
(1978) 04 MAD CK 0043

In the Madras High Court

Case No : S.C. Petition No. 444 of 1977 in Writ Petition No. 359 of 1975

A.C. Paul

APPELLANT

Vs

Tax Recovery Officer

RESPONDENT

Date of Decision : 10-04-1978

Acts Referred:

Constitution of India, 1950 — Article 133, 133(1)
Income Tax Act, 1961 — Section 20(7), 220(7)

Citation : (1978) 7 CTR 337

Hon'ble Judges : P. Govindan Nair, C.J

Bench : Single Bench

Judgement

P. Govindan Nair, C.J.—This is a petition under Article 133(1) of the Constitution. It is admitted that, in order that a certificate may issue, both the conditions, (a) and (b) of Article 133, will have to be satisfied. Those conditions are :-

(a) that the case involves a substantial question of law of general importance; and

(b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

The question that we considered in W.P. No. 359 of 1975 was the interpretation of Sec. 220(7) of the Income Tax Act, 1961. That section, with the Explanation, is in the following terms :

(7) where an assessee has been assessed in respect of income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India, the Income Tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation : For the purposes this section, income shall be deemed to have been brought into India, if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee outside India or if the income whether capitalised or not, has been brought into India in any form.

2. The applicant for the certificate was an assessee to Income Tax. He had substantial income in Ceylon and his income in India, compared to that in Ceylon, was negligible. He was admittedly assessed on this total income, which included his Ceylon income. Consequently, the rate that was applicable was higher.

3. On behalf of that applicant it was contended, at the time of the hearing of the writ petition, that meaning to be attributed to the words, "that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India", was that it required calculation of the tax on the foreign income, as if the foreign income, as total income and that, consequently, the tax due on the Indian income must also being the total income and that the tax payable by the assessee could only be the tax attributable to the Indian income on calculation being made as if the Indian income was the total income. This submission was found unacceptable to the Court. After advertent to the relevant provision of the statute, it was held that the charge was on that total income. Any step for granting relief u/s. 20(7) cannot affect these provisions of the Act and hence it was ruled that the tax attributable to the Indian income must be determined by finding out the tax imposed by dividing the total tax imposed by the total income and that the assessee would be liable to pay that tax.

4. It was contended by counsel on behalf of the applicant that the view taken by this court was erroneous. The question is whether there is a substantial question of law of general importance and whether that question of law, but we are not satisfied that it is a substantial question of law. But even assuming that it is a substantial question of law of general importance, the applicant must also satisfy the court that that question requires to be decided by the Supreme Court.

5. In a recent decision, State Bank of India vs. N. S. Money, the Supreme Court considered the question when the Article could be said to have been satisfied. The Supreme Court observed (paragraph 2 at page 1112) :-

The certificate issued by the High Court under Art. 133 (1) is bad on its facts, according to counsel for the respondent and the appeal consequently incompetent. We are inclined to agree that the grant of a constitutional passport to the Supreme Court by the High Court is not a advertence to the dual vital requirements built into Art. 133(1) by specific amendment. Failure here stultifies the scheme of the Article and floods this court with cases of lesser magnitudes with illegitimate entry. A substantial question of law of general importance is a sine qua non to certify fitness for hearing by the apex Court. Nay ,more; the question, however important and substantial must be of such pervasive

importance and deep significance that in the High Courts judgment, it imperatively needs to be settled at the national level by the highest bench. The crux of the matter has been correctly set out in a decision, Union of India vs. Hafiz Mohd. Said, of the Delhi High Court in words which find our approval :

A certificate can be granted only if the case involves a question of law;

(i) which is not only substantial but is also of general importance; and (ii) the said question, in our opinion, needs to be decided by the Supreme Court

It has to be noted that all the above requirements should be satisfied before a certificate can be granted. It means that it is not sufficient if the case involves a substantial question of law of general importance, but in addition to it, the High Court should be of the opinion that such question needs to be decided by the Supreme Court. Further, the word needs suggests that there has to be a necessity for a decision by the Supreme Court on the question, and such a necessity can be said to exist, when, for instance, two views are possible regarding the question and High Court takes one of the said views. Such a necessity can also be said to exist when a different view has been expressed by another High Court.

6. Assuming, without deciding, that there is a substantial question of law of general importance, we are not satisfied that the question needs to be decided by the Supreme Court. We said in our judgment -

We are unable to accept the argument of counsel that, after the determination of the tax that is due from a person in accordance with provisions of the Act which necessarily implies that the tax must be calculated on the basis of his total income and at the rate applicable to that total income, the Income Tax Officer can alter the quantum of the total tax due from the assessee by bifurcating the foreign income and the Indian income and by treating these two separate incomes on which separate taxes have to be calculated in accordance with the provisions of the Act.

we concluded by saying -

We have no hesitation whether in concluding that the method to be adopted is by finding out average rate of tax applicable on the total income determined by the assessing authorities i.e., the tax finally determined after the appeals and references, if any, for the concerned years and disposal of - by dividing the total tax so imposed by the total income. That average rate will have to be applied to the Indian income and the tax that can be collected will be the tax as can be calculated on the Indian income.

7. We do not think that two views are possible. Accordingly, we dismiss application.