Commissioner Of Income-Tax, Madhya ... vs Paluram Dhanania on 28 October, 1965

Equivalent citations: [1966]60ITR250(SC), AIRONLINE 1965 SC 16, (1966) 60 ITR 250

Bench: A.K. Sarkar, J.R. Mudholkar, R.S. Bachawat

JUDGMENT

Sarkar, J.

1. The respondent-assessee was resident and ordinarily resident in the former ruling State of Raigarh. On July 31, 1944, the Ruler of Raigarh issued a notification in the following terms :

> "It is notified for the general information of the assessees of the Raigarh State that the Indian Income-tax Act (XI of 1922) of British India (mutatis mutandis) is in full force in this State with its up- to-date amendments. All future amendments will be applicable automatically in Raigarh State."

2. The respondent-assessee was to income-tax for the accounting years 1945 and 1946, under the Indian Income-tax Act, 1922, applied to the State by virtue of this notification. The State later merged in India.

3. On March 15, 1952, and March 26, 1954, the Income-tax Officer, Nagpur, took action under section 34 of the Indian Income-tax Act as applied to the State by virtue of the aforesaid notification to reopen the earlier assessments. It was contended on behalf of the respondent that the proceedings under section 34 were irregular as the sanction of the Commissioner of Income-tax had not been taken without which the proceedings could not be taken in view of the amendment of that section by the Income-tax and Business Profits Tax (Amendment) Act, 1948, which applied to the area of the former Raigarh State by virtue of the notification of July 31, 1944. It was not in dispute that the sanction had not been taken. This contention was rejected by the Income-tax Officer and his decision was upheld on appeal by the Appellate Assistant Commissioner. On further appeal to the Income-tax Appellate Tribunal, the Tribunal upheld that contention and allowed the appeal. The Tribunal held that the amendment made in section 34 by the Amending Act of 1948 applied to the area covered by the Raigarh State which, as the parties agreed before it, merged in India prior thereto.

4. At the request of the revenue authorities the Tribunal referred the following question for the decision of the High Court :

> "Whether on a true construction of the Raigarh Darbar Notification No. 89/44/D/Raigarh dated July 31, 1944, section 34 of the Indian Income- tax Act, 1922, as amended by the Income-tax and Business profits Tax (Amendment) Act, 1948, was applicable to the proceedings taken in the present case ?"

5. It appears from the statement of the case submitted by the Tribunal that the revenue authorities had sought to raise another question basing themselves on the fact that Raigarh State had merged in India on January 1, 1948, and not April 1, 1949, as had been wrongly conceded by them at the hearing of the appeal before the Tribunal and, therefore, on a proper interpretation of the notification the amended section did not apply to the areas of the former Raigarh State. What that question was does not appear on the record. The Tribunal refused to refer the question as that would be changing the basis of the appellate decision. The revenue authorities did not take up this matter further for compelling the Tribunal to refer that question to the High Court.

6. In the High Court, however, the revenue authorities again sought to contend that on December 31, 1947, Raigarh State ceased to exist and merged in India from January 1, 1948, and so the amendment made to section 34 of the Indian Income-tax Act, 1922, by the amending Act of 1948 was not applicable to the territories covered by that State. The High Court did not permit them to raise this point as the question referred assumed that the amending Act of 1948 applied to those areas and further that in essence the revenue authorities were raising a question of fact as to when Raigarh State merged in India and this the Tribunal had rightly refused them permission to do, particularly as they had all along proceeded on the basis that the State had merged in India on January 1, 1948.

7. In the present appeal the Additional Solicitor-General appearing for the revenue authorities raised the same contention as counsel for them had done in the High Court. The learned Additional Solicitor-General said that the State having merged in India on January 1, 1948, on a proper interpretation of the notification of July 31, 1944, it had to be held that the amending Act of 1948 had never applied to Raigarh State. It is unnecessary to express any opinion as to the merits of this contention. It is based on the allegation that the merger took place on January 1, 1948, and not on April, 1, 1949, as had been conceded before the Tribunal.

8. We entirely agree with the view taken by the High Court. The question referred - and in the circumstances earlier stated it must be held that no other question of law arose out of the Tribunal's appellate order was - of an interpretation of the notification on the facts found or agreed to before the Tribunal at the hearing of the appeal, namely, that the merger had taken place on April 1, 1949. The question now sought to be argued is one of construction of the notification on an entirely different basis. The question of construction now raised would not arise on the basis the judgment was given by the Tribunal. Furthermore, the Tribunal definitely refused to frame the question on the basis of merger of the State in India on January 1, 1948, and that order has become final as its correctness was not challenged by the revenue authorities in further proceedings. The question now

raised by the learned Additional Solicitor-General is not a question that is involved in the question framed. It really turns on a question of fact as to which, of course, no reference could be made by the Tribunal to the High Court.

9. It is not contended that if the date of merger was January 1, 1948, the question framed can be answered to the advantage of the revenue authorities. In fact we were not asked to answer that question on the basis that the merger took place on January 1, 1948. The question must, therefore, be answered in the affirmative.

10. The result is that p1 the appeal fails and it is dismissed with costs.

11. Appeal dismissed.