Dhakeswar1 Cotton Mills Ltd vs Commissioner Of Income Tax,West Bengal on 29 October, 1954

Equivalent citations: 1955 AIR 65, 1955 SCR (1) 941, AIR 1955 SUPREME COURT 65, AIR 1955 SUPREME COURT 154

Author: Mehar Chand Mahajan

Bench: Mehar Chand Mahajan, Ghulam Hasan, Natwarlal H. Bhagwati

PETITIONER:
DHAKESWAR1 COTTON MILLS LTD.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX,WEST BENGAL

DATE OF JUDGMENT:
29/10/1954

BENCH:
MAHAJAN, MEHAR CHAND (CJ)
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MAHAJAN, MEHAR CHAND (CJ)
DAS, SUDHI RANJAN
HASAN, GHULAM
BHAGWATI, NATWARLAL H.
AIYYAR, T.L. VENKATARAMA

CITATION:
1955 AIR 65 1955 SCR (1) 941
CITATOR INFO :

F	1955 SC 154	(1,2)
R	1955 SC 170	(20)
R	1957 SC 78	(8)
R	1957 SC 810	(4,6,8,9)
D	1959 SC 248	(3)
D	1959 SC 742	(5)
R	1959 SC1238	(27)
R	1959 SC1252	(14)
R	1959 SC1295	(14)
D	1960 SC 729	(4,7,9)
D	1961 SC1708	(9,11,15,17)
D	1962 SC1323	(2,6,7,8)
E	1963 SC 491	(2)
R	1963 SC 835	(4)
R	1968 SC1461	(10)
RF	1977 SC1627	(12)

ACT:
Constitution of India, Art. 136-Appeal by Special Leave-Supreme Court's power-Indian Income-tax Act (XI of 1922), s. 23(3)-Assessment when invalid.

HEADNOTE:
It is not possible to define with any precision the limitations of the powers conferred on the Supreme Court by Art. 136 of the Constitution. This is an overriding and exceptional power and should be exercised sparingly and with caution and only in special and extraordinary situation. Beyond this no set formula, or rule can stand in the way of or fetter the exercise of the power conferred on the Supreme Court under Art. 136 of the Constitution. Sufficient safeguard and guarantee for the exercise of this power lie in the trust reposed by the Constitution in the wisdom and good sense of judges of the Supreme Court. This power is not hedged in by technical hurdles of any kind when it is called in aid against any arbitrary adjudication or for advancing the cause of justice or for giving a fair deal to a litigant so that in justice may not be perpetrated or perpetuated. Conclusiveness or finality given to any decision by any domestic law cannot dater the Supreme Court from exercising the power conferred under Art. 136 of the Constitution.
The powers given to the Income-tax Officer under s. 23(3) of the Indian Income-tax Act, 1922, however wide, do not entitle him to base the assessment on pure guess without reference to any evidence or material. An assessment under 9. 23(3) of the Act cannot be made only on bare suspcion. An assessment so made without disclosing to the assessee the information supplied by the departmental representative and without giving any opportunity to the assessee to rebut the information so supplied and declining to take into consideration all materials which the assesses wanted to produce in support of his case constitutes a violation of the fundamental rules of justice and calls for the powers under Art. 136 of the Constitution.
Seth Gurmukh Singh v. Commissioner of Income-tax, Punjab (1944 I.T.R. 393) approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 217 of 1953. Appeal from the Judgment and Order dated the. 16th day of January, 1950, of the Income-tax Appellate Tribunal, Calcutta in Income-tax Appeal No. 4658 of 1948-49 and E.P.T.A. No. 1137 of 1948-49.

N. C. Chatterjee and Veda Vyas, (S. K. Kapoor and Ganpat Rai, with them) for the appellant.

C. K. Daphtary, Solicitor-General for India (G. N. Joshi, with him) for the respondent.

1954. October 29. The-Judgment of the Court was delivered by MEHR CHAND MAHAJAN C.J.-The appellant is a public limited joint stock company incorporated under the Indian Companies Act, 1915, with its registered office at Calcutta. It carries on the business of manufacture and sale of cotton yarn and piece-goods. On the 28th of July, 1944, the Income-tax Officer issued a notice to it under section 22(2) of the Indian Income-tax Act calling upon it to file the return of its income for the assessment year 1944-45 (account year being 1943-44). Before the expiry of the due date for filing the return the account books of the appellant company together with the documents relevant to the accounts, were taken into custody by the Sub-Divisional Officer, Narayanganj and it is alleged that these remained in the custody of the court of the Sub-Divisional Magistrate till January, 1950, when they were handed back to the appellant. In this situation the assessee pleaded for extension of time to furnish the return. This request was refused, and a show cause notice was issued under section 28(3) of the Act calling upon the appellant company why penalty should not be imposed upon it for its failure to file the return. An officer of the company appeared before the Income-tax Officer and explained the cause for this default. In order to, ascertain whether the explanation furnished by the assessee was genuine, the Income-tax Officer made inquiries from the court concerned about this matter. He also made a request to the court to allow him, access to the books of account. The court, however, neither acceded to the demand that books of account be made available to the assesse nor did it permit the Income-tax Officer to have access to them. The Income-tax Officer having thus satisfied himself about ,the genuineness of the assessee's explanation, condoned the default in filing the return and dropped the proceedings taken against the company under section 28(3) of the Act. It seems that no further action in the matter was taken by the department till the year 1947. During that year the company requested the department toreador the proceedings. The proceedings having been revived the appellant company furnished the return of its income for the assessment year 1944-45 on the 16th March, 1948. This return, however, was not a complete document as without the assistance of the books the profits could not be computed according to the ,provisions of law. On receipt of the return the Income-tax Officer issued a notice under section 23(2) of the Act calling upon the company to supply further information on a number of points and to prepare certain statements indicated in the notice. This requisition had to be complied with by the 19th March, 1948. On that date the Chief Accounts Officer of the company appeared before the Income-tax Officer and asked for further time till the middle of the following week for furnishing the requisite particulars. This request was, however, refused -and assessment was completed on the 20th March, 1948. The excess profits assessment was also made final on the 23rd March, 1948. The relevant part of the assessment order is in these terms:-

> "From the point of view of profits, 1943 was a very good year, if not the best, for all cotton mills. Expenses on cotton and fuel shows that production was undoubtedly higher whereas it is found that the gross profit disclosed by this company is low. I conclude that full amount of sales have not been accounted for. It is expected that actually the- rate of gross profit should have been higher this year. In view of the

> higher costs of establishment, I take it that the rate of about 40%, i.e., near about the rate disclosed in 1942 accounts, should have been maintained. I add back the Rs. 36 lakhs for unaccounted sales".

It may be mentioned that in the return the company had disclosed a gross :profit of 28 per cent,. on sales amounting to Rs. 1,78,96,122. The total amount of sales in the year 1942 was of the amount of Rs. 1, 15,69,582, disclosing a gross profit of 41 percent. The establishment expenses, however, during that year -were in the sum of Rs. 15,94,101, while during the accounting year relevant to the year under assessment these had gone up to Rs. 34,74,735 on account of labour troubles. A number of other causes were mentioned by the assessee for the low rate of profit during the relevant period; but the Income-tax Officer took no notice of them. On appeal this order was upheld by the Appellate Assistant Commissioner. The assessee then appealed to the Tribunal against these decisions. What happened before the Tribunal may well be stated in terms of the Tribunal's order itself. 'this is what is mentioned in the judgment of the Tribunal:-

> "At the end of the hearing of this appeal on 25th of November, 1949, the Income-tax Appellate Tribunal requested the departmental representative to produce for the examination of the Income-tax Appellate Tribunal the gross profit rates shown or assessed in the cases of other similar cotton mills. The departmental representative wanted 3/4 days' time to collect information on this point. On this the appellant also wanted to be allowed to produce information regarding the gross profit rates shown or assessed by other similar cotton mills, and he was also allowed to produce information on the point. On or about the 29th November the counsel for the appellant requested that he should be allowed time till Saturday the 3rd of December to file the above information and time for this purpose was allowed to him. On the 3rd December Mr. Banerjee the appellant's counsel saw the Account. ant Member in his chamber and wanted to produce written arguments and a trunk full of books and papers in support of his case. Mr. Banerjee was told that the arguments in the case had finished on the 25th and he was allowed time only to supply to the court the gross profit rates shown or assessed in the cases of other similar cotton mills. He was told that it was pot fair to the other side to take notice of any additional evidence or record at that stage and his trunk of books and papers was returned to him. During the discussion of Mr. Banerjee with the Accountant Member Mr. Banerjee produced a report' showing that the gross profit rates of some mills in Bengal on the average amounted to 23 per cent. In the statement showing 23 per cent. gross profit rates there was another item called 'Pool profit' which was bigger than the gross profits rate. Mr. Banerjee was asked to explain what this word 'Pool profit' meant but he had no information on this point..... For want of this information we are afraid it is not possible for us to attach a great deal of importance to the gross profit percentage of 23 per cent. mentioned in the books produced by Mr. Banerjee.
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> Mr. Banerjee during this discussion further produced a book showing the wastage expected. In that book certain quality of cotton had been mentioned and it was said that wastage of 34 per cent. was normal. In the case of the assessee he has shown a

wastage of 9 per cent. in 1942, 26 per cent. in 1943 and 19 per cent.' in 1944. The figure of 34 per cent. shown in that book would therefore seem to refer to a particular quality of cotton very much inferior to the cotton generally used by the appellant. The department's main case on the question of wastage is based on the appellant's own books according to which his wastage in the year under review amounted to three times the wastage in the year previous. In the light of all this information it appears to us that the Income-tax Officer was justified in making a substantial addition to the gross profit shown by the appellant. Coming to the question of what the amount of addition should be the departmental representative has on our request filed a number of cases of other cotton mills which show a gross profit rates varying between 49 per cent. and 22 per cent. and in one case even 13 per cent. has been shown..... In the face of all the above facts it appears to us that the Income-tax Officer was justified in coming to the conclusion that all sales had not been brought into the books. We have, however, considered all facts relevant to this case and are of the opinion that the addition to the sales should be reduced from Rs. 36 lakhs made by the Income-tax Officer to Rs. 16 lakhs Which would reduce the gross profit rate to about 35 per cent.

The sum and substance of these decisions is that the Income- tax Officer estimated the gross profit on sales at 40 per cent. by a pure guess, while the Tribunal reduced it to 35 per cent. by applying some other rule of thumb. It is not clear from either of these judgments on what material these estimates were based.

Dissatisfied with the decision of the Tribunal, the assessee wanted the Tribunal to state a case and refer to the High Court for its decision ten questions of law. It seems that Dr. Pal who represented the assessee before the Tribunal had only argued one question namely, whether the estimate of profit made by the Income-tax Officer was excessive or whether it was justified on the material on the record. The other points raised in the memorandum of appeal regarding the validity or the correctness of the procedure of assess- ment had been abandoned. The questions which were submitted to the Tribunal. and which it was asked to refer to the High Court concerned all the points including those abandoned before the Tribunal. The Tribunal came to the conclusion that no question of law arose on its order, and it, therefore, dismissed the application made by the assessee. It appears that the assessee then applied to the High Court under section 66(2) of the Act for the issue of a mandamus to the Tribunal directing it to refer to the High Court the very same questions of law which it had refused to refer. This application was summarily rejected. The High Court also refused an application for leave to appeal to this Court. Having exhausted all the remedies that were available to him under the Income-tax Act, the assessee then made an application to this Court for special leave against the order of the Income-tax Tribunal under the provisions of article 136 of the Constitution. Leave was allowed and this appeal is now before us by virtue of that leave.

> Mr. Chatterjee, the learned counsel for the appellant, contended inter alia that the assessment order made under section 23(3) of the Income-tax Act had been made in violation of the principles of natural justice, inasmuch as it was not based on any material whatsoever and that the evidence tendered by the appellant had been improperly rejected. It was further said that the Tribunal acted without jurisdiction in relying on the data supplied by the Income-tax department behind the back of the appellant company, and without giving it an opportunity to rebut or explain the same. Reliance was placed on the decision of a Full Bench of the Lahore High Court in Seth Gurmukh Singh v. Commissioner of Income-tax, Punjab(1), for the proposition that while proceeding under sub-section (3) of section 23, the Income-tax Officer, though not bound to rely on evidence produced by the assessee as he considers to be false, yet if he proposes to make an estimate in disregard of that evidence, he should in fairness disclose to the assessee the material on which he is going to found that estimate; and that in case he proposes to use against the assessee the result of any private inquiries made by him, he must communicate to the assessee the substance of the information so proposed to be utilized to such an extent as to put the assessee in possession of full particulars of the case he is expected to meet and that he should further give him ample opportunity to meet it. It was said that the Tribunal failed to disclose to the assessee the material that the departmental representative had given-to it regarding the rates of gross profit of cotton mills varying between 49 per cent. and 13 per cent., and that if that disclosure had been made, the assessee would have satisfied the Tribunal that the mills which had shown gross profits at rates mentioned above had no similarity of any kind with the appellant company's mill or to other mills in Bengal and therefore those rates had no relevancy in the enquiry as to gross profits of the assessee company's mill. It was also argued that both the Income-tax Officer and the Tribunal acted arbitrarily and on suspicion in estimating the rate of (1) [1944] 12 I.T.R. 393.

gross profit. In conclusion the learned counsel urged that now that the books of account of the company were available, it was only just and fair that the 'Income-tax Officer and the Tribunal should examine these book,% in order to determine the correctness of the return furnished by the assessee.

The learned Solicitor-General who appeared for the Commissioner of Income-tax, West Bengal, combated the contentions raised by 'Mr. Chatterjee on a two-fold ground:

> (1) In the first instance, without questioning the jurisdiction of this Court to grant special leave against an order of an Income-tax Tribunal, he argued that such leave should not be granted when remedies provided by the Income-

tax Act itself were available for correcting errors of the Tribunal, and had been taken but without success. It was said that the power conferred on this Court by article 136 of the Constitution being an extraordinary power, its exercise should be limited to cases of patent and glaring errors of procedure, or where there has been a failure of justice because of the violation of the rules of natural

justice or like causes but that this discretionary power should not be exercised for the purpose of reviewing findings of fact when the law dealing with the subject has declared those findings as final and conclusive. (2) That the finding given by the Income-tax Officer and affirmed by the Appellate Assistant Commissioner and the Tribunal was based on material and it could not be said that these bodies had acted arbitrarily in this matter. It was contended that the Income-tax Officer has very wide powers and is not fettered by technical rules of evidence and pleadings, and that the only restriction on his judgment is that he must act honestly on the material however inadequate before him, but not capriciously or arbitrarily. It was suggested that owing to the disparity of the rate of wastage the Income-tax Officer was entitled to reach the conclusion that the assessee had not disclosed the full sales made by him during the accounting year, and that on that basis he was entitled on his own information to make an estimate of the rate of gross profit.

As regards the first contention of the learned Solicitor- General, we are unable to accede to it. It is not possible to define with any precision the limitations on the exercise of the discretionary jurisdiction vested in this Court by the constitutional provision made in article 136. The limitations, whatever they be, are implicit in the nature and character of the power itself. It being an exceptional and overriding power, naturally it has to be exercised sparingly and with caution and only in special and extraordinary situations. Beyond that it is not possible to fetter the exercise of this power by any set formula or rule. All that can be said is that the Constitution having trusted the wisdom and good sense of the Judges of this Court in this matter, that itself is a sufficient safeguard and guarantee that the power will only be used to advance the cause of justice, and that its exercise will be governed by well established principles which govern the exercise of overriding constitutional powers. It is, however, plain that when the Court reaches the conclusion that a person has been dealt with arbitrarily or that a Court or tribunal within the territory of India has not given a fair deal to a litigant, then no technical hurdles of any kind like the finality of finding of facts or otherwise can stand in the way of the exercise of this power because the whole intent and purpose of this article is that it is the duty of this Court to see that injustice is not perpetuated or perpetrated by decisions of Courts and tribunals because certain laws have made the decisions of these Courts or tribunals final and conclusive. What we have said above sufficiently disposes of the first contention raised by the learned Solicitor-General.

As regards the second contention, we are in entire agreement with the learned Solicitor-General when he says that the Income-tax Officer is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a Court of law, but there the agreement ends; because it is equally clear that in making the assessment under sub-section (3) of section 23 of the Act, the Income-tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment under section 23(3). The rule of law on this subject has, in our opinion, been fairly and rightly stated by the Lahore High Court in the case of Seth Gurmukh Singh v. Commissioner of Income-tax, Punjab (Supra).

In this case we are of the opinion that the Tribunal violated certain fundamental rules of justice in reaching its conclusions. Firstly, it did not disclose to the assessee what information had been supplied to it by the departmental representative. Next, it did not give any opportunity to the

company to rebut the material furnished to it by him, and, lastly, it declined to take all the material that the assessee wanted to produce in support of its case. The result is that the assessee had not had a fair hearing. The estimate of the gross rate of profit on sales, both by the Income-tax Officer and the Tribunal seems to be based on surmises, suspicions and conjectures. It is somewhat surprising that the Tribunal took from the representative of the department a statement of gross profit rates of other cotton mills without showing that statement to the assessee and without giving him an opportunity to show that statement had no relevancy whatsoever to the case of the mill in question. It is not known whether the mills which had disclosed these rates were situate in Bengal or elsewhere, and whether these mills were similarly situated and circumstances. Not only did the Tribunal not show the information given by the representative of the department to the appellant, but it refused even to look at the trunk load of books and papers which Mr. Banerjee produced before the Accountant-Member in his chamber. No harm would have been done if after notice to the department the trunk had been opened and some time devoted to see what it contained. The assessment in this case and in the connected appeal,* we are told, was above the figure of Rs. 55 lakhs and it was meet and proper when dealing with a matter of this magnitude not to employ *civil Appeal NO- 218 Of 1953, not reported, unnecessary haste and show impatience, particularly when it was known to the department that the books of the assessee were in the custody of, the Sub-Divisional Officer, Narayanganj. We think that both the Income-tax Officer and the Tribunal in estimating the gross profit rate on sales did not act on any material but acted on pure guess and suspicion. It is thus a fit case for the exercise of our power under article 136.

In the result we allow this appeal, set aside the order of the Tribunal and remand the case to it with directions that in arriving at its estimate of gross profits and sales it should give full opportunity to the assessee to place any relevant material on the point that it has before the Tribunal, whether it is found in the books of account or elsewhere and it should also disclose to the assessee the material on which the Tribunal is going to found its estimate and then afford him full opportunity to meet the substance of any private inquiries made by the Income-tax Officer if it is intended to make the estimate on the foot of those enquiries. It will also be open to the department to place any evidence or material on the record to support the estimate made by the Income-tax Officer or by the Tribunal in its judgment. The Tribunal if it thinks fit may remit the case to the Income-tax Officer for making a fresh assessment after taking such further evidence as is furnished by the assessee or by the department. The coats; of these proceedings will abide the result. Case remitted.