
(1967) 01 AHC CK 0025

In the Allahabad High Court

Case No : Civil Miscellaneous Reference No. 142 of 1964

BHAWANI SHANKER

APPELLANT

Vs

STATE.

RESPONDENT

Date of Decision : 19-01-1967

Acts Referred:

Citation : (1968) 68 ITR 873

Hon'ble Judges : Manchanda, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

MANCHANDA J. - This is a case stated u/s 24(4) of the U. P. Agricultural Income Tax Act, 1948 (hereinafter referred to as the Act).

No question has been formulated or referred. That is not proper. It is the duty of the Agricultural Income Tax Revision Board (hereinafter to as the Board) when stating a case, to formulate a question for the opinion of this court.

The question that can be said to arise is :

"Whether the Board was justified in refusing to entertain the revision on the ground that the application was not signed by the minor assessee or his guardian but only by the Mukhtarnama appointed by the guardian ?"

The material facts lie within a narrow compass and are these : The assessee was a minor and his father, Ram Lal, was his guardian. The latter executed a Mukhtarnama in favour of Girja Shanker and that Mukhtarnama gave very wide powers to the Mukhtar including the power to sign to memo of appeal and applications. Against the assessment order for the relevant assessment year Girja Shanker as Mukhtarnama filed an appeal to the Collector-in-charge u/s 16 of the Act. The appeal was dismissed on the ground that the memorandum of appeal was not verified and signed by the guardian of the assessee, Ram Lal, but only by the Mukhtarnama and as such the provisions of section 21(4) read with

rule 25 had not been complied with. Against the dismissal of the appeal a revision was filed again under the signature of the Mukhtarnama. Bhawani Shanker. A preliminary objection was taken at the time of the admission of the appeal. The Board of Revenue, on the analogy of the provisions of section 21 and rule 25 which related to appeals, upheld the preliminary objection holding that the revision was not validly presented and ordered it to be returned to the signatory thereof. In other words, the Board refused to entertain the revision filed by the Mukhtar. An application u/s 24(2) having been dismissed on the ground that no question of law arose, this court upon being moved u/s 24(4) directed the Board to state a case. That is how the matter is before this court.

The court of the Board refusing to entertain the revision is manifestly erroneous in law. It is well-settled that unless there is specific provision of law requiring the signatures and verification of the assessee himself the common law rule *qui facit per alium facit per se* will have to be followed. In other words, what a man can do himself can equally well be done by his duly authorized agent. A vital matter such as the jurisdiction to entertain a revision on which is governed by law and is not one which lies in the discretion of the Revision Board. There may be something to be said for the proposition that an appeal has to be signed and verified by the assessee himself, because of the provisions of section 21(4) read with the rule 25 of the Agricultural Income Tax Rules (hereinafter referred to as the Rules). Section 21(4) runs :

"Every appeal under this section shall be presented in the prescribed form and shall be verified in the prescribed manner."

Rule 25 reads :

"(1) An appeal u/s 2 to the Commissioner or Additional Commissioner may be filed within 35 days of the order appealed against and shall be in the case of an order u/s 6 in form A. I. T. 6. ... and the same shall be verified in the manner indicated therein..."

(2) (ii) On receiving such memorandum of appeal the Collector shall endorse thereon the date of its presentation and the name of the party, or his duly authorized agent in writing in that behalf presenting it and remit the appeal within a week of such presentation to the Commissioner or Additional Commissioner."

Paragraph 6 of A. I. T. form VI requires :

"A concise statement of the facts on which the petitioner relies for the purpose of this appeal is attached herewith."

It then goes on to provide that the petition has to be signed. There is a space provided for the signatures. It is, however, not made clear as to who is to be the signatory. In the form of verification given at the foot, the position is again left somewhat ambiguous :

"I,... the petitioner named in the above petition, do declare that what is stated therein, including the statement of facts referred to in paragraph 5 is true to the best of my information and belief."

Under similar provisions of the Income Tax Rules, 1922, in Form B, the position, as to who is required to sign the memo of appeal, is placed beyond doubt by providing in the foot-note that the form of appeal and the form of verification appended thereto shall be signed "in the case of an individual by the individual himself. " Similarly, in the Agricultural Income Tax Act or the Rules, it would have been advisable to have appended similar foot-note to place the matter beyond debate. Contrasting, however, the provisions for appeal with the provisions for revision it becomes clear that even assuming that the memo of appeal must be signed and verified by the assessee there is no such requirement for a revision. Section 22 reads :

"The Revision Board may, on their own motion or on an application, call for the record of any proceeding under this Act pending before or decided by any authority subordinate to the Revision Board and after such enquiry as they deem necessary, may pass such orders as they think fit..."

There is no A. I. T. form provided for an application for revision, nor is there any rule requiring it to be in a prescribed form. This is obviously for the reason that the Board can exercise its revisional power even suo motu. There can therefore be no question of having a prescribed form for such an application. It is enough for any one to bring the error of jurisdiction or law to the notice of the Board and it may, if satisfied, invoke its revisional powers. therefore, the Board fell into an error in thinking that a revision application to it required to be signed and verified by the assessed. the error was one of law and further the refusal to entertain the appeal was failure to exercise jurisdiction vested in it by law.

In this view of the matter, it is not necessary for this court to express concluded opinion on the further questions which were raised - as to whether the appeal itself was valid dismissed by the Commissioner u/s 21 of the Act for failure of the guardian of the minor to sign and verify the memo of appeal and whether the appeal filed by the duly authorized agent was valid or not. As to whether the assessee could have filed another memo of appeal signed by the duly authorized agent and thus cure the defect, if any, in the filling of the appeal along with an application for condonation of the delay is again a matter on which we express no opinion as that will also be for the Board to consider while disposing of the reference application on its merits. The Board in this connection will bear in mind the decision of the Supreme Court in Commissioner of Agricultural Income Tax v. Sri Keshab Chandra Mandal and of this court in Special Manager, Court of Wards, Naraindas Narsingdas v. Commissioner of Income Tax, of the Calcutta High Court in Sheonath Singh v. Commissioner of Income Tax, of the Supreme Court in Gouri Kumari Devi v. Commissioner of Income Tax, and of this court in Behari Lal Laxminarain v. Income Tax Officer.

For the reasons given above, the question is answered in the negative and in favour of the assessee. In the circumstances of the case, however the parties are left to bear their own costs. Counsels fee is assessed at Rs. 100.

Question answered in the negative.