

Supreme Court of India

Industrial Trust Ltd. vs Commissioner Of Income-Tax, ... on 19 April, 1973

Equivalent citations: AIR 1974 SC 1985, 1973 91 ITR 550 SC, (1974) 3 SCC 525

Author: K Hegde

Bench: H Khanna, K Hegde

JUDGMENT K.S. Hegde, J.

1. These are appeals by special leave. They arise from a common Judgment of the Rajasthan High Court. The assessee-company was incorporated in the erstwhile State of Jaipur on March 10, 1943, under the Jaipur Companies Act. In these appeals we are concerned with the assessment of the assessee for the assessment years 1946-47, 1947-48 and 1949-50.

2. At the relevant time the headquarters of the assessee company was at Jaipur. The Income-tax Officer, Ajmer issued notices under Section 34 of the Indian Income-tax Act, 1922 (to be hereinafter referred to as the Act) to the assessee calling upon it to submit its income-tax returns in respect of the assessment years mentioned earlier. In response to those notices the assessee submitted its returns on August 11, 1953. When those returns were pending before the I. T. O., Ajmer, the I.T.O., Central Circle IV, issued fresh notices to the assessee under Section 34 calling upon it to submit its income-tax returns in respect of those very assessment years. The assessee did not submit any return. On the other hand it wrote a letter to the I.T.O., Central Circle IV, saying that it had already submitted its returns to the I.T.O., Ajmer and hence it could not be called upon to submit fresh returns. Ignoring the objection of the assessee the I.T.O., Central Circle, assessed the assessee. He rejected the assessee's objection regarding jurisdiction with these words:

By its letter dated 27th September, 1956, the assessee contended that under Section 64(1) of the Indian Income-tax Act, the place of assessment should be where the assessee carried on business, profession or vocation and that as the principal place of the business was at Jaipur, the place of assessment should have been at Jaipur. The assessee also relied upon the decision of the 'Bidi' Supply Co. v. Union of India, in support of its contention. This objection of the assessee regarding the jurisdiction was duly referred to the Commissioner of Income-tax, Delhi, who, vide his letter dated 30th January, 1957, addressed to the assessee company, informed that the case of assessee has been transferred to the Income-tax Officer, Central Circle IV, under Section 5(7-A) of the Indian Income-tax Act, and that in view of the facility of investigation and proper assessment it was not possible to accede to the request of the company for transfer of the case back to the territorial Income-tax Officer. Moreover, the case of Pannalal Brijraj v. Union of India, has already decided the issue regarding the vires of Section 5(7-A). The contention of the assessee regarding jurisdiction is, therefore, rejected.

3. From the above observations it is clear that the contention taken before the I.T.O., Central Circle was that the assessee should be assessed by the Income-tax Officer, Jaipur who possibly had acquired territorial jurisdiction over the assessee by the time the assessment proceedings were going on before the Central Circle. No objection appears to have been taken on the ground that the Ajmer I. T. O., was seized of the proceedings in view of the notices issued by him under Section 34. The contention now advanced, namely, that in view of the circumstances that the Ajmer I. T. O., had

already issued notices under Section 34 and that the assessee had already submitted its returns in response to their notices the I. T. O., Central Circle was incompetent to initiate fresh proceedings under Section 34 against the assessee does not appear to have been taken before the I. T. O., Central Circle.

4. The assessee went up in appeal to the Appellate Assistant Commissioner against the assessments made by the I. T. O., Central Circle. Before that officer the assessee contested the jurisdiction of the I. T. O., Central Circle to assess the assessee. The Appellate Assistant Commissioner also rejected that contention. He observed:

The proceedings under Section 34(1-A) for the assessment year 1946-47 appear to have been started on valid grounds in accordance with the law. A notice under Section 34(1)(a) for that year was issued by the Income-tax Officer, Ajmer, after taking the previous approval of the Commissioner of Income-tax, Delhi. A return was filed, but the assessment was not completed. Later on, it was found that the Income-tax Officer, Ajmer was not empowered and had no jurisdiction to issue notice under Section 34(1)(a) in respect of the pre-integration period. The proceedings started by him were, therefore, not valid in the eye of law. Thereafter the Income-tax Officer, Central IV, Delhi issued notice under Section 34(1-A) after obtaining the prior approval of the Central Board of Revenue. On receipt of this notice, the company in the letter dated 2-4-1955 informed the Income-tax Officer that a return has already been filed for that year and requested him to treat the said return as one submitted in compliance with the notice under Section 34(1-A). The Income-tax Officer only complied with the request. Under the circumstances, there is no merit in the appellant's contention that the Income-tax Officer was not competent to issue the notice under Section 34(1-A) for the assessment year 1946-47.

5. Here again it may be noticed that the only contention taken before the A. A. C. was that the notice issued by the Income-tax Officer, Central Circle, under Section 34(1-A) was invalid in respect of the assessment year 1946-47 and not in respect of other assessment years. It may be noticed that by its letter dated 2-4-1955, the assessee had requested the Income-tax Officer, Central Circle, to assess him on the basis of the returns submitted by it to the Income-tax Officer, Ajmer. The Income-tax Officer Central Circle, complied with that request. The circumstance under which the I. T. O., Central Circle came to issue notices under Section 34 is set out in the Order of the A. A. C. The A. A. C's Order indicates that in respect of Jaipur which was formerly a native State, there have been some changes as regards the Income-tax setup. Possibly for some time after Jaipur's integration with India, Jaipur was under the jurisdiction of the I. T. O., Ajmer. But that is not clear from the records. All the same it is necessary to note that, it was not the contention of the assessee that the I. T. O., Central Circle was not competent to initiate proceedings against it in view of the notices issued by the I. T. O., Ajmer. We have only to examine the correctness of that contention.

6. Before the Tribunal it was urged that as the I. T. O., Ajmer had already initiated proceedings under Section 34(1)(a), the I. T. O., Central Circle was incompetent to initiate fresh proceedings under Section 34(1-A). The Tribunal accepted that contention. Consequently the Tribunal held that the notices issued by I. T. O., Central Circle, were invalid notices. Thereafter, at the instance of the Commissioner of Income-tax, the following question was submitted by the Tribunal to the High

Court in respect of the assessment year 1946-47:

Whether on the facts and in the circumstances of the case a fresh action under Section 34(1-A) could be initiated on 21-2-1955 and an assessment made thereon on 24-3-1956 when a return dated 11-8-1953 was already pending before the Income-tax Officer?

7. The High Court answered that question in favour of the Department. Some what similar questions were submitted to the High Court in respect of the assessment years 1947-48 and 1949-50. Those questions were also answered in favour of the Department.

8. There is no dispute that if the assessment proceedings under Section 34 initiated by the I. T. O., Ajmer, are valid proceedings, the I. T. O., Central Circle, would not have had jurisdiction to issue fresh notices under Section 34. The case for the department is that the I. T. O., Ajmer, had no jurisdiction over the assessee in respect of the assessment years with which we are concerned and consequently, the notices issued by him under Section 34 in respect of those years were invalid notices. We have to see whether that submission is correct. If we hold that the notices issued by the I. T. O., Ajmer were invalid notices then we have to uphold the Judgment of the High Court. At no stage before the authorities under the Act the assessee had put forward the case that any I. T. O., other than I.T.O., Ajmer or I. T. O., Central Circle had jurisdiction over it in respect of the assessment years in question.

9. Section 5, Sub-section (6) of the Act provides:

The Central Board of Revenue may, by notification in the official Gazette empower Commissioner of Income-tax, Appellate or Inspecting Assistant Commissioner of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income or such area as may be specified in the notification, and thereupon the functions so specified shall cease to be performed in respect of the specified classes of persons or classes of income or area by the other authorities appointed under Sub-sections (2) and (3).

10. Ordinarily an assessee has to be assessed by the I. T. O. within whose territorial jurisdiction he resides. But, it is open to the Central Board of Revenue to assign any particular class of assessee or any particular type of assessments to an I. T. O., of its choice. It was urged on behalf of the Department that the I. T. O., Ajmer had no jurisdiction to assess the assessee in respect of the assessment years with which we are concerned, in view of the notification issued by the Central Board of Revenue on July 1, 1952 That notification, to the extent relevant for our purpose may be set out. It reads thus:

Notification No. S. R. O. 1214 dated the 1st July, 1952.

In exercise of the powers conferred by Sub-section (6) of Section 5 of the Indian Income-tax Act, 1922 (XI of 1922), and in supersession of its Notification No. 13/I.T. dated the 12th February, 1919, the Central Board of Revenue appoints the Officers specified in the 3rd, 4th, 5th and 6th columns of the Schedule annexed hereto, to perform all the functions of an Income-tax Officer. Inspecting,

Assistant Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax and the Commissioner of Income-tax respectively in respect of the persons specified in the corresponding entry in the 2nd column thereof.

Provided that nothing herein contained shall apply to cases or classes of cases assigned to a Commissioner of Income-tax appointed under Sub-section (2) of Section 5 of the Indian Income-tax Act, 1922, without reference to area.

S.No.

Persons I. T. O.

Ins. Asst. Commr., I/Tax.

A. A. C. of I/Tax.

Commr. of Income Tax.

X X X X X X X X X X X X X X *77.

Persons (excluding those who fall under S. Nos. 69 and 76) not resident in the taxable territories and not assessed through statutory agents under S. 43 with any income for direct assessment etc., house property, interest etc. residing in the following Indian States:

(1) X X X X X X X X X X X X X X (56) Jaipur. I. T. O.

Ajmer.

I. A. C., Delhi.

A. A. C., Delhi.

C. I. T., Delhi.

(57) to x X X X X (109) x X X X X (*) This item will apply only to pending Assessments for period or periods before the integration or merger of the Indian States.

(emphasis supplied.)

11. Jaipur was integrated into India on 7 th April, 1949 but for the purposes of Income-tax it was integrated as from 1st April, 1950. In view of the aforementioned notification it is clear that the Income-tax Officer, Ajmer had jurisdiction over the residents of Jaipur after the issue of that notification only in respect of the assessments pending before him and not in respect of any other assessments. Quite clearly the assessee's assessments were not pending before the I. T. O., Ajmer.

Hence the contention advanced on behalf of the assessee that the I. T. O., Ajmer had jurisdiction over it in respect of the assessment years in question cannot be upheld. It was never urged either before the I. T. O., or before the Appellate Assistant Commissioner or even before the Tribunal that the I. T. O., Central Circle, had no jurisdiction per se over the assessee. That question did not come up for consideration before any of the authorities under the Act. We are not called upon to decide that question nor is it possible to decide that question on the basis of the material before us. Hence, the Rule laid down by this Court in *Commr of Income-tax, Bombay City v. Ranchhoddas Karsondas* relied on by the appellant has no application on the facts of this case.

12. It was next contended by Mr. B. Sen, learned Counsel for the assessee that whether the I. T. O., Ajmer had jurisdiction over the assessee or not that Officer, having issued notices to the assessee under Section 34 and the assessee having submitted its returns in response to those notices, the I. T. O., Central Circle, was not competent to initiate assessment proceedings against the assessee. In support of that contention reliance was placed on the decision of the Madras High Court in *Raman Chettiar v. Commr. of Income-tax, Madras* 42 ITR 700 (Mad). That decision was affirmed by this Court in *Commr. of Income-tax, Madras v. S. Raman Chettiar*, . The question that arose for decision in *Raman Chettiar's* case was whether a return, submitted to an Income-tax Officer having jurisdiction, in response to an invalid notice under Section 34, is a valid return. The High Court as well as this Court held that such a return was a valid return. But that is not the case here. Herein, the return was submitted to an I. T. O., who had no jurisdiction territorial or otherwise over the assessee. Hence the Rule laid down in *Raman Chettiar's* case does not bear on the question arising for decision in this case.

13. For the reasons mentioned above, we are in agreement with the conclusion reached by the High Court. We accordingly dismiss these appeals with costs; ering fee one set.