

(1975) 12 OHC CK 0017

In the Orissa High Court

Case No : Special Jurisdiction Case No's. 176 and 177 of 1974

Commissioner of Income Tax

APPELLANT

Vs

Dhadi Sahu

RESPONDENT

Date of Decision : 05-12-1975

Acts Referred:

Income Tax Act, 1961 — Section 271(1), 274, 274(2)

Citation : (1976) 42 CLT 89 : (1976) 105 ITR 56

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : B.K. Mohanty and P.K. Misra, for the Respondent

Judgement

This Judgment has been overruled by : Commissioner of Income Tax, Orissa Vs. Dhadi Sahu, (1992) 108 CTR 444 : (1993) 199 ITR 610 : (1992) 6 JT 714 : (1992) 3 SCALE 255 : (1994) 1 SCC 257 Supp : (1992) 3 SCR 168 Supp

R.N. Misra, J.—The Income Tax Appellate Tribunal, Cuttack Bench, has stated these cases on applications made u/s 256(1) of the Income Tax Act of 1961 (hereinafter to be referred to as "the Act") by the revenue and has referred the following common question for opinion of the court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in cancelling the levy of penalty u/s 271(1)(c) holding that the Inspecting Assistant Commissioner failed to have jurisdiction to impose penalty in consequence of the amendment of Section 274(2) of the Income Tax Act, 1961 ?"

2. The assessee is an individual deriving income from his share in a partnership business styled as "M/s. Dhadi Sahu & Others". For the assessment years 1968-69 and 1969-70, the assessee filed returns of income disclosing his share income only of the said firm. Assessments were completed for these two years on February 28, 1970, and the Income Tax Officer included the income of the minor children of the assessee who were also partners in the same firm and the

income from the house property standing in the name of the assessee's wife which was held as a fact to be belonging to the assessee. As a result of these additions, while the assessee had returned an income of Rs. 5,940 for the assessment year 1968-69, he was assessed on an income of Rs. 30,840. Similarly, for the other year, as against the returned income of Rs. 7,020, he was assessed on an income of Rs. 19,472. The Income Tax Officer initiated proceedings for imposition of penalty u/s 271(1)(c) of the Act and as he was of the view that the cases were covered by Section 274 of the Act, he referred the cases to the Inspecting Assistant Commissioner. While the matter of imposition of penalty u/s 271(1)(c) was thus pending before the Inspecting Assistant Commissioner, by the Taxation Laws (Amendment) Act of 1970, which came into force with effect from April 1, 1971, the provision in Section 274(2) underwent amendment.

3. The Inspecting Assistant Commissioner imposed penalties of Rs. 24,000 and Rs. 12,500, respectively, for these two years. The assessee appealed to the Tribunal and contended that in view of the amendment of Section 274(2) of the Act, the Inspecting Assistant Commissioner lost jurisdiction to impose penalties in these cases and, therefore, the levy of penalty was liable to be vacated. The learned Single Member of the Tribunal came to hold: "The other contention of the assessee's learned counsel seems to have substantial force, namely, that in the imposition of penalty, the Inspecting Assistant Commissioner had lost his jurisdiction by the amendment since before the amendment he had jurisdiction in cases where minimum penalty imposable exceeded Rs. 1,000 whereas after the amendment he had jurisdiction only in cases where the particulars of income or income in respect of which particulars have been concealed by the assessee exceed Rs. 25,000 and, as admittedly, in this case, the difference between the returned income and assessed income which may be deemed to have been the amount in respect of which particulars of income have been concealed or in respect of which inaccurate particulars of income have been furnished under the Explanation did not exceed Rs. 25,000, the Inspecting Assistant Commissioner failed to have jurisdiction and, therefore, the penalties imposed by him cannot be sustained....."

4. Prior to the amendment, Sub-section (2) read thus : "Notwithstanding anything contained in Clause (iii) of Sub-section (1) of Section 271, if in a case falling under Clause (c) of that Sub-section the minimum penalty imposable exceeds a sum of rupees one thousand, the Income Tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty."

5. After the amendment, the provision reads thus :

"Notwithstanding anything contained in Clause (iii) of Sub-section (1) of Section 271, if in a case falling under Clause (c) of that sub-section, the amount of income (as determined by the Income Tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been

furnished exceeds a sum of twenty-five thousand rupees, the Income Tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty."

6. There is no dispute that the Inspecting Assistant Commissioner gets jurisdiction to deal with a penalty matter only when there is a reference made to him by the Income Tax Officer. Section 271 requires the Income Tax Officer or the Appellate Assistant Commissioner to initiate proceeding for penalty where in the course of any proceeding under the Act the said authorities are satisfied that any of the three events as enumerated in Clauses (a), (b) and (c) of Sub-section (1) of that Section has happened. Thus, under the scheme in Chapter 21 of the Act, satisfaction to initiate proceeding is either of the Income Tax Officer or of the Appellate Assistant Commissioner. While the proceeding originates with these officers when the initiating authority is the Income Tax Officer and the amount of penalty imposable is in excess of Rs. 1,000 under unamended Sub-section (2) of Section 274 of the Act the case had to be referred to the Inspecting Assistant Commissioner for disposal. In this case, the Income Tax Officer while completing the assessments for both these years, being satisfied that penalties were to be imposed u/s 271(1)(c) of the Act, referred the matter to the Inspecting Assistant Commissioner and while the Inspecting Assistant Commissioner was still in seisin of the matter, the amendment referred to above came. Admittedly, after the provision was amended, in the present case, no reference to the Inspecting Assistant Commissioner could have been made because, as rightly found by the Tribunal, the amount of income as determined by the Income Tax Officer on assessment in either year is not in excess of the returned income by Rs. 25,000. The question referred to us can appropriately be answered by examining the effect of the amending provision, namely, whether it took away the jurisdiction of the Inspecting Assistant Commissioner in a pending reference if under the new provision the reference was not open to be made to him. Otherwise stated, the proposition is whether, as a result of the amendment, a reference pending with the Inspecting Assistant Commissioner on the basis of the old provision would no more be maintainable if under the new amended provision that reference was not competent. The answer to the point would depend upon whether the amendment is retrospective in its operation. Subsection (2) of Section 274 is admittedly a provision relating to procedure. In the case of *Anant Gopal Sheorey Vs. The State of Bombay*, it was pointed out:

" The question that arises for decision is whether to a pending prosecution the provisions of the amended Code have become applicable. There is no controversy on the general principles applicable to the case. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode. In other words, a change in the law of procedure operates retrospectively and unlike the law

relating to vested right is not only prospective."

7. In the case of Nani Gopal Mitra Vs. The State of Bihar, it has been observed :

"It is true that as a general rule alterations in the form of procedure are retrospective in character unless there is some good reason or other why they should not be. In James Gardner v. Edward A. Lucas [1878] 3 AC 582 (HL) Lord Blackburn stated :

" Now the general rule, not merely of England and Scotland, but, I believe, of every civilized nation, is expressed in the maxim, *nova constitutio futuris formam imponere debet, non praeteritis*--prima facie, any new law that is made affects future transactions, not past ones. Nevertheless, it is quite clear that the subject-matter of an Act might be such that, though there were not any express words to shew it, it might be retrospective. For instance, I think it is perfectly settled that if the legislature intended to frame a new procedure, that instead of proceeding in this form or that, you should proceed in another and a different way ; clearly there bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be. Then, again, I think that where alterations are made in matters of evidence, certainly upon the reason of the thing, and I think upon the authorities also, those are retrospective, whether civil or criminal" It is, therefore, clear that as a general rule the amended law relating to procedure operates retrospectively"

8. The same question had been examined by a Bench of the Calcutta High Court in the case of Bireswar Moral and Another Vs. Indu Bhushan Kundu and Others, . In the said case the amended provisions of the Bengal Agricultural Debtors Act (7 of 1936) came up for consideration. The brief facts necessary to appreciate the ratio are these : A had obtained a decree for money against B in a suit for recovery of the price of Barga crops in the court of a munsif and he put the decree into execution. B filed an application for relief before the Debt Settlement Board under the Bengal Agricultural Debtors Act (7 of 1936). A notice u/s 34 of that Act was issued on 25th June, 1940. In pursuance of this notice, the munsif stayed the execution proceedings. On 11th July, 1940, the Act underwent amendment by Bengal Act 8 of 1940 and Section 20 of the Act 7 of 1936 was amended by inserting therein the following words : "or whether a liability is a debt or not "before the words "the Board shall decide the matter". On 24th August, 1940, A objected to the order of stay made by the munsif on the ground that B's liability under the decree was not a debt within the meaning of Act 7 of 1936 and consequently the Debt Settlement Board had no jurisdiction to issue notice u/s 34 of the Act 7 of 1936. The munsif held that B's liability under the decree was not a debt as defined in Act 7 of 1936. He, accordingly, vacated the order of stay. The first appellate court as also the learned single judge of the High Court upheld the order of the munsif.

9. B contended in the appeal that after Act 8 of 1940 had come into force only the Debt Settlement Board had jurisdiction to decide the question whether the liability of B under the decree was a debt within the meaning of Act 7 of 1936 and that the munsif had no jurisdiction to decide this question. The point which was raised in Letters Patent Appeal, therefore, was that in view of the amendment by the 1940 Act the civil court's jurisdiction u/s 9, Civil Procedure Code, must be taken to have been impliedly excluded. Therefore, though the question was already pending in the provincial court and was a matter within its jurisdiction when initially raised, it had ceased to be a matter within the jurisdiction in view of the amendment. The Division Bench accepted the contention and held that the munsif ceased to have jurisdiction. The net effect of this decision is that a matter which was pending in a forum with jurisdiction was no more maintainable in that forum on account of a change relating to jurisdiction.

10. A Bench of the Bombay High Court in the case of Shiv Bhagwan Moti Ram Saraoji Vs. Onkarmal Ishar Dass and Others, dealt with the question of jurisdiction with reference to amendment during the pendency of an action. Chagla C.J., at page 373 of the report, observed :

"The question that arises for determination is whether, notwithstanding the fact that the court had no jurisdiction with regard to this property at the inception of the suit, this court can try the suit with regard to this property by reason of the fact that jurisdiction was subsequently conferred on it....

Now, I think it may be stated as a general principle that no party has a vested right to a particular proceeding or to a particular forum, and it is also well-settled that all procedural laws are retrospective unless the legislature expressly states to the contrary.....This court was bound to take notice of the change in the law and was bound to administer the law as it was when the suit came on for hearing. Therefore, if the court had jurisdiction to try the suit when it came on for disposal, it could not refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the date when it was instituted."

11. Bhagwati J, (as the learned judge then was), while concurring with Chagla C.J., observed :

"There is authority for the proposition that if the law is changed at the date of the hearing, the court should give effect to the changed law, and that it is the duty of the court to administer the law of the land at the date when the court is administering it."

12. The decisions of the Calcutta and the Bombay High Courts support the same rule though while the Calcutta case came to the conclusion that jurisdiction was lost, the Bombay case came to the conclusion that jurisdiction had been acquired. Both were concerned with alteration of the jurisdiction by an amendment to the procedural law in regard to a pending action.

13. If the Inspecting Assistant Commissioner had passed final orders prior to the Amending Act of 1970, there would have been no question of loss of jurisdiction, but as the matter was still pending and by change of procedure the references became incompetent, the Inspecting Assistant Commissioner had no jurisdiction to complete the proceedings because he had no longer jurisdiction to deal with the matter of this type. We are of the view that the Tribunal came to the right conclusion on the facts of the case. Our answer to the question referred to us, therefore, is:

14. On the facts and in the circumstances of the case, and on a true interpretation of Section 274, as amended by the Taxation Laws (Amendment) Act of 1970, the Inspecting Assistant: Commissioner to whom the case had been referred prior to 1971 had no jurisdiction to impose penalty.

15. The assessee shall have the costs of these references. Hearing fee is assessed at Rs. 100.

N.K. Das, J.

16. I agree.