Kamlapat Motilal vs Commissioner Of Income-Tax, Uttar ... on 29 January, 1962

Equivalent citations: [1962]45ITR266(SC)

Author: S.K. Das

Bench: J.C. Shah, M. Hidayatullah, S.K. Das

JUDGMENT

S.K. Das, J.

1. This is an appeal by special leave from the judgment and order of the High Court of Allahabad dated July 16, 1956, by which the said High Court decided a question referred to it under section 66(1) of the Indian Income-tax Act, 1922, against the assessee. The question was in these terms :

> "Whether the Appellate Assistant Commissioner was legally justified in issuing a notice under section 28 of the Income-tax Act in circumstances of the case of the applicant in respect of the item of Rs. 76,836 ?"

2. We may first state the relevant facts. The assessee, appellant before us, is a partnership firm which ran a sugar mill at Cawnpore and assessee for the manufacture of sugar involved the conversion of gur into sugar. In the relevant assessment year 1942-43, the account year being October 1, 1940, to September 30, 1941, the assessee submitted a return of income and on the basis of that return the Income-tax Officer concerned made an assessment on November 30, 1944. When making the assessee two sums of Rs. 63,954 and Rs. 76,836. The sum of Rs. 63,954 was added in respect of the market value, as calculated by the Income-tax Officer, of the goods which were in the factory in the process of conversion from gur into sugar. In the return filed by the assessee this stock of "goods in process" was not included at all. The Income-tax Officer found that at the close of the relevant account year the stock of "goods in process" which had not been shown in the return consisted of 7,956 maunds and the corresponding stock of "goods in process" at the beginning of the account year was 850 maunds. The Income-tax Officer added a sum of Rs. 63,954 being the price of 7,106 maunds, the difference between the opening and the closing stock. The price was fixed at the rate of Rs. 9 per maund. The second sum of Rs. 76,836 was added back on the ground that it had been wrongly shown as expenditure in respect of excise duty in the account year, when the sales in respect of which this duty was paid had been made in the preceding year. It was held that as the assessee maintained accounts on the mercantile system of accounting, this excise duty should have been debited as expenditure not in the account year but in the preceding year. The assessee appealed to the Appellate Assistant Commissioner in respect of both these items and urged certain points in support of its appeal which need not be stated here. The Appellate Assistant Commissioner

did not accept the contentions urged on behalf of the assessee and rejected the appeal by his order dated July 8, 1946. On July 5, 1946, however, he issued a notice to the assessee under section 28(3) of the Income-tax Act asking it to show cause why a penalty under section 28(1) (c) should not be imposed on it on the ground that it had concealed the particulars of its income or deliberately furnished inaccurate particulars of its income, inasmuch as the stock of "good in process" amounting to 7,106 maunds was not accounted for and a sum of Rs. 76,836 on account of excise duty relating to another year was debited against the profits of the year of account. On July 22, 1946, the assessee furnished an explanation in answer to the notice. This was considered by the Appellate Assistant Commissioner who, by his order dated January 21, 1947, rejected the explanation furnished by the assessee and imposed a penalty of Rs. 50,000 on it. The assessee went up in appeal to the Income-tax Appellate Tribunal (hereinafter referred to as the Tribunal) both against the order of assessment confirmed by the Appellate Assistant Commissioner and the order imposing a penalty under section 28(1) (c) of the Income-tax Act. In the appeal from the assessment order, the Tribunal came to the conclusion that the valuation of 7,106 maunds of "goods in process" should be made at Rs. 6 per maund instead of Rs. 9 as fixed by the Income-tax Officer and confirmed by the Appellate Assistant Commissioner. The amount of Rs. 63,954 was accordingly reduced to Rs. 42,636. As to the second sum of Rs. 76,836 the Tribunal held that the Income-tax Officer correctly found that that sum was not an expenditure in the relevant year of account, but none the less it was an expenditure incurred in the business and should have been allowed for the year to which it appertained. The Tribunal expressed the view that there should be no difficulty in correcting the assessment of that particular year in which the expenditure was incurred, under section 35 of the Income-tax Act. The Tribunal said :

> "Lest there be a doubt on the point, we direct that the excise duty of Rs. 76,836 should be adjusted as an expenditure due and allowable for the earlier year of assessment, i.e., 1941-42."

3. This order was passed by the Tribunal on August 7, 1947. As to the penalty imposed under section 28(1) (c) of the Income-tax Act, the Tribunal held that the penalty was rightly imposed but reduced the quantum of penalty to Rs. 43,000.

4. Thereafter, the assessee moved the Tribunal for referring three questions of law which, according to it, arose out of the Tribunal's order. One of these questions, question No. 3, we have already set out at the beginning of this judgment, being the question which the Tribunal referred to the High Court. The other two questions were :

> "(1) Whether in view of the finding that the stock of sugar in process has never been shown in the accounts under section 13 of the Income- tax Act and that the value of the closing stock of sugar in process in the preceding year (i.e., 850 maunds of opening stock of sugar in process) was deducted in computing the profits of the previous year, a penalty as contemplated under section 28 of the Income-tax Act could be imposed ?

(2) Whether in view of the finding under section 31(4) of the Income- tax Act in I. T. A. No. 1200 of 1946-47 recorded by the Tribunal by its order dated August 17, 1947, it was legally necessary to adduce any further evidence besides the said finding and the books of account of the applicant, inasmuch as the said finding was legally binding on the parties ?"

5. These two questions the Tribunal refused to refer to the High Court on the ground that they related to findings of fact and did not involve any questions of law. It appears that originally by an order dated October 21, 1948, the Tribunal held that all the three questions were modified its original order and held that the third question, which we have set out earlier in this judgment, was a question of law which arose out of the Tribunal's order, the question being whether the Appellate Assistant Commissioner was legally competent to issue a notice under section 28 of the Income-tax Act, when the Income-tax Officer had issued no such notice.

6. In respect of the two questions which the Tribunal refused to refer to the High Court, the assessee did not move the High Court under section 66(2) of the Income-tax Act. What the assessee did was this. When the reference came to the High Court on the third question on a case being stated by the Income-tax, the assessee made an application to the High Court under sub-section (4) and (5) of section 66 and prayed that the Tribunal be asked to state a case on the other two questions also, questions as to which the Tribunal had refused to make a reference. This application the High Court rejected. The High Court then dealt with the third question which had been referred to it by the Tribunal and held that the Appellate Assistant Commissioner was legally justified in issuing a notice under section 28 of the Income-tax Act to the assessee in respect of the item of Rs. 76,836. The High Court disposed of the reference on that footing.

7. In the appeal before us the learned advocate for the assessee has been unable to show that the answer given by the High Court to the third question, which was the only question referred to the High Court, was in any way incorrect. Section 28 of the Income-tax Act in terms enables the Appellate Assistant Commissioner to take action under that section if in person has, inter alia, concealed the particulars of his income or deliberately furnished inaccurate particulars of such income. The High Court rightly point that the Appellate Assistant Commissioner was within his right in taking action under section 28 of the Income-tax Act against the assessee when in the course of the appeal proceedings before him he was satisfied that the assessee had deliberately furnished inaccurate particulars of its income in the sense that it debited a sum of Rs. 76,836 on account of excise duty, an expenditure which related to another year and could not be debited against the profits of the year under consideration. We are satisfied that the Appellate Assistant Commissioner was legally justified in issuing a notice under section the 28 of the Income-tax Act against assessee.

8. This really disposes of the present appeal. The learned advocate for the assessee has, however, made a grievance of the rejection of the assessee's petition under sub-sections (4) and (5) of section 66 of the Income-tax Act by the High Court. He has contended that the first question and the third question were inter-connected and even though the Tribunal had refused to refer the first question, it was open to the High Court to ask the Tribunal to state a case on the first question also. We are unable to agree. Sub-section (4) of section 66 states clearly that if the High Court is not satisfied that

the statements in a case referred under the section are sufficient to enable it to determine the question raised thereby, the court may refer the case back to the Tribunal to make such additions thereto or alterations therein as the court may direct in that behalf. It is manifestly clear that this sub-section does not imply that the High Court can ask the Tribunal to state a case on a question which the Tribunal has not referred to the High Court and which, on the contrary, the Tribunal has refused to refer on the ground that it relates to a finding of fact only. It is obvious that sub-section (4) of section 66 cannot do service for sub-section (2) thereof. If the assessee was dissatisfied with the order of the Tribunal refusing to state a case on certain questions, the clear duty of the assessee was to move the High Court under sub-section (2) of section 66 within the time allowed by law. The assessee in the present case did not take any such action and he wanted to evade the consequences of his failure to take action under sub-section (2) by resorting to a petition under sub-section (4). This assessee was not entitled to do. Sub-section (4) comes into operation when the case is incomplete in the sense that all the relevant material facts are not set out therein or the Tribunal has not stated its conclusion and findings on the material facts of the case. It has been held in some decisions that under sub-section (5) it is open to the High Court, without raising new and different questions, to resettle or reframe the questions formulated by the Tribunal before answering them so as to bring out the; real issue between the parties, and the High Court may even decide a point of. Law, which is implicit in or covered by the question referred by the Tribunal, no additional facts being necessary to support the point. These considerations, however, do not arise in the present case In the present case the first question was entirely different from the third question and the Tribunal held that it related to a finding of act only.

Whether it so related or not, it cannot be said that the first question was implicit in the third question or that the third question was required to be reframed in any other form. The third question raised a very simple point of law, namely, whether the Appellate Assistant Commissioner was legally justified in issuing a notice under section 28 of the Income-tax Act against the assessee In respect of the sum of Rs. 76,836. That question had no connection with the merits of the case, namely, whether the penalty under section 28 was rightly imposed on the assessee or not. We are, therefore, of the opinion that it is not open to the assessee to make any grievance of. The order of the High Court rejecting the petition under sub-sections (4) and (5) of section 66. Those sub sections were of no assistance to the assessee in the present case.

9. In the result the appeal fails and is dismissed. In the circumstances of the case there will be no order as to costs.

10. Appeal dismissed.