Supreme Court of India
Rajinder Nath Etc vs Commissioner Of Income Tax, Delhi on 13 August, 1979
Equivalent citations: 1979 AIR 1933, 1979 SCR (1) 272
Author: R Pathak
Bench: Pathak, R.S.

PETITIONER:
RAJINDER NATH ETC.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, DELHI

DATE OF JUDGMENT13/08/1979

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
BHAGWATI, P.N.

CITATION:
1979 AIR 1933 1979 SCR (1) 272
1979 SCC (4) 282
CITATOR INFO :
R 1980 SC 656 (8)
D 1984 SC 993 (19)

ACT:
Income-Tax Act 1961 (43 of 1961)-S. 153(3)(ii)-Applicability of-"finding" and "direction"-Difference between-Observation that Income Tax Officer, "is free to take action" not a 'direction'.

HEADNOTE:
A Hindu undivided family consisting of the father (Karta) and his three sons carried on business. Land was acquired in the name of the Karta and the price was paid out of the books of the family, and a building was constructed on the land. Another building was constructed on another plot of land.

On a partial partition of the above Hindu undivided family its business was taken over by a partnership firm consisting of the Karta and the two elder sons and the firm debited a certain sum of money in the building account of the firm for the assessment year 1955-56 and a similar sum in respect of the other property for the assessment year 1956-57.

The appellants (assessees) who were members of the

partnership firm, filed separate returns in their individual status for the assessment years 1955-56 and 1956-57 claiming that the two properties belonged to the four members of the family in their individual capacity. The Income Tax Officer however regarded the properties as belonging to the partnership firm, and in the assessment proceedings of the firm for the said years, estimated the cost of construction at a higher figure, than the cost disclosed, and made additions accordingly to the returned income of the firm.

Allowing the appeals of the partnership firm the Appellate Assistant Commissioner deleted the additions holding that as the money was advanced by the firm and debited to the account of each co-owner, the partnership firm was not the owner of the properties and therefore it could not be said to have earned any concealed income.

The Income Tax Officer then initiated proceedings under s. 147(a) of the I.T. Act 1961 against the individual assessees for the assessment years 1955-56 and 1956-57 and the additions on account of concealed income originally made in the assessments of the partnership firm were divided between the assessees and included in their individual assessment, rejecting the plea of the assessees that there was no case for invoking the said section, as they had already disclosed that they had invested in the properties when filing their original individual returns.

On appeal the Appellate Assistant Commissioner though agreeing that there was no default on the part of the assessees to warrant proceedings under s. 147(a) and though ordinarily the assessments would be barred by limitation, maintained the assessments on the ground that s. 153(3)(ii) of the Act applied.

273

The Income Tax Appellate Tribunal though rejecting the contention that the assessees were not covered by the expression "any person" in s. 153(3)(ii), pointed out that the provision could not be availed of by the Income Tax Officer as there was neither any "finding" nor a "direction" on the earlier order of the Appellate Assistant Commissioner in consequence of which, or to give effect to which, the impugned assessment could be said to have been made and that no opportunity had been afforded to the assessees of being heard as was required by Explanation 3 to s. 153(3) before that earlier order was made. It held that the Appellate Assistant Commissioner had no jurisdiction to convert the assessments made by the Income Tax Officer under s. 147(a) to "assessments passed under s. 153(3)(ii)".

The High Court on Reference by the Tribunal observed that the finding that the properties did not belong to the partnership firm and therefore the excess amount of the cost of construction could not be regarded as the concealed income of the firm, was necessary for the disposal of the appeals filed by the firm and as a corollary it was held that the buildings belonged to the co-owners. This

necessitated the "direction" to the Income Tax officer that he was free to assess the excess amount in the hands of the co-owners. It held that the Appellate Assistant Commissioner could convert the provisions of s. 147(i) into those of s. 153(3)(ii) of the Act and that the provisions of s. 153(3)(ii) of the Act applied to the case.

In the assessee's appeals to this Court on the question whether s. 153(3)(ii) can be invoked.

Allowing the appeals,

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HELD: (1) The provisions of s. 153(3)(ii) of the Income Tax Act, 1961 are not applicable to the instant case. [280 C]

(2) The expression "finding" and "direction" are limited in meaning. A finding given in an appeal, revision or reference arising out of an assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. To be a necessary finding, it must be directly involved in the disposal of the case. [277G]

(3) Where the facts show that the income can belong either to A or B and to no one else, a finding that it belongs to B or does not belong to B would be determinative of the issue whether it can be taxed as A's income. A finding respecting B is intimately involved as a step in the process of reaching the ultimate finding respecting A. If, however, the finding as to A's liability can be directly arrived at without necessitating a finding in respect of B, then a finding made in respect of B is an incidental finding only. It is not a finding necessary for the disposal of the case pertaining to A. The same principles apply when the question is whether the income under enquiry is taxable in the assessment year under consideration or any other assessment year. [278A-B]

(4) It is now well settled that the expression "direction" in s. 153(3) (ii) of the Act must mean an express direction necessary for the disposal of the case before the authority or court. It must also be a direction which the authority or court is empowered to give while deciding the case before it.

[278C]

274

5. (i) Section 153(3) (ii) is not a provision enlarging the jurisdiction of the authority or court. It is a provision which merely raises the bar of limitation for making an assessment order under s. 143 or s. 144 or s. 147. [278D]

Income Tax Officer, A-Ward, Sitapur v. Murlidhar Bhagwan Das, 52 ITR 335; N. Kt. Sivalingam Chettiar v. Commissioner of Income-tax, Madras, 66 ITR 586 (SC); referred to.

In the instant case all that has been recorded is the

finding that the partner ship firm is not the owner of the properties. The finding proceeds on the basis that the cost has been debited in the accounts of the four co-owners. But that does not mean, that the excess over the disclosed cost of construction constitutes the concealed income of the assessees. The finding that the excess represents their individual income requires a proper enquiry and for that purpose an opportunity of being heard is needed to be given to the assessees. That is plainly required by Explanation 3 to s. 153(3). The finding contemplated in Explanation 3, is a finding that the amount represents the income of another person. [278H-279B, D]

(ii) It is one thing for the partners of a firm to be required to explain the source of a receipt by the firm, it is quite another for them in their individual status to be asked to explain the source of amounts received by them as separate individuals. [279C]

(iii) The observation of the Appellate Assistant Commissioner cannot be described as such a finding in relation to the assessee. [279D]

(iv) It is also not possible to say that the order of the Appellate Assistant Commissioner contains a direction that the excess should be assessed in the hands of the co-owners. The observation that the Income Tax Officer "is free to take action" cannot be described as a "direction". A direction by a statutory authority is in the nature of an order requiring positive compliance. When it is left to the option and direction of the Income Tax Officer whether or not to take action it cannot be described as a direction. [279E-F]

(v) The order of the Appellate Assistant Commissioner contains neither a 'finding' nor a 'direction' within the meaning of s. 153(3)(ii) of the Act in consequence of which or to give effect to which the impugned assessment proceedings can be said to have been taken. [279G]

Commissioner of Income tax, Andhra Pradesh v. Vadde Pullaiah & Co., 89 ITR 240; referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1864- 1869 of 1972.

Appeals by Special Leave from the Judgment and Order dated 17-9-1971 of the Delhi High Court in Income-Tax Reference Nos. 22, 25 and 26 of 1970.

S. C. Manchanda and A. D. Mathur for the Appellants. T. A. Ramachnadran and Miss A. Subhashini for the Respondent.

The Judgment of the Court was delivered by PATHAK, J: These appeals, by special leave, are directed against a judgment dated September 17, 1971 of the High Court of Delhi, disposing of an income tax reference.

There was a Hindu undivided family consisting of the karta, Lala Sham Nath and his three sons, Rajinder Nath, Ram Chander Nath and a minor, Surinder Nath. The family carried on business. On April 29, 1949, land was acquired in Sunder Nagar, New Delhi in the name of the karta, and the price was paid out of the books of the family. A building was constructed on the land and was completed in September 1954. Another building was constructed in the following year on a plot at Golf Links, New Delhi.

On March 18, 1950, there was a partial partition of the Hindu undivided family, and its business was taken over by a partnership firm Messrs. Faqir Chand Raghunath Dass consisting of Lala Sham Nath and the two elder sons, Rajinder Nath and Ram Chander Nath. The partnership firm debited a sum of Rs. 98,418/- in the building account of the firm towards the cost of construction of the Sunder Nagar property during the assessment year 1955-56. In the assessment year 1956-57, the partnership firm debited a sum of Rs. 99,148/-on account of the construction of the Golf Links property.

The assessees, who are members of the partnership firm, field separate returns in their individual status for the assessment years 1955-56 and 1956-57. They claimed that the Sunder Nagar and the Golf Links properties belonged to the four members of the family in their individual capacity. But the Income Tax officer regarded the properties as belonging to the partnership firm, and in the assessment proceedings of the firm for those years, he estimated the cost of construction at a higher figure than the cost disclosed, and made additions accordingly to the returned income of the firm. The partnership firm appealed. Allowing the appeals, the Appellate Assistant Commissioner deleted the additions. He found that when the construction of the buildings was commenced the moneys were advanced by the New Delhi branch of the firm, and the debit in its books was transferred to the Head Office where one-fourth of the total expenditure was debited to the account of each co-owner. On that he held that the partneship firm was not the owner of the properties, and, therefore, it could not be said to have earned any concealed income.

The Income Tax Officer then initiated proceedings under section 147(a) of the Income Tax Act, 1961 against the individual assessees for the assessment years 1955-56 and 1956-57, and the additions on account of concealed income originally made in the assessments of the partnership firm were now divided between the assessees and included in their individual assessments. The Income Tax officer rejected the plea of the assessees that as they had already disclosed that they had invested in the properties when filing their original individual returns there was no case for invoking section 147(a). The Appellate Assistant Commissioner, on appeal, agreed that there was no default on the part of the assessees to warrant proceedings under section 147(a) and that ordinarily the assessments would have been barred by limitation. But the maintained the assessments on the ground that section 153(3) (ii) of the Act applied. In second appeal, the Income-tax Appellate Tribunal, while rejecting the contention that the assessees were not covered by the expression "any person" in section 153(3)(ii), pointed out that nevertheless that provision could not be availed of by the Income

Tax Officer because there was neither any "finding" nor a "direction" in the earlier order of the Appellate Assistant Commissioner in consequence of which, or to give effect to which, the impugned assessments can be said to have been made. It also observed that no opportunity had been afforded to the assessees of being heard, as was required by Explanation 3 to section 153(3) before that earlier order was made. The Tribunal further expressed the view that the Appellate Assistant Commissioner had no jurisdiction in the appeals before him to convert the assessments made by the Income Tax Officer under section 147(a) to "assessments passed under section 153(3) (ii)".

The Commissioner of Income Tax obtained a reference to the High Court of Delhi on the following two questions:-

> "1. Whether on the facts and in the circumstances of the case, the Appellate Assistant Commissioner was legally justified in holding that the provisions of section 147(a) of the Income-tax Act, 1961, were not applicable to the case for the assessment years 1955-56 and 1956-57 respectively ?
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> 2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Appellate Assistant Commissioner in appeals before him could not convert the provisions of section 147(1) into those of Section 153(3)(ii) of the Income-tax Act, 1961 and that provisions of section 153(3) (ii) of the Act were not applicable to the instant case ?"

The High Court noted the finding of the Appellate Assistant Commissioner that the properties did not belong to the partnership firm, and therefore the excess amount of the cost of construction could not be regarded as the concealed income of the firm. The High Court observed that such a finding was necessary for the disposal of of the appeals filed by the firm, and as a corollary it was held that the buildings belonged to the co-owners. This, according to the High Court, necessitated the "direction" to the Income Tax Officer that he was free to assess the excess amount in the hands of the co-owners.

The High Court, taking the view that the co-owners were partners of the firm and, therefore, covered by the expression "any person" in section 153(3)(ii) of the Income- tax Act, held that the bar of limitation for making the impugned assessments was raised by that provision, and that the assessments could be sustained by reference to that provision. It answered the second question referred by the Tribunal in favour of the Revenue and, in the circumstances, considered it unnecessary to answer the first question.

The present appeals have been filed by individuals who are partners of the firm. No appeal has been filed by Surinder Nath who, at the time when the partnership was constituted was a minor and was not admitted to the benefits of the partnership.

The case has been dealt with throughout on the basis that if section 153(3) (ii) of the Act applies, and the bar of limitation thereby removed, it is immaterial that the assessments have been made under section 147(a) of the Act. The question, therefore, is whether section 153(3)(ii) can be invoked. It is

not contended on behalf of the assessees that they are not covered by the expression "any person" in section 153(3)(ii) of the Act. The only contention is that there is no "finding" or "direction" within the meaning of section 153(3) (ii) of the Act in the order of the Appellate Assistant Commissioner in consequence of which or to give effect to which the impugned assessments have been made.

The expressions "finding" and "direction" are limited in meaning. A finding given in an appeal, revision or reference arising out of an assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. To be a necessary finding, it must be directly involved in the disposal of the case. It is possible in certain cases that in order to render a finding in respect of A, a finding in respect of B may be called for. For instance, where the facts show that the income can belong either to A or B and to no one else, a finding that it belongs to B or does not belong to B would be determinative of the issue whether it can be taxed as A's income. A finding respecting B is intimately involved as a step in the process of reaching the ultimate finding respecting A. If, however, the finding as to A's liability can be directly arrived at without necessitating a finding in respect of B, then a finding made in respect of B is an incidental finding only. It is not a finding necessary for the disposal of the case pertaining to A. The same principles seem to apply when the question is whether the income under enquiry is taxable in the assessment year under consideration or any other assessment year. As regards the expression "direction" in section 153(3)(ii) of the Act, it is now well settled that it must be an express direction necessary for the disposal of the case before the authority or court. It must also be a direction which the authority or court is empowered to give while deciding the case before it. The expressions "finding" and "direction" in section 153(3) (ii) of the Act must be accordingly confined. Section 153(3)(ii) is not a provision enlarging the jurisdiction of the authority or court. It is a provision which merely raises the bar of limitation of making an assessment order under section 143 or section 144 or section 147. Income Tax Officer, A-Ward, Sitapur v. Murlidhar Bhagwan Das and N. Kt. Sivalingam Chettiar v. Commissioner of Income-tax, Madras. The question formulated by the Tribunal raises the point whether the Appellate Assistant Commissioner could convert the provisions of section 147(1) into those of section 153(3)(ii) of the Act. In view of section 153(3)(ii) dealing with limitation merely, it is not easy to appreciate the relevance or validity of the point.

In the present case, the Appellate Assistant Commissioner found that the cost of constructing the two buildings had not been met by the partnership firm. The firm had merely advanced money to the individual four co-owners, whose personal accounts in the books of the firm had been debited accordingly. On that material the Appellate Assistant Commissioner held that the partnership was not the owner of the property and consequently any excess over the disclosed cost of construction could not be added in the assessments of the firm. All that has been recorded is the finding that the partnership firm is not the owner of the properties. It is true that the finding proceeds on the basis that the cost has been debited in the accounts of the four co-owners. But that does not mean, without anything more, that the excess over the disclosed cost of construction constitutes the concealed income of the assessees. The finding that the excess represents their individual income requires a proper enquiry and for that purpose an opportunity of being heard is needed to be given to the assessees. Indeed, that is now plainly required by Explanation 3 to section 153(3). The expression "another person" in the Explanation would include persons intimately connected with the person in whose case the order is made in the sense explained by this Court in Murlidhar

Bhagwan Das (supra). It is one thing for the partners of a firm to be required to explain the source of a receipt by the firm, it is quite another for them in their individual status to be asked to explain the source of amounts received by them as separate individuals. On such opportunity being provided it would have been open to the assessees to show that the excess alleged over the disclosed cost of construction did not constitute any taxable income. The finding contemplated in Explanation 3, it will be noted is a finding that the amount represents the income of another person. We are unable to hold that the observation of the Appellate Assistant Commissioner can be described as such a finding in relation to the assessees.

It is also not possible to say that the order of the Appellate Assistant Commissioner contains a direction that the excess should be assessed in the hands of the co-owners. What is a "direction" for the purposes of section 153(3)(ii) of the Act has already been discussed. In any event, whatever else it may amount to, on its very terms the observation that the Income Tax Officer "is free to take action" to assess the excess in the hands of the co-owners cannot be described as a "direction". A direction by a statutory authority is in the nature of an order requiring positive compliance. When it is left to the option and discretion of the Income Tax Officer whether or not to take action it cannot, in our opinion, be described as a direction.

Therefore, in our judgment the order of the Appellate Assistant Commissioner contains neither a finding nor a direction within the meaning of section 153(3)(ii) of the Income Tax Act in consequence of which or to give effect to which the impugned assessment proceedings can be said to have been taken.

Reliance was placed by the Revenue on Commissioner of Income-Tax, Andhra Pradesh v. Vadde Pullaiah & Co. In that case.

there were two appeals before the Appellate Assistant Commissioner, an appeal by the firm and another by Pulliah, a partner of the firm, filed in his individual status. The question was whether the business was the business of the firm or that of Pullaiah. In order to decide the appeal of the firm as well as that of Pullaiah, the Appellate Assistant Commissioner had to decide whether the business was that of the firm or that of Pullaiah. In finding that the business was that of the firm and not of Pullaiah, the Appellate Assistant Commissioner had necessarily to inquire into a matter which covered the subject matter of both the appeals.

In the circumstances, differing from the High Court, we held that the provisions of section 153(3) (ii) of the Income Tax Act are not applicable to the instant case. The question is answered in favour of the assessees and against the Revenue.

The High Court did not enter into the first question formulated for its opinion, that is to say, whether the provisions of section 147 (a) of the Income Tax Act are applicable for the assessment years 1955-56 and 1956-57. It is agreed by the parties that if section 153 (3) (ii) of the Act cannot be invoked by the Revenue, it is necessary to decide the first question formulated by the Tribunal. In view of the opinion expressed by us on the application of section 153(3)(ii) of the Act, the case must go back to the High Court for its opinion on the first question.

The appeals are allowed, the judgment dated September 17, 1971 of the High Court governing the cases of the different assessees for the assessment years 1955-56 and 1956-57 is set aside. The provisions of section 153(3)(ii) of the Income Tax Act, 1961 are not applicable to the instant case. Accordingly, the second question is answered in favour of the assessees and against the Revenue. The cases are remanded to the High Court for its opinion on the first question formulated by the Income Tax Appellate Tribunal. The assessees are entitled to their costs of these appeals.

N.V.K. Appeals allowed.