

(1956) 05 AHC CK 0023
In the Allahabad High Court
Case No : A.I.T. Application No. 310 of 1953

CHAUBEY SATGUR DAS RAO

APPELLANT

Vs

STATE OF U.P.

RESPONDENT

Date of Decision : 11-05-1956

Acts Referred:

Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : (1958) 28 AWR 408 : (1958) 34 ITR 880

Hon'ble Judges : Mootham, C.J

Bench : Division Bench

Final Decision : Dismissed

Judgement

MOOTHAM C.J. - This is an application u/s 24(4) of the U.P. Agricultural Income Tax Act against the refusal of the Revision Board to state a case for the opinion of this court.

On March 25, 1949, the assessee was assessed to agricultural Income Tax in respect of the assessment year 1948-49 on his income for the previous year ending June 30, 1948. Against the assessment he preferred an application in revision u/s 22 of the Act to the Agricultural Income Tax Board. This application was dismissed on October 16, 1952. The assessee thereafter filed an application to the Board u/s 24(2) asking it to refer to this court certain questions of law which the assessee contended arose out of the Boards order of October 16, 1952. This application was rejected by the Board on March 9, 1953, on the ground that it was barred by time and the Board did not express any opinion on the merits of the application. The assessee then filed the application which is now before us. In this application the assessee asks that the fifteen questions of law be referred to this court; nine of these questions are said to arise out of the decision of the Board that the assessee's application u/s 66(2) was barred by time and the remaining questions out of the Boards earlier order of the 16th October.

The question which we have first to determine is the procedure prescribed by the Act in such circumstances. Section 24(2) enables an assessee to apply to the Revision Board to refer to this court any question of law "arising out of such order of decision" which, it is not in dispute, means in this case the Boards order of October 16, 1952; and if the Board refused (as it has) to make a reference then this court may u/s 24(4) if not satisfied that the decision of the Revision Board is correct, require the Board to state a case and refer it to the High Court. It is evident that the questions which in such circumstances the Board has to refer and the case which it has to state must arise out of and relate to the order made by the Board u/s 22, namely, the order of October 16, 1952.

Sub-section (4) is in these terms : "(4) If the Board reject the application under sub-section (2) or refuse to state the case on such application, the assessee may within three months of the communication of the order under sub-section (3) apply to the High Court and the High Court may, if it is not satisfied about the correctness of the decision of the Revision Board, require the Revision Board to state the case and refer it and on receipt of such requisition the Revision Board shall state and refer the case to the High Court."

It is clear, therefore, that whatever may have been the ground upon which the Board has refused the application the only affirmative course open to this court, if it is not satisfied as to the correctness of the Boards decision, is to require a case to be stated. No distinction is made in the procedure to be followed in cases where the court finds the Board, after considering an application for a reference on its merits, has erroneously come to the conclusion that no question of law arises and cases in which it finds that the Board has wrongly rejected the application or refused to make a reference on the ground that it is time barred or is otherwise incompetent. In this respect the provisions of section 24 of the Act are in marked contrast with those of section 66 of the Indian Income Tax Act, sub-section (3) of which provides that if the Appellate Tribunal has rejected an application for a reference on the ground that it is time barred and the High Court is of opinion that the Appellate Tribunal erred in so doing, it may require that Tribunal to treat the application as made within time.

Now bearing in mind that a reference can lie and a case be stated only on a question of law arising out of the order made by the Board u/s 22, it follows that the question whether the decision of the board that an application made to it u/s 24(2) is time-barred is not a question which can be made the subject of a reference and must, therefore, be decided finally by the High Court. If the High Court is of opinion that the decision of the Board on the question of limitation is right, that is the end of the matter. If it is of the view that the Boards decision on that question is wrong, then in our opinion it must examine the order made by the Board (in this case) in exercise of its revisional powers, and only if it is satisfied that that order passed u/s 22 raised a question of law will order a case to be stated. It is true that in circumstances such as the present in which the Board has not considered the application made to it on its merits the court will

not have the advantage of having before it the opinion of the Board, but it would appear that it was the intention of the Legislature that the assessee should not be placed in the position of having to make a second application for a reference as would be the case if, on a consideration of the first application on its merits, the Board came to the conclusion that no question of law arose and accordingly refused to state a case. That possibility is avoided if, at the present stage, the High Court examines the order made on revision and decides at once whether a question of law arises thereon.

We turn now to a consideration of the question whether the Board was right in holding that the assessee's application u/s 24(2) was time-barred. That sub-section so far as is material provides that :

"Within sixty days of the communication of an order u/s 21 or section 22, the assessee may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, apply to the Revision Board to refer to the High Court any question of law arising out of such order or decision....."

And it is common ground that the fee prescribed in respect of the assessee's application was Rs. 50.

The application was received by the Board on December 16, 1952, and was accompanied by a treasury challan showing that a deposit of Rs. 50 had been made. The Board returned the application to the assessee as defective inasmuch as (a) the application ought to have been accompanied by court fee stamps of the value of Rs. 50 and a copy of the Board's order of October 16, 1952, and (b) the application ought to have had affixed to it a court fee stamp of Rs. 3-12-0.

The application was resubmitted on January 15, 1953, accompanied by a court fee stamp of the value of Rs. 50 and a copy of the order required. The Board however again returned the application as it had not had affixed to it a court fee stamp of Rs. 3-12-0 and the application was finally submitted to the Board with the court fee stamps on January 29, 1953. The Board was of opinion that the application was presented in the proper form on January 29, 1953, and that as limitation expired on December 15, 1952, the application was clearly out of time. In this court the learned standing counsel has conceded that there is no rule that required the application to be accompanied by a copy of the order made u/s 22, and he has not attempted to support the Board's view that the last day upon which the application could be filed was December 15, 1952, in view of the terms of sub-section (2) of section 24 which provide that the prescribed period of sixty days shall commence from the date upon which the order of the Board was communicated to the assessee. That date is October 29, 1952. The period of limitation could not, therefore, expire before December 26, 1952. On behalf of the Board it has however been contended that it was necessary for the assessee's application to be accompanied by a court fee stamp of Rs. 50 and to bear a court fee stamp of Rs. 3-12-0 and that as these requirements were not complied with until some time after December 26, 1952, the application was out of time and

the Boards decision was right.

Now section 44(1) of the Act empowers the State Government to make rules "for carrying out the purposes of this Act", and in purported exercise of that power the State Government has made rules 25D(1) and 26 which read as follows :

"25-D. (1) Petitions or applications under the Agricultural Income Tax Act to the assessing authority, the Commissioner or the Additional Commissioner and Board shall be chargeable with the sum court fee as is respectively chargeable for petitions and applications to the Collector, the Commissioner of a Division and the Board of Revenue.

26. An application for reference to the High Court under sub-section (2) of section 24 shall be accompanied by a court fee of, where the agricultural income of the applicant as determined by the assessing authority :

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(i) does not exceed Rs. 15,000 Rs. 50

(ii) exceeds.....Rs. 15,000 but does not exceed Rs. 50,000 Rs. 75

(iii) exceeds Rs. 50,000 Rs. 100."

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It is under the former of these rules that it is contended that the assessee's application must bear a court fee stamp of Rs. 3-12-0 and under the latter that it must be accompanied by a court fee stamp of Rs. 50. Now it is to be observed first, that although rule 25D(1) purports to make the application chargeable with a court fee and that the requirement of rule 26 is that the application is to be accompanied by a court fee, nowhere in the Act or Rules is it laid down in what manner such court fee is to be paid. There is no provision such as is to be found in section 25 of the Court Fees Act that the court fee is to be paid by means of the purchase of stamps, and in the absence of any such provision we are of opinion that the Board was not entitled to demand that the payment of either fee must be by means of court fee stamps and that there was a sufficient compliance with rule 26 if the application was accompanied, as in this case, by a treasury challan showing that the appropriate fee has been deposited in the treasury.

Secondly, there is no provision in the Act or Rules, such as is again to be found in the Court Fees Act, that an application shall not be received by the Board or any other sales tax authority unless the fee prescribed by rule 25D(1) had been paid; and we are, therefore, of opinion that the fact that the fee prescribed by this rule has not been paid does not entitle the Board to refuse to accept the application. All that the rule says is that the fee is chargeable; how or when that fee is to be collected is not provided.

It has also been argued on behalf of the assessee that rule 25D(1) is ultra vires the Legislature on two grounds. In the first place it is contended that the rule is

not within the rule making power conferred on the State Government by section 44 of the Act; and secondly that the Board is not a court within the meaning of item 1 of List II of the Seventh Schedule to the Government of India Act, 1935, and the Provincial Legislature had in consequence no power to legislate with regard to fees to be taken therein. In the view we take, these questions do not arise, but should our view be wrong and in deference to the arguments of learned counsel we propose to state shortly the opinion which we have formed. In our judgment both submissions are well founded. The State Governments rule making power is restricted to the making of rules for carrying out the purposes of the Act. The broad purpose of the Act is stated in the preamble as being the imposition of a tax on agricultural income, and the only section in which provision is made for the collection of a fee appears to be section 24(2), that is to say the fee of Rs. 100 or such less amount as may be prescribed which must accompany an application under the sub-section. In these circumstances the State Government has, in our opinion, no power to levy by rule another fee, namely a fee payable on the application itself, and rule 25D(1) is, therefore, ultra vires.

A court is a place where justice is judicially administered. Its characteristics have been considered in a number of cases including a series of decisions of the Supreme Court of which the most recent is *Brajnandan Sinha v. Jiyoti Narain*. In that case the Supreme Court pointed out that a tribunal cannot be a court unless it has, in addition to some of the trappings of a judicial tribunal, the power to give a decision or a definitive judgment which has finality and authoritativeness. A tribunal is not however necessarily a court because it possesses this power, for a true judicial decision presupposes an existing dispute between two or more parties and then involves, in addition to an authoritative decision, (1) the presentation of their case by the parties to the dispute, (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence, and (3) if the dispute between them is a question of law, the submission of legal arguments by the parties. This was laid down in *Cooper v. Wilson* in a passage cited with approval in *Brajnandan Sinha's* case. Now under the Agricultural Income Tax Act every Collector and Assistant Collector in charge of a sub-division is an assessing authority and is required u/s 14 to exercise and perform within his revenue jurisdiction such powers and duties as may be prescribed under the Act. Section 21 provides for an appeal by an assessee against assessment, and it enacts that such appeal shall lie to the Commissioner who may either decide it himself or transfer it to the Additional Commissioner and "Commissioner" and "Additional Commissioner" are defined in clause (3) of section 2 as meaning persons appointed by the State Government to perform the duties of a Commissioner or the Additional Commissioner as the case may be under the Act. Then section 22 provides for the exercise of revisional powers by a Revision Board which is defined in clause (7) of section 2 as any authority appointed by the State

Government to perform the duties of the Revision Board under the Act. Section 22 provides that the Revision Board may, on their own motion or on an application, call for the record of any proceeding under the Act pending before or decided by any authority subordinate to the Revision Board and after such inquiry as they deem necessary, may pass such orders as they may think fit. The Act does not provide that the proceedings before the appellate authority or before the Board shall be in public, nor is any provision made as to the procedure which either of these authorities shall follow in the hearing of an appeal or revision save that in the case of the former no enhancement of assessment shall be made unless the appellant has had a reasonable opportunity of showing cause against such enhancement, and in the case of the latter that the Revision Board shall not pass an order prejudicial to an assessee without giving him a reasonable opportunity of being heard. Section 28 vests the assessing, appellate and revisional authorities for the purpose of assessment, deduction and exemption with the same powers as are vested in a court under the CPC when trying a suit in respect of three matters, namely enforcing the attendance of a person and examining him on oath or affirmation, compelling the production of any document, and issuing a commission for the examination of a witness; and this section further provides that any such proceedings before such authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. The use of the expression "shall be deemed to be" makes it clear that were it not for this provision such proceedings would not be judicial proceedings. The Revision Board is not referred to in the Act as a court or a tribunal but as an authority, and it is an authority which may exercise functions which are not in our opinion consistent with strict judicial action. It may make such enquiry as it deems necessary and pass such orders as it thinks fit. It is not prohibited from importing into its decisions knowledge of the facts possessed by its members. In our opinion the Revision Board is not a place where it can be said that justice is judicially administered and consequently it is not, in our judgment, a court.

In the result this application will be restored to the list for argument on the question whether the order of the Board dated 16th October, 1952, gives rise to any question of law which should be referred to this court.

Order accordingly.