C.I.T., Andhra Pradesh vs M/S. Vadde Pallaiah & Co on 8 March, 1973

Equivalent citations: 1973 AIR 2434, 1973 SCR (3) 655, AIR 1973 SUPREME COURT 2434, 1973 4 SCC 121, 1973 TAX. L. R. 1308, 1973 3 SCR 655, 1973 SCC (TAX) 407, 89 ITR 240

Author: K.S. Hegde

Bench: K.S. Hegde, P. Jaganmohan Reddy, Hans Raj Khanna

PETITIONER:
C.I.T., ANDHRA PRADESH

Vs.

RESPONDENT:
M/S. VADDE PALLAIAH & CO.

DATE OF JUDGMENT08/03/1973

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
REDDY, P. JAGANMOHAN
KHANNA, HANS RAJ

CITATION:
1973 AIR 2434 1973 SCR (3) 655
1973 SCC (4) 121
CITATOR INFO :
RF 1979 SC1933 (15)
R 1984 SC 993 (22)

ACT:
Income-tax Act (11 of 1922) s. 34(3), Second Proviso-Scope of.

HEADNOTE:
Upto the assessment year 1953-54 a business was being carried on by P as an individual. in March 1953, he entered into a partnership consisting of himself and others. For the assessment years 1954-55, 1955-56 and 1956-57 the firm filed returns of income and applied for registration under s. 26A of the Income-tax Act. 1922. The income-tax officer

rejected' the application holding that there was no genuine firm. He accordingly assessed P as an individual in respect of the income earned in that business. As against that order the firm as well as P appealed to the Appellate Assistant Commissioner who allowed both the appeals. The Appellate Assistant Commissioner held that the business was that of the firm and' not of P. When the income-tax Officer proceeded to assess the firm for the assessment years 1954-55, 1955-56 and 1956-57, the firm resisted it taking the plea that the proceedings were barred by limitation under s 34(3) of the Act. On the question whether the assessment for each of the assessment years was valid the High Court, on reference, held that the assessments were barred by time and were not saved by the second' proviso to s. 34(3) of the Act.

Allowing the appeals to this Court.

HELD : Under the proviso the limitation of time would not apply to an assessment or re-assessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under s. 31, 33, 33A and 33B, 66 or 66A. A finding which can be considered as relevant under the proviso must be one which was necessary for deciding the appeal before the authority; and the expression ,any person' refers to one who would be liable to be assessed for the whole or part of the income that went into the assessment of the year under appeal or revision. The person should be intimately connected with the proceedings in which the finding was given. [658 CD; 660 A-B, E-F]

In the present case, the order of the Appellate Assistant Commissioner was made under s. 31. Though he had not given any direction, the order made by the Income-tax Officer was in consequence of the finding given by the Appellate Assistant Commissioner. The finding given by the Appellate Assistant Commissioner that the business was that of the firm was absolutely necessary for deciding both the appeals before him. P, who was the dominant partner of the firm was not only interested in his own assessment but was also interested, in the assessment of the firm. The partners and the firm were intimately connected with him and hence, they are 'persons' coming within the scope of the proviso. [658 E-F; 660 C, F-G]

Income-tax Officer, A-Ward, Sitapur v. Murlidhar Bhagwan Das, 52 I.T.R. 335; 344, N.M. Sivalingam Chettiar v. Commissioner of Incometax, Madras, 66 I.T.R. 586 and Daffadar Bhagat Singh and Sons v. Incometax Officer, A-Ward Ferozepore, 71 I.T.R. 417, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeals Nos.1682 to 1684 of 1970.

Appeals by special leave from the judgment and order dated October 3, 1969 of the Andhra Pradesh High Court in R.C. No. 4 of 1966.

S. T. Desai, B. D. Sharma, S. P. Nayar, and R. N. Sachthey, ,for the, appellant.

N. D. Karkhanis, and K. Rajendra Chowdhary, for the respondent.

The Judgment of the Court was delivered by HEGDE, J.These are appeals by Special Leave. They arise from a common judgment of the Andhra Pradesh High Court in a reference under section 66(i) of the Indian Income Tax Act, 1922, to be hereinafter referred to as the "Act". The reference in question relates to the assessment of the assessee for the assessment years 1954-55, 1955-56 and 1956-

57. The question of law referred by the Tribunal is "Whether on the facts and the circumstances of the case, the assessment made on the firms, for each of the assessment years 1954-55, 1955-56 and 1956-57, are valid in law ?"

> Now we shall set out the material facts as could be gathered 'from the case stated by the Tribunal. Up to and including the assessment year 1953-54 business with which we are concerned in this case, was carried on by Vadde Pallaiah. He was assessed as an 'individual'. On March 20-3-1953 he entered into a partnership consisting of himself and three others. That partnership was known as "M/s. Vadde Pulliah & Co." In that partnership Pulliah had 8 as. share and out of the remaining three partners two had 3 as. share each and o ne had 2 as. share. For the assessment years 1954-55, 1955-56 and 1956-57, this firm filed returns of income as a firm. It also applied for registration under section 26A. The Income-tax Officer rejected that application holding that there was no genuine firm. He came to the conclusion that the business was exclusive that of Pulliah. He accordingly assessed Pulliah as an 'individual' in respect of the income earned in that business. As against that order both the firm as well as Pulliah went up in appeal to the Appellate Assistant Commissioner. Before the Appellate Assistant Commissioner, the question for consideration was whether the firm in question was a genuine firm. If the firm was a genuine firm, it necessarily followed that Pulliah was wrongly assessed. If, on the other hand, the 'firm was not a genuine firm, Pulliah was rightly assessed. Therefore, the sole question that arose for decision in the appeals filed by the firm as well as Pulliah was as to the genuineness of the firm in question. The Appellate Assistant Commissioner after examining the material before him came to the conclusion that the firm in question was a genuine firm. Consequently, he allowed the appeal of the firm as well as that of Pulliah. In the firm's appeals, he directed the Income-tax Officer to register, that firm and in Pulliah's appeal he set aside the assessment made on him. In the operative portion of his order he stated thus "The Income-tax Officer is directed to adopt the, correct, share of income of the appellant from this firm."

But in the body of his order he specifically held that the business. in question was carried on by the firm and not by Pulliah.

After this order was made, the Income-tax Officer proceeded to assess the firm in respect of the income earned by that firm during the assessment years 1954-55, 1955-56 and 1956- 57 When the Income-tax Officer initiated proceedings against the firm for the purpose of assessment, the firm resisted the same taking the plea that the proceedings in question is barred by limitation under section 34(3) of the Act. He rejected that contention. Aggrieved by that order the firm went up in appeal to the Appellate, Assistant Commissioner. The Appellate Assistant Commissioner upheld the contention of the, assessee and set 'aside the order of' the Income-tax Officer. As against that order the Income tax Officer went up in appeal to the Income-Tax Appellate Tribunal. The Tribunal partly accepted the appeal of the Income-tax Officer.. It came to the conclusion that the assessment in respect of assessment years 1955-56 and 1956-57 are not barred in view of the Second Proviso to section 34(3) of the Act. But it opined that the assessment in respect of the assessment year 1954-55 was barred by limitation. Aggrieved by the decision of the Tribunal both the Commis- sioner of Income-tax as well as the assessee moved the Tribunal under section 66(i) of the Act to refer certain questions of law to the High Court of Andhra Pradesh. The Tribunal submitted' the question set out earlier to the High Court.' The High court has answered that question in favour of the assessee. It came to the conclusion that the impugned assessments were barred by time and they are not saved by the Second Proviso to sub-section(3) of section 34 of the Act. Tit is as against that decision these appeals have been brought by the Commissioner of Income-tax. In order to decide the controversy before us it is necessary to refer to the material portions of section 34. That section deals with income escaping assessment. We are now concerned with sub-section (3) of section 34 and the Second Proviso there to Sub-section (3) of section 34 reads :

> "No order of assessment or reassessment, other than an order of assessment tinder section 23 to which 'clause(c) of sub-section (1) of section 28 applies or an order-
>
> of assessment or reassessment in cases falling within clause
>
> (a) of sub-section (1) or sub-section (1A) of this section shall be made after the expiry of four years from the end of the year in which the' income, profits or gains were first assessable."

The First Proviso is not relevant for our present purposes. Hence we shall proceed to quote the Second Proviso to sub- section (3) of section 34. That Proviso gays "Provided further that nothing contained in this section limiting the time within, which any action may be taken or any order, assessment or re-assessment may be made, shall apply to a re-assessment made under section 27 or to an assessment or re-assessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 31, section 33, section 33A, section 33B, section 66 or section 66A."

The question before us is whether the assessee's case is covered by the Second Proviso to section 34(3) ? Before a case can be said to be covered by the said Proviso certain requirements will have to

be fulfilled. The first and foremost requirement is that the order made must be one either under section 31 or section 33 ,or section 33A or section 33B or section 66 or section 66A. In the present case, admittedly, the order in question was made under section 31. The present case does not fall within the scope of section 27 about which there is no dispute. The next requirement is that the order made by the IncomeTax Officer must be to give effect to any finding or direction given by the Appellate Authority. In this case, the Appellate Assistant Commissioner had not given 'any direction to assess the assessee. Therefore, all that we have to see is whether the order made by the Income tax Officer was in consequence of a finding given by the Appellate Assistant Commissioner. The further ,question that we have got to decide is whether the assessee can be considered as one of the persons coming within the scope of the proviso in question. There has been considerable controversy as to the meaning of the word 'finding' in the Second Proviso to section 34(3). This question came up before this Court for consideration in Income-Tax Officer, A-Ward, Sitapur v. Murlidhar Phagwan Das.(1) This is what this Court observed in that case "The expression "finding or direction", the argument proceeds, is wide enough to take in at any rate a finding that is necessary to dispose of the appeal or direction which Appellate Assistant Commissioners have in (1) 52 I.T.R. 335 ; 344.

practice been issuing in respect of 'assessments of the years other than those before them in appeal. What does the expression "finding" in proviso to sub-section (3) of section 34 of the Act mean ? "Finding" has not been defined in the Income-tax Act. Order XX, rule 5, of the Code of Civil Procedure reads :

> "In suits in which issues have been framed, the court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit."

Under this Order, a "finding" is, therefore, a decision on an issue framed in a suit. The second part of the rule shows that such a finding shall be one which by its own force or in combination with findings on other issues should lead to the decision of the suit1 itself. That is to say, the finding shall be one which is necessary for the disposal of the suit. The scope of the meaning of expression "finding" is considered by a Division Bench of the Allahabad High Court in Pt. Hazari Lal V. Income-Tax Officer, Kanpur,(',). There the learned judges pointed out The word 'finding', interpreted in the sense indicated by us above, will only cover material questions which arise in a particular case for decision by the authority hearing the case or, the appeal which, being necessary for passing the final order or giving the final decision in the appeal, has been the subject of controversy between the interested parties or on which the parties concerned have been given a hearing."

We agree with this contention of finding." The same view was taken by this Court in N.KT. Sivalingam Chettiar v. Commissioner of Income-tax, Madras (2) . .LM15 Therein this Court ruled that a finding or direction by an appellate authority in an order relating to the assessment of one year does not warrant the avoidance of the bar of limitation under section 34 of the Indian Incometax Act, 1922, against initiation of proceedings for assessment for another year. A finding within the second proviso to section 34(3), must be a finding for giving relief in respect of the

assessment for the year in question. A finding may only be that which was necessary for the disposal of an appeal in respect of an assessment of a parti- cular year.

(1) 39 I.T.R. 265. (2) 66 I.T.R. 586.

The law on question was elaborately examined by this Court again in Daffadar Bhagat Singh and Sow v. Income,-tax Officer, A Ward Ferozepure(1). Therein this Court reiterated that a finding which can be considered as relevant under the second proviso to section 34(3) must be one which was necessary for deciding the appeal before the authority. Having set out the law let us examine whether the finding given in this case is one that was necessary for the decision of the case before the Appellate Assistant Cornmissioner. As mentioned earlier the question that the Appellate Assistant Commissioner had to decide in the two appea ls before him, which he heard together, was whether the business in question was the business of the firm or that of Pulliah. He had only two alternatives before him. In order to decide the appeal of the firm as well as that of Pulliah, he had to decide whether the business was that of the firm or that of Pulliah. He came to the conclusion that the business was that of the firm and not of Pulliah. There is no room for doubt that the finding given by the Appellate Assistant Commissioner was absolutely necessary for deciding both the appeals before him.

This takes us to the other branch of the second proviso to section 34(3), namely, whether the firm can be considered as coming within the expression 'any person' in the proviso in question. In Murlidhar Bhagwan Das (Supra), this Court came to the conclusion that the expression 'any person' in the second proviso to section 34(3) referred to one who would be liable to be assessed for the whole or a part of the income that went into the assessment of the year under appeal or revision. Further, that person should be intimately connected with the proceedings in which the finding was given. The same view was taken in other cases refierred to earlier. In the instant case Pulliah was the dominant partner of the firm as found by the Tribunal. He had 8 as. share in ;the firm. He, was the original owner of the firm. He was not only interested in his own assessment, he was also interested in the assessment of the firm. The partner of Pulliah were ,intimately connected with him. Hence we were clearly of the opinion that they are "persons" coming within the scope of the second proviso to section 34(3). It may be noted that the Appellate Assistant Commissioner had to deal with--the cases of Pulliah as well as that of the firm.

In our opinion the High Court erred in coming to the con- clusio.n that the finding given by the Appellate Assistant Commissioner, in the appeals filed by Pulliah as well as by the firm, that the business was carried on by the firm was not a necessary .finding for deciding the appeals before him. That finding was (1) 71 I.T.R, 417.

clearly necessary. But for that finding he could not have decided the appeals before him in the way he decided. The High Court was also wrong in its conclusion that the firm was a stranger to the assessment made on Pulliah. The firm was intimately connected with Pulliah and the assessment made on him.

For the reasons mentioned above we set aside the order of the High Court. We vacate the answer given by the High Court and answer the question referred to in the affirmative and in favour of the Revenue. The appellant will got his costs from the Respondent. One hearing fee.

V.P.S. Appeal allowed.