similar facts that come up before the Income-tax Department. To hold, therefore, that leave should be granted wherever there is a question of law and wherever there is a possibility of there being any other similar case would result in leave being granted almost as a matter of course in every Income-tax reference. We consider that the same principles, which govern applications for leave to appeal under Section 109(c), Civil P. C., should govern an application for leave to appeal under Section 66A (2), Income-tax Act, and unless the question raised is of 'wide public importance' the case should not be certified as a fit case for appeal. We cannot certify that this is a fit case which raises a question of wide public importance.

5. The application must fail and it is dismissed. The Department is entitled to its cost which we assess it at a sum of Rs. 200.