
(1951) 03 PAT CK 0015
In the Patna High Court
Case No : Misc. Judicial Case No. 229 of 1949

Bihar Mica Concern Ltd.

APPELLANT

Vs

Commr. of Income Tax

RESPONDENT

Date of Decision : 14-03-1951

Acts Referred:

Income Tax Act, 1961 — Section 22(1), 22(2), 66(1)

Citation : AIR 1951 Patna 186

Hon'ble Judges : Sarjoo Prosad, J; Ramaswami, J

Bench : Division Bench

Advocate : Baldeva Sahay and R.J. Bahadur, for the Appellant; S.N. Dutt, for the Respondent

Judgement

Ramaswami, J.—This reference is made by the Income Tax Appellate Tribunal u/s 66(1), Income Tax Act.

2. The assessee Bihar Mica Concern Ltd. is a private company limited, the shareholders being Chatturam and Dareanram, holding equal shares. The assessee carried on business at Kodarma which is situated in Chotanagpore, a partially excluded area. The Income Tax Officer made assessment for the year 1939-40 on 85-8-1939. The income was determined to be Rs. 346. No appeal was preferred by the assessee to the Appellate Assistant Commissioner or to the Tribunal. On 10-7-1941 the Income tax Officer issued notice u/s 34 on the ground that the income had partly escaped assessment. The proceedings continued till 31.3.1944. A revised estimate was made and the total income was computed to be Rs. 8146. An appeal was preferred by the assessee to the Appellate Assistant Commissioner who dismissed the appeal. A second appeal was preferred before the Appellate Tribunal who hoard it along with the appeal instituted by Chhatturam Horilram Limited. The Appellate Tribunal delivered a single judgment dismissing both the appeals.

3. At the instance of the assessee the Appellate Tribunal has referred the following questions of law for being determined by the High Court :

(1) "Whether the revised assessment made on 31-3-1944 is validly made having regard to the fact that the Bihar Regulation IV [4] of 1942 had been made with (retrospective effect ? and (2) Whether the notice u/s 34 issued on 10 7 1941 was validly issued for the assessment of the year 1939-40?"

4. In my opinion both these questions must be answered against the assessee in view of the principle enunciated by the Federal Court in *Chatturam v. Commissioner of Income tax, Bihar* (1947) 15 ITR 302. In that case the assessee was served on 20-4-1940 with a notice u/s 22(2), Income Tax Act, for furnishing a return in the prescribed form for the accounting year 1939-40. On 22-4-1940 a notice u/s 22(1) was published in the newspapers requiring persons generally to submit the returns in prescribed form. On 26 5 1940 the Governor of Bihar by Notification u/s 92(1), Government of India Act, directed that the Indian Income tax Act and the Indian Finance Act 1940 should be deemed to have been applied to the Chotanagpur Division with retrospective effect. To remove doubts as to the retrospective applicability of the Acts the Governor of Bihar acting u/s 92 (2), Government of India Act made Regulation I [1] of 1941. The Regulation received assent of the Governor-General on 13 6-1941. There were appeals against the assessments and the appeals were pending when Regulation I was made. Upon these facts it was held by the Federal Court that u/s 92 (1) the Governor was acting in exercise of his legislative powers; that in any event u/s 92 (2), Constitution Act, the Governor had full plenary powers of legislation in respect of the partially excluded area and that he had power to make Regulation I [1] of 1941 applicable to the Chotanagpore Division with retrospective effect. It was further held that the issue or receipt of a notice was not the foundation of the jurisdiction of the Income Tax Officer to make the assessment or of the, liability of the assessee to pay the tax. The liability to pay the tax is founded on Sections 3 and 4, Income Tax Act, which are the charging section. Section 22 and others are the machinery sections to determine the amount of tax and it was futile to contend that the Income Tax Officer was not entitled to assess the party or that the party is not liable to pay any tax because notice had not been issued to him.

5. Applying the ratio of this decision to the present case it is manifest that both the questions referred to the High Court must be answered in the affirmative. The assessee must pay the cost of this reference. Hearing fee Rs. 250

Sarjoo Prosad, J.

6. I agree.