K. Raveendranathan Nair vs Commnr. Of Income Tax . on 10 August, 2017

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Bench: Ashok Bhushan, A.K. Sikri

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REPOR

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3131 OF 2006

K. RAVEENDRANATHAN NAIR .....APPELLAN
& ANR.

VERSUS

COMMISSIONER OF INCOME TAX & ORS. .....RESPONDENT(

WITH

CIVIL APPEAL NO. 3130 OF 2006

JUDGMENT

A.K. SIKRI, J.

By amendment in the Income Tax Act, 1961 (hereinafter referred to as the 'IT Act') in the year 1998, Section 260A was inserted providing for statutory appeal against the orders passed by the Income Tax Appellate Tribunal. In this very Section, under sub-section (2)(b), court fees on such appeals was also prescribed which was fixed at Rs.2,000/-. However, sub-section (2)(b) of Section 260A prescribing the aforesaid fee was omitted by amendment carried out in the said Act, with effect from June 01, 1999. It was presumably for the reason that insofar as court fee payable on such appeals are concerned, which are to be filed in the High Court, it is the State Legislature which is competent to legislate in this behalf.

2) In the State of Kerala, the law of court fee is governed by the Kerala Court Fees and Suits Valuation Act, 1959 (hereinafter referred to as the '1959 Act'). Section 52 thereof relates to the fee payable in appeals. Thus, with the omission of clause (b) of sub-section (2) of Section 260A of the IT

Act, fee became payable on such appeals as per Section 52. The State Legislature thereafter amended the 1959 Act by Amendment Act of 2003 and inserted Section 52A therein, which was passed on March 06, 2003. In fact, before that an Ordinance was promulgated on October 25, 2002 which was replaced by the aforesaid Amendment Act, the Act categorically provided that Section 52A is deemed to have come into force on October 26, 2002. As per the amended provision, viz. Section 52A of the 1959 Act, the fee on memorandum of appeals against the order of the Income Tax Appellate Tribunal or Wealth Tax Appellate Tribunal is to be paid at the rates specified in sub-item (c) of item (iii) of Article 3 of Schedule II. This sub-item (c) reads as under:

> (c) Where such income exceeds One percent of the assessed two lakh rupees income, subject to a maximum of ten thousand rupees.

It is clear from the above that fee is now payable, where such income exceeds two lakh rupees, at the rate of 1% of the 'assessed income', subject to a maximum of ten thousand rupees.

3) The question that arose for consideration before the High Court in the impugned judgment, against which these appeals arise, was payment of fee as per the aforesaid schedule on the appeals that are filed on or after October 26, 2002. As per the State of Kerala, on all appeals which are filed against the order of Income Tax Appellate Tribunal or the Wealth Tax Appellate Tribunal on or after October 26, 2002, fee is payable as per the aforesaid amended provisions. The appellants herein, however, contend that in all those cases which were even pending before the lower authorities, i.e. the Assessing Officer, Commissioner of Income Tax (Appeals) or Income Tax Appellate Tribunal and orders were passed even before October 01, 1998, the right to appeal had accrued with effect from October 01, 1998 and, therefore, such cases would be governed as on the date when the orders were passed by the lower authorities and the court fee would be payable as per the unamended provisions. The High Court has not accepted this plea of the appellants and has held that any appeal 'filed' on or after October 26, 2002 shall be governed by Section 52A of the 1959 Act.

4) The appeals are filed both by the writ petitioner, whose writ has been dismissed, as well as the Income Tax Department. The Commissioner of Income Tax (Appeals) has not accepted the decision of the High Court and the reason for that is obvious. Numerous appeals under Section 260A of the IT Act are filed by the Department as well and the Department also gets hit by the aforesaid Section 52A of the 1959 Act, as interpreted by the High Court.

5) Learned counsels appearing for the assessee as well as Income Tax Department submitted that the right of appeal is a matter of substantive right and not merely a matter of procedure. Therefore, this right becomes vested in a party when the proceedings are first initiated and before a decision is given, by the inferior court. Therefore, the relevant date for paying the court fee would be when the proceedings are initiated in the lowest court and not when the appeal is filed in the High Court. In support of this proposition, reliance is placed on the judgment of this Court in Hosein Kasam Dada (India) Ltd. v. The State of Madhya Pradesh And Others1 wherein the Court held as under:

> (i) that the appellant had a vested right to appeal when the proceedings were initiated, i.e., in 1947, and his right to appeal was governed by the law as it existed on

that date;

(ii) that the amendment of 1950 cannot be regarded as a mere alteration in procedure or an alteration regulating the exercise of the right of appeal, but whittled down the right itself, and it had no retrospective effect as the Amendment Act of 1950 did not 1 1953 SCR 987 expressly or by necessary intendment give it retrospective effect, and the appeal could not therefore be rejected for non-payment of the tax in respect of which the appeal was preferred.

6) In that case, Section 22(1) of the Central Provinces and Berar Sales Tax Act, 1947, provided that no appeal against an order of assessment should be entertained by the prescribed authority unless it was satisfied that such amount of tax as the appellant might admit to be due from his had been paid. This Act was amended on November 25, 1949 and Section 22(1), as amended, provided that no appeal should be admitted by the said authority unless such appeal was accompanied by satisfactory proof of the payment of the tax in respect of which the appeal had been preferred. On November 28, 1947, the appellant submitted a return to the Sales Tax Officer, who, finding that the turnover exceeded two lakh rupees, submitted the case to the Assistant Commissioner for disposal and the latter made an assessment on April 08, 1950. The appellant preferred an appeal on May 10, 1950 without depositing the amount of tax in respect of which he had appealed. The Board of Revenue was of the opinion that Section 22(1), as amended, applied to the case as the assessment was made, and the appeal was preferred, after the amendment came into force, and rejected the appeal.

The appellant in that case lost till the High Court. However, this Court allowed the appeal on the ground that the vested right had accrued to the appellant to file the appeal in the year 1947 itself when the proceedings were initiated. Therefore, amendment carried out in Section 22(1) of the Central Provinces and Berar Sales Tax Act, 1947 in the year 1949 would not apply in the case of the appellant.

Reference was also made to another judgment of this Court in State of Bombay v. Supreme General Films Exchange Ltd.2 In that case the issue was whether in the absence of provision giving retrospective effect to certain amendments to court fee payable with effect from April 01, 1954, the court fee payable on appeal was payable according to the law in force at the time of the filing of the suit prior to this date or the law in force at the time of the filing of the appeal. This Court held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment.

7) When the proceedings originate in the form of a suit filed in the lowest court, it is easy to ascertain that date of filing which becomes governing date for the purpose of payment of court fee in respect of appeals, as vested right accrues on the date of filing of the initial court proceedings. 2 (1960) 3 SCR 640 How it is to be translated in tax matters? This was explained in Hardeodas Jagannath v. State of Assam and Others 3 by holding that the appeal provisions applicable in a tax matter for assessee would be the one as on date of assessment and not the one applicable during the assessment period. For revenue appeal, the same would be one as on the date disputed demand is

negative by the appellate authority and not the one applicable during the period of assessment or as on the date of assessment.

8) On the aforesaid basis, it was argued by the counsel for both the assessees in these appeals that in all those cases where appeals were preferred by the assessee against the assessment orders, the provision relating to the payment of court fee which was prevailing on the date of assessment would be applicable. On the other hand, in those cases where Revenue preferred the appeals, the concerned date would be the date on which disputed demand was negatived by the appellate authority. It was, thus, submitted that the High Court was not right in holding that in all those cases where the appeals are filed in the High Court, whether by the assessee or the Income Tax Department, after the insertion of Section 52A, i.e. after October 26, 2002, fee is payable as provided under Section 52A of the 1959 Act. In this hue, it was also pointed out that Section 260A of the IT Act was inserted with effect from 3 (1969) 2 SCR 261 October 01, 1998 and, therefore, from this date right to file the appeal in the High Court accrued as a vested right. Thus, all those proceedings where the assessment orders were passed after October 01, 1998 by the Assessing Officer and the assessee had approached the High Court by filing appeal under Section 260A of the IT Act, fee as per the unamended provision was payable and not under Section 52A of the 1959 Act. Likewise, it was argued, in those cases where the Revenue filed the appeal in the High Court where the disputed demand was negative by the appellate authority after October 01, 1998 and before October 26, 2002, court fee was payable as per the unamended provision.

9) Mr. Pallav Sishodia, learned senior counsel appearing for the State of Kerala, submitted that though there was no quarrel about the proposition laid down in the judgments cited by the learned counsel for the appellants, these judgments are premised on two postulates, namely:

> (i) there exists a vested right of appeal and it accrued prior to coming into force of Section 52A of the 1959 Act; and
>
> (ii) such a vested right stands impaired and/or made conditional retrospectively 'expressly or by necessary intendment'.

He, thus, submitted that it was imperative to have requisite foundational facts to demonstrate the aforesaid two conditions. According to him, however, the issue appears academic as no assessee has come forward as aggrieved by levy of court fee under Section 52A of the 1959 Act in a case in which appeal is filed where assessment is made and/or disputed demand in appeal is raised prior to October 26, 2002. Nor the details are available of the appeals filed by the Income Tax or Wealth Tax Departments where assessments are reversed in part of full and/or disputed demand is quashed by the Commissioner (Appeals) or Income Tax Appellate Tribunal prior to October 26, 2002, particularly number of such appeals pending before the High Court of Kerala, if at all. In any case, in the other appeals filed, if any, for the tax demands negatived by the appellate authorities prior to October 26, 2002, this issue of court fees does not appear to have been kept alive for grant of any effective relief. He cited few judgments in support of his submission that this Court should restrain itself from undertaking academic exercise and deciding the issue in question.

10) We are not inclined to accept the aforesaid plea inasmuch as the High Court has decided the issue in categorical terms. Therefore, it would be appropriate to reflect on the said decision and to find out as to whether this decision is correct in law. It is a different matter that after the legal position is clarified, the same can be applied in respect of those appeals which are covered thereby.

11) Hence, we proceed to decide the legal issue involved in these appeals.

12) We may mention at the outset that after referring to the judgments noted above even the High Court in the impugned judgment has accepted that right of appeal is not a matter of procedure and that it is a substantive right. It is also recognised that this right gets vested in the litigants at the commencement of the lis and, therefore, such a vested right cannot be taken away or cannot be impaired or imperilled or made more stringent or onerous by any subsequent legislation unless the subsequent legislation said so either expressly or by necessary intendment. An intention to interfere with or impair or imperil a vested right cannot be presumed unless such intention be clearly manifested by express words or by necessary implication. However, the High Court has still dismissed the writ petition as it was of the opinion that the vested right of appeal conferred under Section 260A of the IT Act, insofar as payment of court fee is concerned, is taken away by necessary implication. In other words, the provisions of Section 52A of the 1959 Act inserted by the Amendment Act of 2003, in that sense, have retrospective operation thereby effecting the earlier assessment also. This proposition is advanced with the logic that prior to introduction of Section 260A in the IT Act with effect from October 01, 1998, there was no right of appeal.

13) It is difficult to accept such a logic given by the High Court. No doubt, before October 01, 1998, in the absence of any statutory right of appeal to the High Court, there was no such vested right. At the same time, the moment Section 260A was added to the statute, right to appeal was recognised statutorily. Therefore, as already pointed out, in respect of those proceedings where assessment orders were passed after October 01, 1998, vested right of appeal in the High Court had accrued. Same was the position qua Department in respect of those cases where the demand raised by the Department stood negatived by the appellate authority after October 01, 1998.

14) In the present case, as noted above, when Section 260A of the IT Act was introduced by way of amendment with effect from October 01, 1998, it contained provision in the form of clause (2) of sub-section (2) thereof relating to payment of court fee as well. As per that provision, fixed court fee of Rs.2,000/- was provided. This provision was, however, omitted with effect from June 01, 1999. The court fee became payable as per Section 52 of the 1959 Act. The amendment in question in the 1959 Act, i.e. Section 52A, was made effective from March 06, 2003. This provision has not been made retrospective.

15) We, therefore, are not able to subscribe to the aforesaid view of the High Court and set aside the same. In fine, we hold as under:

> (i) Wherever assessee is in appeal in the High Court which is filed under Section 260A of the IT Act, if the date of assessment is prior to March 06, 2003, Section 52A of the 1959 Act shall not apply and the court fee payable shall be the one which was

payable on the date of such assessment order.

(ii) In those cases where the Department files appeal in the High Court under Section 260A of the IT Act, the date on which the appellate authority set aside the judgment of the Assessing Officer would be the relevant date for payment of court fee. If that happens to be before March 06, 2003, then the court fee shall not be payable as per Section 52A of the 1959 Act on such appeals.

16) These appeals stand allowed in the aforesaid terms.

.....J. (A.K. SIKRI) .....J. (ASHOK BHUSHAN)
NEW DELHI;

AUGUST 10, 2017.