

Lalji Haridas vs Income-Tax Officer And Anr. on 25 July, 1961

Equivalent citations: [1961]43ITR387(SC)

Bench: J.C. Shah, M. Hidayatullah, P.B. Gajendragadkar, Raghuber Dayal

JUDGMENT

Gajendragadkar, J.

1. These two appeals arise out of two writ petitions filed by the two appellants who are brothers, Lalji Haridas and Chhotalal Haridas, against the respective Income-tax Officers in their areas. Lalji Haridas, who is a resident of Jamnagar, filed Special Civil Application No. 132 of 1957 in the High Court of Judicature, Bombay, at Rajkot, challenging the validity of the notices issued against him by the Income-tax Officer, Ward A, at Jamnagar under section 23(2) of the Indian Income-tax Act, claiming appropriate writ or order restraining the said Income-tax Officer from taking any further proceedings under the said notices. This petition was summarily dismissed by the High Court and the application made by Lalji for a certificate to file an appeal in this court was also rejected. Thereupon he applied for and obtained special leave from this court. It is with special leave granted to him that Lalji has brought his appeal before this court.

2. Chhotalal, who is a resident of Bombay, filed Special Civil Application No. 374 of 1960 in the High Court at Bombay, challenging the validity of the notices issued against him by the Fourth Income-tax Officer, Ward G, and claiming appropriate writ or order restraining the said officer from taking any further proceedings under the said notices. This application was summarily dismissed by the High Court and Chhotalal's request for a certificate was likewise rejected. Chhotalal then applied for and obtained special leave from this court, and that is how his appeal has come to this court.

3. In the notices issued by the respective Income-tax Officers against the two appellants an enquiry is proposed to be held in regard to the liability to pay tax on the alleged total income of Rs. 97,00,000 received by either or both of the two appellants. This income represents the remittances of monies through the Indian Overseas Bank Ltd., Pondicherry, and the United Commercial Bank Ltd., Pondicherry, and had accrued during the assessment year 1952-53 respectively. Since both the appellants challenged the validity of the proceedings commenced against them in their writ petitions the present appeals can be conveniently treated as companion matters and have been accordingly placed for hearing together as such. We writ first deal with the appeal preferred by Lalji.

4. It appears that the appellant, Lalji, filed return of his income for the year 1952-53 under section 22 of the Act. Later, the Income-tax Officer, Ward B, Jamnagar, sent the file of the appellant to the Fourth Income-tax Officer, Ward G, Bombay. On receiving the file the Bombay officer summoned

the appellant his amounts and to attend in person in connection with the enquiry of the assessment proceedings for the year 1952-53, under section 37 of the Act. The appellant objected to the validity of the transfer of his file to Bombay and disputed the jurisdiction of the Bombay officer to deal with the matter. On September 30, 1953, the Central Board of Revenue passed an order under section 5(2) of the Act directing that the Commissioner of Income-tax(Central), Bombay, shall perform his functions in respect of persons including the appellant. Subsequently, on October 7, 1953, the Commissioner purporting to exercise powers under section 5(5) of the Act assigned the appellant's case to the Income-tax Officer, Section IV (Central) Bombay, and directed that the said officer shall perform the functions of an Income-tax Officer in respect of the case so assigned. The appellant attempted to persuade the Central Board to reconsider its order but his attempt failed. Then he filed Civil Suit No. 226 of 1954 in which he claimed an injunction restraining the said Income-tax Officer from proceeding with the assessment. This claim was based on the allegation that the order of transfer passed by the Central Board of Revenue was illegal and without jurisdiction. An order of interim injunction passed in the suit naturally halted the proceedings before the Income-tax Officer. On May 21, 1956, the Central Board cancelled its earlier order of transfer with the result that the case of the appellant was retransferred to the Income-tax Officer, Ward A, Jamnagar Circle. On receiving the papers the said officer, who is the first respondent in the present proceedings, issued a notice on January 9, 1957, under section 23(2) requesting the appellant to attend before him on January 17, 1957. Even this proceeding was stayed by the civil court at the instance of the appellant but the interim injunction issued in that behalf was subsequently dissolved on March 1, 1957. The first respondent then issued another notice on February 23, 1957, fixing March 4, 1957, as the date of hearing. The appellant asked for an adjournment but the adjournment was refused, and on March 4, 1957, an ex parte order of assessment was passed. This order showed that the officer took the view that the appellant was liable to pay tax on the total income of Rs. 93,01,117 and that the amount of tax was determined at Rs. 87,93,958-13-0. An application made by the appellant to the said officer for reopening the assessment under section 27 was dismissed. The appellant then took the matter before the Appellant Assistant Commissioner. The appellate authority allowed the appeals preferred by the appellant against the ex parte order determining the liability of the appellant to pay the tax and against the refusal to reopen the issue. As a result of the appellate order the matter went back to the first respondent for a fresh hearing and that led to the issue of the notice which has given rise to the present writ proceedings.

5. The validity of the notice issued against the appellant is sought to be challenged by Mr. S. T. Desai on two grounds. He contends that the assessment proceedings commenced against the appellant are barred by limitation under section 34(3) of the Act and he argues that the initiation of the said proceedings is without jurisdiction and as such illegal. The question of limitation can and ought to be raised by the appellant before the Income-tax Officer; that is not a point which can be legitimately agitated in writ proceedings. We, therefore, do not propose to deal with this point. If the appellant is so advised he may raise this point before the first respondent, and we have no doubt that if it is so raised the first respondent will deal with it in accordance with law.

6. The question of jurisdiction raised by the appellant is, in one opinion, not well founded. It is significant that the case for the appellant is that the order of transfer passed by the Central Board on September 30, 1953, was illegal and unauthorised. Indeed, in the proceedings before us the validity

of the said order is not sought to be supported even by the respondent so that if the said order was invalid there can be no doubt that the subsequent order passed by the Commissioner of Income-tax (Central), Bombay, assigning the case to the Income-tax Officer, Section IV (Central), Bombay, would itself be invalid. It is obvious that this latter order has been passed by the Commissioner in pursuance of the authority conferred on him by the earlier order passed by the Central Board itself. The sequence of the orders leaves no doubt on the point. Besides, it is not disputed that the Commissioner of Income-tax (Central), Bombay, would otherwise have no jurisdiction to deal with income-tax proceedings pending again against the appellant at Jamnagar. Therefore, if the original order of the Central Board is invalid, the assignment of the appellants case to the Income-tax Officer, Section IV(Central), Bombay, is also invalid, and so the matter will have to be dealt with by the first respondent who under section 64 of the Act has jurisdiction to deal with it.

7. Mr. Desai faintly attempted to argue that the transfer of the case papers in regard to the appellant's assessment for the year 1952-53 had been validly effected by what he described as a notification passed in that behalf. No such notification has, however, been produced in the present proceedings and indeed the appellant's case throughout has been that the Income-tax Officer, Ward B, Jamnagar, transferred the said papers, "without authority, illegally and without any intimation to the appellant and in contravention of section 64 of the Act." It is unnecessary to enquire why and how this case file was sent from Jamnagar to Bombay. It is patent that the transfer of the case file to Bombay by the Income-tax Officer, Ward B, Jamnagar, was in law wholly invalid and unauthorised. Therefore, it would be idle for the appellant to contend that the proceedings had been validly transferred to any Income-tax Officer in Bombay. That being so, it follows that the proceedings are properly pending before the first respondent and the notice issued by him is valid and legal. In our opinion, therefore, there is no substance in the question of jurisdiction raised by the appellant.

8. That takes us to the appeal preferred by Chhotalal. As we have already mentioned Chhotalal is a resident of Bombay and respondent No. 1 is the Fourth Income-tax Officer, Ward G, at Bombay. It is common ground that respondent No. 1 had at the relevant time jurisdiction under the Act to assessee the appellant, Chhotalal. As ex parte order was passed against the appellant for the assessment year 1952-53, on March 30, 1957, by the Seventh Income-tax Officer, Ward G, Bombay, on the finding that the remittances in question constituted the income of the appellant from undisclosed business and other source during the assessment year. This ex parte order was challenged by the appellant by preferring an appeal before the Appellate Assistant Commissioner. The appellate authority allowed the appellant's appeal and set aside the ex parte order on the ground that there was no service of notice on the appellant as required by law. The matter was accordingly remitted to the Income-tax Officer for a fresh assessment. Thereupon the impugned notice was served on the appellant under section 34 of the Act on February 25, 1959.

9. The main argument which is urged by Mr. Nambiar in support of this appeal is that respondent No. 1, the Income-tax Officer, who has issued the impugned notice, has no jurisdiction to assess the appellant for the income in question, because he contends that even according to respondent No. 1 the said proposed assessment would be in the nature of a precautionary or protective assessment, and Mr. Nambiar's case is that this concept of a precautionary or protective assessment is not recognized by the Act and as such any attempt to levy such assessment would be illegal. In support

of this argument Mr. Nambiar strongly relied on the finding recorded against the appellant's brother, Lalji, in the ex parte assessment order which had originally been passed against him. It is no doubt true that the said ex parte order had held that Lalji was liable to pay the tax on the amount of income in question; but the said order has been subsequently set aside, and, as we have already seen, fresh proceedings against Lalji have been commenced at Jamnagar. Mr. Nambiar also relied on the admission made by the respondent in his statement of the case before this court, and he contended that the respondent himself seems to concede that the assessment proposed to be made against the appellant is no more than precautionary. It is true that paragraph 3 of the statement avers that "steps are being taken against the appellant for taxation of income in his hands only as a precautionary measures against the eventuality of its being finally held that the income is not liable to be taxed in his brothers hands", and it was added that "the appellants contention that such a procedure is not warranted under the Act is entirely untenable"; but in appreciating the effect of this statement it would be necessary to consider the other relevant statements made by the respondent in his statement of the case. In paragraph 4, for instance, it is added that until the question of liability to pay tax in respect of the income in question is finally determined it may not be possible to safely predicate that it is the income of one and not of the other, and the respondents case appears to be that in such circumstances protective assessment have to be made so that the income may not escape taxation altogether. In other words, the respondents case clearly is that the notices issued against the two brothers by their respective Income-tax Officers are intended to determine who is responsible to pay tax for the income in question; now though Mr. Nambiar wanted to argue that protective or precautionary assessment of tax is not justified by any of the provisions of the Act he did not seriously contest the position that at the initial state it would be open to the income-tax authorities to determine by proper proceedings who is in fact responsible for the payment of tax, and that is all that is being done at the present stage. In cases where it appears to the income-tax authorities that certain income has been received during the relevant assessment year but it is not clear who has received that income and prima facie it appears that the income may have been received either by A or B or by both together, it would be open to the relevant income-tax authorities to determine the said question by taking appropriate proceedings both against A and B. That being so, we do not think that Mr. Nambiar would be justified in resisting the enquiry which is proposed to be held by respondent No. 1 in pursuance of the impugned notice issued by him against the appellant. Under these circumstances we do not propose to deal with the point of law sought to be raised by Mr. Nambiar.

10. We would, however, like to add one direction in fairness to the appellants. The proceedings taken against both the appellants should continue and should be dealt with expeditiously having regard to the fact that the matter is fairly old. In the proceedings taken against Lalji the Income-tax Officer should make an exhaustive enquiry and determine the question as to whether Lalji is liable to pay the tax on the income in question. All objections which Lalji may have to raise against his alleged liability would undoubtedly have to be considered in the said proceedings. Proceedings against Chhotalal may also be taken by the Income-tax Officer and continued and concluded, but until the proceedings against Lalji are finally determined no assessment order should be passed in the proceedings taken against Chhotalal. If in the proceedings taken against Lalji it is finally decided that it is Lalji who is responsible to pay tax for the income in question it may not become necessary to make any order against Chhotalal.

11. In the result the appeals fail and are dismissed. There would be no order as to costs.

12. Appeals dismissed.