

(1989) 07 CAL CK 0028
In the Calcutta High Court
Case No : C.R. No. 2882 (W) of 1979

Basudeo Prasad Agarwalla

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

Date of Decision : 06-07-1989

Acts Referred:

Income Tax Act, 1961 — Section 254

Citation : (1989) 180 ITR 388 : (1990) 48 TAXMAN 260

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

Advocate : Sanjay Bhattacharya and Chandrima Bhattacharya, for the Appellant; A.C. Moitra and R.E. Prosad, for the Respondent

Judgement

Susanta Chatterjee, J.—The present rule was obtained by a writ petition on April 16, 1979, praying, inter alia, for an appropriate writ commanding the respondents to quash and/or cancel the two draft orders of assessment for the assessment years 1970-71 and 1971-72 made by respondent No. 1, Income Tax Officer, Central Circle-XXX, Calcutta, as forwarded to the petitioner under letter dated February 19, 1979, and the two purported notices both dated March 5, 1979, and March 29, 1979, issued by respondent No. 2, Inspecting Assistant Commissioner of Income Tax, Range-V(c), Calcutta, on the ground that respondent No. 1 exceeded his jurisdiction in making the addition or disallowances inasmuch as neither the order of the Appellate Assistant Commissioner of Income Tax dated September 27, 1974, nor the order of the Tribunal dated May 30, 1975, authorised respondent No. 1 to make the assessment for the assessment year 1970-71 afresh as if the assessment was a regular assessment u/s 143 of the said Act.

2. Mr. Sanjay Bhattacharya, learned advocate appearing with Mrs. Chandrima Bhattacharya for the petitioner, have argued that even assuming though not admitting that the order of the Tribunal for the assessment year 1970-71 dated May 30, 1975, had the effect of reopening the assessment as a whole, it is urged

that the order of the Tribunal is illegal, invalid and without jurisdiction as the Tribunal's order would be beyond the scope of the appeal. It is also argued that although the whole corpus of assessment was revived and left open with a fresh lease of life for a fresh adjudication by the Income Tax Officer, the respondent had no jurisdiction and competence to ignore the findings and/or directions of the appellate authority. Respondent No. 1, it is alleged, has thoroughly ignored such findings and/or directions in the order of the Appellate Assistant Commissioner of Income Tax both in respect of the assessment years 1970-71 and 1971-72 and thus acted improperly and without jurisdiction. The attention of the court has been drawn to the fact that the power to issue directions by the Inspecting Assistant Commissioner of Income Tax in exercise of the power u/s 144B of the Income Tax Act makes the proceeding before the Income Tax Officer infructuous and ineffective although it is conceded that the proceeding u/s 144B of the said Act did not remain in force and in view of the deletion of the said provision from the Act, the petitioner cannot challenge such proceeding made u/s 144B of the said Act because the respondent authorities are, in any case, entitled to proceed according to law by giving appropriate opportunities to the petitioner as the petitioner would be found otherwise entitled ; but the entire thrust of the argument is that after the decision of the appeal sending the matter on remand, the scope has become limited and the authorities concerned, after remand, cannot take any effective action beyond the scope of the order of the appellate authority. Such an action by the authorities concerned after the order of the appellate authority will be unwarranted and uncalled for and such action would be without jurisdiction.

3.Mr. Moitra, learned advocate appearing for the respondent authorities, has, however, drawn the attention of the court to the decision in *Hukumchand Mills Ltd. Vs. Commissioner of Income Tax, Central Bombay and Others*, . The attention of the court has been drawn to page 237 of the judgment wherein it was held that the word "thereon" of course, restricts the jurisdiction of the Tribunal to the subject-matter of the appeal. The words "pass such orders as the Tribunal thinks fit" include all the powers (except possibly the power of enhancement) which are conferred upon the Appellate Assistant Commissioner by Section 31 of the Act. Consequently, the Tribunal has authority under this section to direct the Appellate Assistant Commissioner or the Income Tax Officer to hold a further enquiry and dispose of the case on the basis of such enquiry. Rule 12 of the Appellate Tribunal Rules, 1946, made u/s 5A(8) of the Act provides as follows :

"The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal; but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal under this rule :

Provided that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being

heard on that ground."

Rule 27 states :

"The respondent, though he may not have appealed, may support the order of the Appellate Assistant Commissioner on any of the grounds decided against him."

4. Having heard the learned advocates of the respective parties, this court is of the view that the challenge as against the orders made u/s 144B did not remain anywhere for consideration ; but with regard to the order made by the respondent authorities after the order of remand, it is to be considered in the proper perspective inasmuch as the authorities concerned cannot take steps beyond the scope of the order of remand. If the order of remand is open and the authorities concerned, after remand, can exercise the jurisdiction in accordance with law, there is nothing for this court to regulate such action ; but at the same time, this court observes that if the scope of remand is limited, after remand, the authorities cannot enlarge the same and make an assessment beyond the scope of the order of remand. The authorities concerned, after remand, are certainly entitled to proceed in accordance with law, but limited, if there is any order of the appellate authority permitting the authorities concerned to proceed in the light of the directions made therein. With this observation, the writ petition is disposed of and the rule is also disposed of and the interim order, if any, is vacated.

5. There will be no order as to costs.