(1951) 03 PAT CK 0012

In the Patna High Court

Case No : Miscellaneous Judicial Case No. 229 of 1949

BIHAR MICA CONCERN LTD. — APPELLANT

Vs

RE. — RESPONDENT

Date of Decision : 14-03-1951

Acts Referred:

Government of India Act, 1935 — Section 92
Income Tax Act, 1961 — Section 22, 3, 34, 4, 66

Citation : (1951) 19 ITR 553

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

Bench : Full Bench

Judgement

RAMASWAMI, J. - This reference is made by the Income Tax Tribunal u/s 66(1) of the Income Tax Act.

The assessee Bihar Mica Concern Ltd., is a private limited company, the shareholders being Chatturam and Darsanram holding equal shares. The assessee carried on business at Kodarma which is situated in Chota Nagpur, a partially excluded area. The Income Tax Officer made assessment for the year 1939-40 on August 25, 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 July 10, 1941, the Income Tax Officer issued notice u/s 34 on the ground that the income had partly escaped assessment. The proceedings continued till March 31, 1944. A revised estimate was made and the total income was computed to be Rs. 8,146. 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 heard it along with the appeal instituted by Chatturam Horilram Limited. The Appellate Tribunal delivered a single judgment dismissing both the appeals.

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 March 31, 1944, is validly made having regard to the fact that the Bihar Regulation IV of 1942 had been made with retrospective effect ? and (2) whether the notice u/s 34 issued on July 10, 1941, was validly issued for the assessment of the year 1939-40 ?"

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. In that case the assessee was served on April 20, 1940, with a notice u/s 22(2) of the Income Tax Act for furnishing a return in the prescribed form for the accounting year 1939-40. On the April 22, 1940, a notice u/s 22(1) was published in the newspapers requiring persons generally to submit the returns in the prescribed form. On the May 26, 1940, the Governor of Bihar by Notification u/s 92(1) of the 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 Chota Nagpur Division with retrospective effect.

To remove doubts as to the retrospective applicability of the Acts the Governor of Bihar acting u/s 92(2) of the Government of India Act made Regulation I of 1941. The Regulation received assent of the Governor-General on the June 13, 1941. There were were appeals against the assessments and the appeal 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 power; that in any event u/s 92(2) of the Constitution Act Governor had full plenary powers of legislation in respect of the partially excluded area and that he had power to make Regulation I of 1941 applicable to the Chota Nagpur 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 the liability of the asessee to pay the tax. The liability to pay the tax is founded on Sections 3 and 4 of the Income Tax Act which are the charging sections. 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.

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. - I agree.

Reference answered accordingly.

