

Commissioner of Income-tax, U.P. Vs. Rukmani Devi.

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Court : Allahabad

Decided On : Aug-03-1962

Reported in : [1964]52ITR271(All)

Appeal No. : Miscellaneous Case No. 422 of 1959

Appellant : Commissioner of Income-tax, U.P.

Respondent : Rukmani Devi.

Judgement :

This is a reference by the Income-tax Appellate Tribunal, Delhi Bench, purporting to be one under section 66(1) of the Indian Income-tax Act. We are concerned with the opposite party, who was assessed to income-tax under the Rampur State Income-tax Act, 1944 (to be referred to as the 'Rampur Act'), for the assessment year 1946-47. She died after this reference was made and one of her sons has got himself impleaded as her legal representative. While the assessment proceedings were pending in the Rampur State against the opposite party the State merged in India and by section 3 of the Taxation Laws (Extension to Merged States and Amendment) Act, 1949 (to be henceforth referred to as the 'Merger Act'), the Indian Income-tax Act, 1922, and all rules and orders made thereunder were extended to, and brought into force in, the State with effect from April 1, 1949, and by section 7, the Rampur Act, which was in force, 'ceased to have effect except for the purposes of the levy, assessment and collection of income-tax and super-tax in respect of any period not included in the previous year for the purposes of assessment under the Indian Income-tax Act, 1922, as extended to that State by section 3..... and for any purposes connected with such levy, assessment or collectio :

Provided that any reference in any such law to an officer, authority, tribunal or court shall be construed as a reference to the corresponding officer, authority, tribunal or court appointed or constituted by or under the Indian Income-tax Act, 1922.....

Provided further that if any question arises as to who such corresponding officer, authority, tribunal or court is, the decision of the Central Government thereon shall be final.'

Section 5 of the Rampur Act describes the classes of income-tax authorities for the purposes of it, they bein :

(a) The Minister-in-charge of Income-tax;

(b) Commissioner of Income-tax;

(c) Assistant Commissioner of Income-tax;

and

(d) Income-tax Officers.

Under the Indian Income-tax Act, 1922 (which will henceforth be referred to as the 'Indian Act') classes of income-tax authorities for the purposes of the Act are :

(a) Central Board of Revenue;

(b) Commissioner of Income-tax;

(c) Appellate Assistant Commissioner of Income-tax;

(d) Income-tax Officers; and

(e) Inspectors of Income-tax.

It is not in dispute that an Income-tax Officer under the Indian Act is an officer or authority corresponding to an Income-tax Officer under the Rampur Act; consequently the assessment proceedings against the opposite party were completed on March 12, 1961 (after the enforcement of the Indian Act), by an Income-tax Officer appointed under the Indian Act. He found concealment of particulars of income or deliberate furnishing of inaccurate particulars of income by the opposite party and on January 18, 1956, imposed a penalty upon her in exercise of the power conferred by section 28(1)(c) of the Rampur Act which is analogous to section 28(1)(c) of the Indian Act. The assessment order was completed and the penalty was imposed by the Income-tax Officer appointed under the Indian Act in view of the provision contained in section 7 of the Merger Act. It has been held in *C.A. Abraham v. Income-tax Officer, Kottayam and Commissioner of Income-tax v. Bhikaji Dadabhai & Co.*, that imposition of a penalty under section 28(1)(c) is included in the phrase, 'the levy, assessment and collection of income-tax'. Consequently the imposition of penalty was governed by the Rampur Act even though it was imposed after the Rampur Act was repealed and the Indian Act had come into force. There is no controversy on this point.

The opposite party preferred an appeal from the order imposing the penalty as provided by section 31 of the Rampur Act to the Appellate Assistant Commissioner appointed under the Indian Act. There is no dispute about his corresponding to an Appellate Assistant Commissioner under the Rampur Act. The Appellate Assistant Commissioner allowed the appeal and set aside the order of penalty on the ground that imposition of penalty is not included in the phrase, 'the levy, assessment and collection of income-tax'. He was of the view that the imposition of penalty is in addition to the assessment of income-tax and not a part of it. We are not concerned with the merits of the view taken by him; what we want to point out is that he allowed the appeal solely on the ground that the penalty could not be imposed under the Rampur Act because its operation in respect of penalty had not been saved by section 7 of the Merger Act.

Section 33 of the Rampur Act provides that the Commissioner of Income-tax may direct the Income-tax Officer to appeal to the High Court against an order passed under section 31 by an Appellate Assistant Commissioner. High Court in this

provision obviously means the High Court of Rampur. The Commissioner of U.P., in exercise of this power, directed the Income-tax Officer to file an appeal from the order of the Appellate Assistant Commissioner to the Income-tax Appellate Tribunal and an appeal was accordingly filed. The Commissioner of U.P. could undoubtedly be an officer corresponding to the Commissioner of Income-tax of Rampur but it is questionable whether the Income-tax Appellate Tribunal, Delhi, could be said to be an authority corresponding to the High Court of Rampur. Under section 33(2) of the Rampur Act, second appeal could be filed only in the High Court of Rampur and by virtue of section 7 of the Merger Act it could be filed only in a tribunal or court corresponding to the High Court of Rampur. The Income-tax Appellate Tribunal entertained the second appeal and issued notice of it to the opposite party who appeared before it but did not question its jurisdiction to entertain it (on the ground that it was not a tribunal or court corresponding to the High Court of Rampur). It dismissed the second appeal, taking the same view of section 7 of the Merger Act as was taken by the Appellate Assistant Commissioner.

Section 66(1) of the Rampur Act provides that, 'If, in the course of any assessment under this Act or any proceeding in connection therewith..... a question of law arises, the Commissioner may..... draw up a statement of the case and refer it with his own opinion thereon to the High Court :

Provided that a reference shall be from an order under section 33 only on a question of law arising out of that order itself and not on a question of law arising out of a previous order under section 31, revised by the order under section 33.'

According to this provision the Commissioner could refer any question of law arising in the course of any assessment under the Act or in proceedings in connection therewith to the Rampur High Court. In the supposed exercise of the power conferred by section 66 of the Rampur Act the Commissioner, U.P., applied to the Income-tax Appellate Tribunal to refer the question of law arising out of its order to this court and he has made the reference now placed before us for our orders. The opposite party objects to its maintainability on four grounds, namely :

1. The Tribunal could not make the reference under section 66(1) of the Rampur Act because it was not an officer or authority corresponding to the Commissioner, Rampur.

2. Section 66 of the Rampur Act did not envisage a reference after a second appeal had been disposed of by the High Court of Rampur (or a tribunal or court corresponding to it under the Indian Act).

3. Even if a reference could be made, it could not be made to this court but could be made only to the Income-tax Appellate Tribunal which was a court or tribunal corresponding to the High Court of Rampur, and

4. The proviso to section 66 barred a reference as the Rampur High Court (or the court or tribunal corresponding to it under the Indian Act) had disposed of a question of law arising out of a previous order made by the Appellate Assistant Commissioner under section 31.

We must sustain the preliminary objection on the first and the last grounds. We must bear in mind that it is the Rampur Act that we are enforcing and not the Indian Act;

the Rampur Act is still operative in respect of the penalty proceedings (original as well as appellate) in respect of the assessment year 1946-47. The Rampur Act has been repealed and with the repeal the authorities created under it have all disappeared. The Indian Act has come into force and with it the authorities created under it have come into existence. If we have to refer to the Indian Act it is only for the purpose of ascertaining who are the officers, authorities, courts or tribunals constituted under the Indian Act corresponding to the officers, authorities, courts or tribunals constituted under the Rampur Act. When while enforcing the Rampur Act we come across a reference to an officer, authority, court or tribunal, we must find the corresponding officer, authority, court or tribunal constituted under the Indian Act and for this purpose only we must refer to the Indian Act. We must caution ourselves against enforcing the provisions of the Indian Act in the guise of ascertaining which are the officers, authorities, etc., constituted under it corresponding to the officers, authorities, etc., constituted under the Rampur Act.

Under the Rampur Act a reference can be made only by the Commissioner and a question at once arises who is the officer or the authority constituted under the Indian Act corresponding to the Commissioner of Income-tax constituted under the Rampur Act. We have no hesitation in saying that the Commissioner of Income-tax, U.P., is the officer or authority corresponding to the Commissioner of Income-tax, Rampur, and that the Income-tax Appellate Tribunal, which is a court or tribunal and not an officer or authority, does not correspond to him. The Commissioner of Income-tax, Rampur, was a high income-tax authority being subordinate only to the Minister-in-charge of Income-tax. The Commissioner of Income-tax, U.P., is a similar high income-tax authority constituted under section 5 of the Indian Act which is analogous to section 5 of the Rampur Act. The highest income-tax authority constituted under the Indian Act is the Central Board of Revenue which may be said to correspond to the Minister-in-charge of Income-tax under the Rampur Act. The Commissioner of Income-tax, U.P., is subordinate only to the Central Board of Revenue and his powers, duties and functions are similar to those of the Commissioner of Income-tax, Rampur. The Income-tax Appellate Tribunal was created in 1939 through an amendment of the Indian Act; though the Rampur Act enacted in 1944 was based on the Indian Act as it stood then, it did not create the Income-tax Appellate Tribunal for Rampur similar to the Indian Income-tax Appellate Tribunal. Thus the Rampur Act departed from the Indian Act in respect of Income-tax Appellate Tribunal and did not create anything corresponding to it. Instead it invested the (Rampur) High Court with the power to hear second appeals and the Commissioner of Income-tax, Rampur, with the power to refer a question of law to the (Rampur) High Court. The Appellate Tribunal constituted under the Indian Act was thus a court or tribunal quite distinct from any officer, authority, court or tribunal constituted under the Rampur Act; in other words it did not correspond to the Commissioner of Income-tax, Rampur, or any other officer, authority, court or tribunal constituted under the Rampur Act. The Appellate Tribunal only decides appeals from orders of the Appellate Assistant Commissioner and has no other powers; it is essentially a court or tribunal and not an income-tax authority. It cannot, therefore, correspond to the Commissioner of Income-tax, Rampur.

Under the Indian Act a Commissioner of Income-tax has no power to refer a question of law to the High Court; on the other hand the power vests in the Appellate Tribunal. Merely because the power vests in the Appellate Tribunal it cannot be contended that it is an authority corresponding to the Commissioner of Income-tax, Rampur, who had the similar power. It is putting the cart before the horse to consider who is invested

with the power under the Indian Act in order to decide who is the corresponding authority. The question before us is which of the officers, authorities, courts or Tribunals constituted under the Indian Act is to exercise the power conferred upon the Commissioner of Income-tax by the Rampur Act and in deciding this we must not take into account by whom the particular power is to be exercised under the Indian Act; instead we should consider who is the officer, authority, etc., corresponding to the officer, authority, etc., who was invested with the power under the Rampur Act. We must first find the corresponding officer, authority, etc., and then invest him with the power; it would be illogical to hold the officer, authority, etc., who has been invested with the power under the Indian Act as corresponding with the officer, authority, etc., of the Rampur Act. The correspondence has to be ascertained with regard to the general powers, duties and functions and not with reference to the particular power that is to be exercised in this case. We should consider which of the officers, authorities, etc., constituted under the Indian Act has generally the powers, duties and functions similar to those of the officer, authority, etc., constituted under the Rampur Act and not who has the particular power. The correspondence must be ascertained first, as the power is conferred upon the officer, authority, etc., who is found to correspond with the officer, authority, etc., constituted under the Rampur Act; it is evident that in ascertaining the correspondence we must not take into account the nature of the power to be conferred. Section 7 of the Merger Act does not lay down that the power conferred under the Rampur Act shall be exercised by whomsoever has been invested with it under the Act.

The second proviso to the Merger Act does not preclude a decision by this court of the question which officer, authority, etc., constituted under the Indian Act, corresponds to the officer, authority etc., constituted under the Rampur Act. The words 'shall be final' do not mean that the question can be decided only by the Central Government; what they mean is that if there is a decision of the Central Government it shall be final and supersede any other decision to the contrary. The proviso about finality suggests that there can be decisions which are not final and are only tentative or provisional. A decision on the question which officer, authority, etc., corresponds to the Commissioner of Income-tax, Rampur, will be a tentative decision subject only to the decision of the Central Government. Section 9(2) of the Citizenship Act, 1955, which was interpreted by the Supreme Court recently in Akbar Khan v. Union of India, at page 70, reads as follow :

'If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority... as may be prescribed in this behalf.'

The proviso under consideration employs quite a different language. Section 9 of the Citizenship Act lays down which authority has jurisdiction to decide the question whereas section 7 of the Merger Act gives finality to decisions of the Central Government. It is one thing to say that a certain authority has jurisdiction to determine a certain question and quite another thing to say that the decision on a certain question by a certain authority is final. A provision giving finality to a determination of a question by a particular authority does not deny jurisdiction in another authority to determine the same question. Consequently, no help can be had from the decision in Akbar Khans case.

The Appellate Tribunal has been invested with the power to make a reference because it is the final appellate court. The provision in the Rampur Act regarding

second appeal was materially different from that in the Indian Act; second appeal under the former lay in the Rampur High Court. It may be that because the Rampur High Court was the final court of appeal, the power of making a reference, which would be to the High Court itself, was conferred upon the Commissioner of Income-tax, Rampur.

We, therefore, hold that the reference by the Appellate Tribunal was incompetent.

Under the first proviso to section 66 of the Rampur Act there would be no reference from an order under section 33 on a question of law arising out of a previous order made under section 31 revised by the order under section 33. Remembering that the order imposing the penalty, the decision of the first appeal by the Appellate Assistant Commissioner and the decision of the second appeal by the Appellate Tribunal were all proceedings under the Rampur Act (though carried out by authorities constituted under the Indian Act). We find that the first appeal was decided under section 31 and the second appeal under section 33 of the Rampur Act. The word 'revised' in the proviso is used in the general sense of an appellate court reconsidering or reviewing the lower courts order. When an appellate court disposes of an appeal from a lower courts order, it can be said to revise it. We are not prepared to hold that there is a misprint in the proviso and that it has no reference to an order passed in second appeal. There is no warrant for saying that there is a misprint in the Rampur Act. There was some basis for the distinction made by the Rampur legislature between a question of law arising for the first time out of the order passed on second appeal and a question of law arising out of it and also out of an order passed in first appeal. The second appeal was to be heard by the High Court of Rampur and the Rampur legislature might have thought that if it disposed of the appeal on a question of law not raised previously, there should be an opportunity for its reconsideration and, therefore, invested the Commissioner with the power of making a reference. If a question of law had been discussed by the first appellate court and then by the Rampur High Court on second appeal the legislature might have thought that there was no case for its being considered again by the Rampur High Court. We see nothing analogous in the provision that the Rampur High Court, which had disposed of the second appeal, should also be the court of reference. There can be an appeal from a judgment of a High Court to the High Court itself and we see no reason why there cannot be a reference to a High Court of a question of law arising out of its own order. A reference under the Rampur Act was required to be heard by at least two judges of the High Court and it may be that the second appeal under the Rampur Act was disposed of a single judge, in which case there was nothing incongruous in two judges of the High Court considering the question of law arising out of an order passed by one judge. The question whether the Commissioner of Income-tax, U.P., could make the reference, arose out of the order made under section 31 by the Appellate Assistant Commissioner, which was upheld by the Appellate Tribunal through the order passed by it under section 33. Consequently, the proviso applied and barred a reference of it.

We reject the contention of the opposite party that the Rampur Act did not contemplate a reference after the disposal of the second appeal by the High Court of Rampur. We repeat that we see nothing incongruous in the Rampur High Court considering the question on reference even though it arose out of an order passed by itself on second appeal. The proviso to section 66 itself suggests that there can be a reference even after the second appeal has been disposed of. The argument that a reference could be made under section 66 only if a question of law arose 'in the

course of any assessment' and that a question of law arising out of an order passed on second appeal by the Rampur High Court could not be said to be an order arising 'in the course of any assessment' does not appeal to us. Merely because the second appeal has been decided it cannot be said that the assessment has ceased to be pending and that, consequently, no reference can be made. There may be no further a appeal; but this only means that the order passed on second appeal is final and not that the assessment is concluded. The order passed on second appeal is an order made in the course of an assessment and a question arising out of it is one arising 'in the course of any assessment'.

We also reject the contention that the Appellate Tribunal is the court or Tribunal corresponding to the Rampur High Court for the purposes of the reference. This court and not the Appellate Tribunal is the court or tribunal corresponding to the Rampur High Court; the jurisdiction of the Appellate Tribunal is very restricted, being confined only to disposal of second appeals from the orders of the Appellate Assistant Commissioners. The general powers, duties and functions of the Rampur High Court correspond to the general powers, duties and functions of this court and not of the Appellate Tribunal. Merely because the Appellate Tribunal is the forum of second appeal under the Indian Act and the forum of second appeal under the Rampur Act was the Rampur High Court, it cannot be said that the former corresponds to the latter. As we pointed out earlier in deciding the question of correspondence we must consider the general powers and not a particular power and certainly not the very power, the conferment of which is under consideration.

The contention that the reference, if any, could be made, should have been made to the Appellate Tribunal which had disposed of the second appeal is directly opposite to the contention advanced earlier to the effect that there can be no reference to the High Court of Rampur of a question arising out of its own order.

The second appeal under the Rampur Act lay to the Rampur High Court. In this case it was filed in the Appellate Tribunal. The Appellate Tribunal was not a court or tribunal corresponding to the High Court of Rampur but no objection to its jurisdiction to decide the appeal was raised by the opposite party. This does not mean that the Appellate Tribunal, which had no jurisdiction, acquired it merely by acquiescence.

Neither of the counsel brought to our notice any notification which might have been issued by the Central Government deciding which officer, authority, etc., corresponds to the High Court of Rampur and the Commissioner of Income-tax, Rampur.

Holding that this reference is incompetent we return it unanswered to the Appellate Tribunal. We direct that the opposite party shall get her costs assessed at Rs. 100 from the Commissioner of Income-tax, U.P.