Commissioner Of Income-Tax, West ... vs Kamal Singh Rampuria on 12 February, 1969

Equivalent citations: [1970]75ITR157(SC)

Author: V. Ramaswami

Bench: A.N. Grover, J.C. Shah, V. Ramaswami

JUDGMENT

V. Ramaswami, J.

1. This appeal is brought by a certificate on behalf of the Commissioner of Income-tax from the judgment of the Calcutta High Court dated 12th September, 1963, in Income-tax Reference No. 81 of 1960 (Appendix).

2. The assessee, Kamal Singh Rampuria, was born in December, 1935. His mother died within a week after his birth. Before her death she had executed a will by which she disposed of Rs. 5,00,000 received by her as a gift previously from her husband, Halash Chand Rampuria. She bequeathed by this will Rs. 1,00,000 to her daughter, Rs. 1,00,000 made up of various sums to charities and the balance of Rs. 3,00,000 was bequeathed to her son, Kamal Singh Rampuria. This sum of Rs. 3,00,000 was invested by the assessee in the firm of M/s. Hazarimal Hiralal and earned interest. Besides, the assessee's mother bequeathed to the assessee 1/6th share held by her in M/s. Bikaner Trading Company, The assessee, a minor, was admitted to the benefits of the partnership in respect of the said share. In the several returns made during his minority by his father, Halash Chand Rampuria, the income from the firm was shown in the son's account till the year 1944-45. The interest payments to the assessee though shown in his account were assessed against the father under Section 16(3)(i) of the Income-tax Act, 1922 (hereinafter called the " Act "). Halash Chand Rampuria was dissatisfied with the order of the Income-tax Officer in dealing with the interest income for the year 1940-41 and the matter was ultimately referred to the High Court in a reference under Section 66(1) of the Act. In respect of the assessment year 1945-46 the return of the income of the minor assessee submitted by the father included the share income from M/s. Bikaner Trading Co. but the interest income was shown in the account of the father. The share income alone was therefore assessed on February 28, 1960. About two years later, the High Court decided the reference for the assessment year 1940-41 and held that the interest income could not be assessed in the hands of the father as Section 16(3) of the Act had no application. The Income-tax Officer thereafter issued a notice under Section 34 of the Act to the assessee in March, 1954, by which time the assessee had attained majority. The assessment was duly completed on 25th March, 1955. No

objection appears to have been taken to the application of Section 34 before the Income-tax Officer but the objection was taken before the Appellate Assistant Commissioner who repelled it and held that the assessment under Section 34 of the Act made by the Income-tax Officer was valid. The assessee appealed to the Tribunal and contended that the Income-tax Officer was wrong in starting proceedings under Section 34. It was contended that the Income-tax Officer knew that the income belonged to the assessee but had chosen nevertheless to assess it in the hands of the father and having done so it was not open to him after the decision of the High Court to initiate proceedings under Section 34. The Tribunal rejected the argument of the assessee and held that the assessee had not discharged his duty of returning his income at the proper time, and so, the provisions of Section 34(1)(a) of the Act applied. At the instance of the assessee the Appellate Tribunal referred the following question of law to the High Court under Section 66(1) of the Act :

> Whether, on the facts and in the circumstances of the case, the assessment made under Section 34(1)(a) of the Income-tax Act was justified in law ?

4. By its judgment dated 12th September, 1963, the High Court answered the question in the negative and in favour of the assessee.

5. On behalf of the appellant it was pointed out that the basis of the reasoning of the High Court was that there was no evidence to support the finding of the Tribunal that the Income-tax Officer had reason to believe that there was any omission on the part of the assessee to disclose fully and truly all material facts necessary for the assessment year 1945-46. It was argued that in doing so, the High Court answered a question entirely different from the one referred to it and therefore exceeded the jurisdiction conferred on it by Section 66(1) of the Act. In other words, the argument was that, in the absence of a question whether the finding of the Tribunal was based on no evidence or that it was perverse, the High Court exceeded its jurisdiction in examining for itself the materials in support of the Tribunal's finding and acting as a court of appeal. In our opinion, there is justification for the argument pat forward on behalf of "the appellant. The relevant portion of the order of the Appellate Tribunal reads as follows:

> For the assessment year 1945-46 with which we are now concerned, the old procedure of returning the income from the Bikaner Trading Company only was followed and the assessment was completed on April 30, 1946, the interest income being included in the hands of the father on February 28, 1950. No doubt, at the inception, the Income-tax Officer had put the asscssee's guardian on the wrong end by taxing incorrectly interest income in his hands. So, to an extent, the assessee was justified in not returning this income, but in so far as the father had not chosen to take the assessment made on him but was contesting it by taking proceedings under Section 66(1), he hoped that the assessment made on him would be cancelled. At any rate, when the reference application was made to the High Court then at least a duty lay upon him as guardian of the minor to return the income from Hazarimal Hiralal in the return of the assessee. Not having done so, he must be said to have deliberately

kept back the source of income from the department.

6. The relevant passage of the judgment of the High Court states See Appendix infra pp. 165-66.:

...it appears to us that the Income-tax Officer could have no reason, on the materials before him, to believe that there had been any omission to disclose material facts as stated before....

7. On the background of the facts stated above, we are of opinion that the finding made by the Tribunal in this regard was not justifiable. It is undoubtedly true that the finding of fact made by the Tribunal cannot be interfered with by this Court, but we consider that a finding on a question of fact regarding the aforesaid matter is open to attack under Section 66 of the Act as erroneous in law, as we find that there is no evidence to support it, and it is perverse as it has been reached without due consideration of the several matters discussed above for such a determination.

8. We are therefore of opinion that there was no non-disclosure of material facts truly and fully as contended on behalf of the department, and therefore the question must be answered in the negative."

9. It is well established that the High Court is not a court of appeal in a reference under Section 66 of the Act and it is not open to the High Court in such a reference to embark upon a reappraisal of the evidence and to arrive at findings of fact contrary to those of the Appellate Tribunal. It is the duty of the High Court to confine itself to the facts as found by the Appellate Tribunal and answer the question of law in the setting and context of those facts. It is true that the finding of fact will be defective in law if there is no evidence to support it or if the finding is unreasonable or perverse. But in the hearing of a reference under Section 66 of the Act it is not open to the assessee to challenge such a finding of fact unless be has applied for a reference of the specific question under Section 66(1). In India Cements Ltd. v. Commissioner of Income-tax it was pointed out by this Court that in a reference the High Court must accept the findings of facts reached by the Appellate Tribunal and it is for the party who applied for a reference to challenge those findings of fact, first, by an application under Section 66(1). If the party concerned has failed to file an application under Section 66(1) expressly raising the question about the validity of the findings of fact, he is not entitled to urge before the High Court that the finding was vitiated for any reason. The same view has been expressed by this Court in a later case in Commissioner of Income-tax v. Sri Meenakshi Mills Ltd. . We are therefore of the opinion that the High Court was in error in reappraising the evidence before the Appellate Tribunal and in interfering with its finding that the Income-tax Officer had no reason to believe that there was an omission on the part of the assessee to disclose fully and truly all the material facts necessary for the assessment.

10. For these reasons, we hold that the judgment of the High Court dated 12th September, 1963, should be set aside and the question referred by the Appellate Tribunal should be answered in the affirmative and against the assessee. The appeal is accordingly allowed with costs.