

Gita Devi Aggarwal vs Commissioner Of Income-Tax, West ... on 31 July, 1969

Equivalent citations: [1970]76ITR496(SC)

Author: V. Ramaswami

Bench: A.N. Grover, J.C. Shah, V. Ramaswami

JUDGMENT

V. Ramaswami, J.

1. The appellant (hereinafter referred to as "the assessee") was married in the year 1961 and after the marriage she started business in hessian and silver speculation under the name and style of "Union Trading Co" at premises No. 28, J.N. Mukherjee Road, Howrah. On or about March 3, 1961, the assessee submitted voluntarily returns of income for the assessment years 1953-54 to 1960-61 to the Income-tax Officer, D-Ward, Howrah. On March 18, 1961, the Income-tax Officer made assessment orders for the aforesaid assessment years under the provisions of the Income-tax Act, 1922 (hereinafter referred to as "the Act"). On February 25, 1963, respondent No. 1 issued a notice to the assessee under Section 33B of the Act for cancelling the assessments and March 6, 1963, was fixed as the date of hearing. On the date of hearing no one attended on behalf of the assessee and an order was made by the respondent in exercise of the powers conferred under Section 33B of the Act cancelling the said assessment orders and directing the Income-tax Officer to make fresh assessments according to law. Being aggrieved by this order the appellant moved the High Court under Article 226 of the Constitution for the grant of a writ. It was alleged that no notice was issued in connection with the proceedings under Section 33B of the Act and no opportunity was given to the appellant for being heard before making the order. A rule nisi was issued by B.E. Banerjee J. on July 20, 1963, which was made absolute by his order dated July 21, 1964. An appeal was taken by the respondents to the Division Bench of the Calcutta High Court consisting of the Chief Justice and B.C. Mitra, J. The appeal was allowed by the Division Bench on the ground that due opportunity was given to the assessee for being heard and the order of respondent No. 1 reopening the assessment under Section 33B of the Act was not defective in law. This appeal is brought by certificate from the judgment of the High Court dated May 24, 1965.

2. The first question that arises in this appeal is whether the appellant is entitled to invoke the special jurisdiction of the High Court under Article 226 of the Constitution. Under Section 33B, Sub-section (3), of the Act, a right of appeal was available to the appellant and would have been more appropriate, because questions of fact regarding the service of the notice were involved and

such questions could have been properly decided in the proceeding of the appeal. It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court for issue of a prerogative writ. It is true that the existence of an alternative remedy does not affect the jurisdiction of the court to issue a writ ; but, as observed by this Court in *Rashid Ahmed v. Municipal Board Kairana* [1950] S.C.R. 566, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists, it will be a sound exercise of discretion for the High Court to refuse to entertain a petition under Article 226 unless there are good grounds therefore.

3. The legal position has been clearly stated by Shah J., speaking for the court, in *Shivram Poddar v. Income-tax Officer* :

It is, however, necessary once more to observe, as we did in *C. A. Abraham's case* , that the Income-tax Act provides a complete machinery for assessment of tax, and for relief in respect of improper or erroneous orders made by the revenue authorities. It is for the revenue authorities to ascertain the facts applicable to a particular situation, and to grant appropriate relief in the matter of assessment of tax. Resort to the High Court in exercise of its extraordinary jurisdiction conferred or recognised by the Constitution in matters relating to assessment, levy and collection of income-tax may be permitted only when questions of infringement of fundamental rights arise, or where on undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess. In attempting to bypass the provisions of the Income-tax Act by inviting the High Court to decide questions which are primarily within the jurisdiction of the revenue authorities, the party approaching the court has of ten to ask the court to make assumptions of facts which remain to be investigated by the revenue authorities.

4. In the present case no explanation has been given by the appellant in the writ petition for not preferring an appeal under the Act and justifying her recourse to the special jurisdiction of the High Court under Article 226 of the Constitution. In our opinion the High Court would have been justified in the circumstances of this case in dismissing the writ petition of the appellant in limine.

5. Turning to the merits of the case also we are satisfied that the appellant is not entitled to any relief. The High Court has found after examination of the evidence that an opportunity was given to the appellant to be heard before respondent No. 1 made the order under Section 33B of the Act. The appellant had declared No. 28, J.N. Mukherjee Road, Howrah, to be her address. She had admitted that she had received all notices of demand under Section 29 of the Act at the same address. It appears that the order made under Section 33B of the Act was served on the appellant at the same address by affixation. The case of the appellant is that she did not know that the notice was affixed by the inspector, D.N. Datta, on February 28, 1963, at the same address. D.N. Datta stated in his report that he attempted to contact the assessee at No. 28, J.N. Mukherjee Road, for personal service on February 25, 1963, and again on February 27, 1963, and having failed in these attempts he served the notice by affixing it on February 28, 1963, at that address. The High Court disbelieved

the allegation of the appellant that she was not aware of the notice of February 28, 1963, in the face of her admission that she had received all notices of demand under Section 29 of the Act at the same address. There is also evidence that copies of notice under Section 33B of the Act were sent by post to the address of the appellant at No- 28, J.N. Mukherjee Road, Howrah. The notice was presented for delivery on February 28, 1963, March 2, 1963, March 4, 1963, March 5, 1963, and finally on March 7, 1963, when the notice not having been claimed by the appellant or on her behalf was returned to the sender. The High Court drew the inference that the appellant had refused to accept the notice when it was attempted to be served upon her by post. In this state of facts the High Court has taken the view that an opportunity was given to the appellant as required by Section 33B of the Act. It was argued on behalf of the appellant that the requirements of Order V, Rule 17, of the CPC, as amended by the Calcutta Amendment, were not strictly satisfied in this case and service of notice on the appellant at the address by affixing was not a valid service. But it is necessary to point out that Section 33B of the Act does not in express terms require a notice to be served as in the case of Section 34 of the Act. Section 33B merely requires that an opportunity of being heard should be given to the assessee and the stringent requirement of service of notice under Section 34 cannot, therefore, be applied to a proceeding under Section 33B of the Act. As we have already stated the High Court has found after an examination of, the evidence of the case that the appellant was given an opportunity of being heard before respondent No. 1 made the order under Section 33B of the Act. We see no reason to differ from the finding of the High Court on this aspect of the case. Accordingly this appeal fails and must be dismissed with costs.