
(1981) 10 GAU CK 0004

In the Gauhati High Court

Case No : Civil Rule No's. 77 (N) to 80 (N) of 1977 and 5 (N) of 1981

Commissioner of Income Tax

APPELLANT

Vs

Satyanarayan Sikaria, HUF

RESPONDENT

Date of Decision : 01-10-1981

Acts Referred:

Income Tax Act, 1961 — Section 153, 153(3), 153(3)(ii), 171(1), 256(1)

Citation : (1982) 10 TAXMAN 310

Hon'ble Judges : T.C. Das, J;K.M. Lahiri, J

Bench : Division Bench

Advocate : G.K. Talukdar and D.K. Talukdar, for the Appellant; B.P. Saraf, H.N. Bharadwaj and G.K. Joshi, for the Respondent

Judgement

K. Lahiri, J.—We propose to dispose of Civil Rules 77(M) to 80(M) by a common order and the other civil rule by a separate order for the convenience of the parties, of course, with prior concurrence of the counsel for the parties. The application involves common questions of law and facts. Civil Rules 77(M) to 80(M):

By separate applications u/s. 256(2) of the income tax Act, 1961, the Commissioner of income tax, Shillong, (for short "CIT") has prayed that the income tax Appellate Tribunal, Gauhati Bench, Gauhati ("the Tribunal" hereinafter), be directed to prepare the statements of the cases and refer the following questions for decision of the High Court: Questions of law

"(i) Whether, on the facts and in the circumstances of the case, and on a proper construction of section 171(1) of the income tax Act, 1961, and having regard to the rights and titles of assessee-HUF under the Hindu law over the income, business and the properties with which the business was carried on, the income arising from the business comprised in Shri Mahabir Rice Mills is not properly assessable in the case of the assessee-HUF?

(ii) Whether the Tribunal was justified in deciding the appeal filed by the

department in the case of the assessee-HUF merely relying on the findings and directions of the Tribunal given in another case, without having regard to the rights and titles of the assessee-HUF over the income, business and properties with which the business comprised in Shri Mahabir Rice Mills was carried on?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the deletion of the entire income arising from Shri Mahabir Rice Mills from the total income of the assessee-HUF merely relying on its orders in respect of the protective assessment in the case of M/s. Gangadhar Sikaria Family Trust when those orders have not reached finality being subject-matter of reference application u/s. 256(1)?

2. The petitioner states that Shri Satyanarayana Sikaria, as karta of his HUF, is the owner of the rice mills named and styled as "Sri Mahabir Rice Mills". He was carrying on rice milling business in partnership with his wife, Smt. Parameswari Devi Sikaria, and his son, Shri Murarilal Sikaria, having 60%, 20% and 20% shares respectively. Subsequently, Shri Satyanarayan Sikaria, for himself and as natural guardian for his minor sons, (2) Smt. Parameswari Devi Sikaria (his wife) and (3) Murarilal Sikaria, executed a trust deed on November 3, 1964, settling all the assets and liabilities of the said Rice Mills in a trust named and styled as M/s. Satyanarayan Sikaria Family Trust (hereinafter referred to as "the trust"), for the benefit of his wife and his sons in their individual capacity in equal shares. There was, however, no partition of the property owned by the HUF. It is stated that under clause 14 of the trust deed it was stipulated that in case of loss, it should be divided among the major beneficiaries. The trust deed provided that "the trust would cease on the attainment of majority by the minors and on sale or disposal of the properties of the trust or as and when decided by the settlers and the assets would be divided equally among the beneficiaries." The trust filed its return in respect of the income from the trust properties. The income tax Officer (hereinafter referred to as "the ITO"), held the trust as invalid in law on various grounds and accordingly he completed the assessment of the trust in the status of an association of persons (AOP) as a protective measure.

3. On appeal, the Appellate Assistant Commissioner of income tax ("the AAC" for short) held that the income of the trust was not includible in the assessment of the assessee-HUF and deleted the entire addition made in that regard in respect of all the assessment years. He followed his earlier decision in the cases wherein he had held the trust to be valid. The Revenue took the matter to the Tribunal who upheld the order of the AAC. It held that in ITA No. 164 (Gau.) to 167 (Gau.) of 1974-75 for the assessment years 1966-67 to 1969-70, it had held that the trust was valid. It relied on a copy of the order passed by it on December 1, 1974, in ITA No. 164 (Gau.) of 1974-75. It also relied on the Tribunal's decision in ITA No. 776 (Gau.) of 1972-73 and ITA 452 (Gau.) of 1974-75 relating to the assessment year 1964-65 in respect of Gangadhar Sikaria Family Trust wherein similar questions cropped up. On the basis of the decisions it held that the trust was valid and the income from the trust properties

had to be allotted amongst the beneficiaries according to their respective shares and the inclusion of the income in the total income of the HUF was not justified and dismissed the appeals.

4. The petitioner filed an application u/s 256(1) of the Act for drawing up a statement of the case and to refer the very same questions set out, but the learned Tribunal, by a common order, turned down the prayer. The grounds for refusal to refer are as follows:

(1) that it would be unnecessary waste of time and effort by the High Court as the questions had already been referred to the High Court;

(2) that the questions set out in the application for reference do not arise out of the order of the Appellate Tribunal as the Tribunal had merely followed its own decisions in the case of the trust. There was no other question to be decided besides the validity of the trust which was already before the High Court;

(3) it would be merely a duplication of the questions already referred in the case of the trust and it would be redundant in view of the provisions contained in section 260(1) read with section 153(3), Expln. 3, of the Act.

5. Dr. Saraf, learned counsel for the assessee, supports the order of the Tribunal.

6. We have heard Civil Rule No. 6(M) to 15(M) of 1981 (disposed of today) [Commissioner of Wealth Tax Vs. Gangadhar Sikaria,] in which the ground of refusal to refer the cases were identical with grounds Nos. 1 and 2. For the reasons stated therein we hold that those grounds were not material for refusing to refer the cases. We have held that the questions of multiplicity of proceedings before the High Court cannot be a valid ground for not referring the questions of law when the parties had statutory rights to obtain the reference from that end. Convenience or inconvenience of the High Court is irrelevant consideration in such matters. If according to law the party is entitled to get reliefs, the doors of the High Court are always open to decide just and appropriate cases. It is the solemn obligation of the High Court to adjudicate cases according to law, whether such duties are painful or burdensome. As such, we find the grounds of refusal to make the present reference are thin and nonexistent. We have also held that the appeals before the Tribunal were adversary proceedings. There were two parties. The appellant based its claims on the facts of the cases and invited the Tribunal to give its decisions on the points. There cannot be any decision of any authority unless the disputed matters are decided on facts. In every adversary system of proceedings two parties must be there and they must contend their respective cases. The Tribunal is bound to decide the case according to law and not in violation of law. In the instant appeals the common question was whether the present assessee should be saddled with tax. The appellant contended that the properties were of the assessee whereas the assessee claimed that it belonged to the trust-a different legal entity. The learned Tribunal decided that question. It held that the trust was a different entity having a different status and the trust properties were not includible and treated as the

properties of the assessee-HUF, under the Act. The reason for arriving at the conclusion are not far to seek. It held that in the income tax assessment proceedings of the trust, it had occasions to decide the very question whether the trust was valid or not. If the trust was non-existent, the authors of the trust should be held as the owners of the properties liable to pay the taxes. The Tribunal held that it had decided on earlier occasions in the income tax proceedings of the trust and/or the assessee, that the trust was valid. It follows, therefore, that it had held earlier on the facts of the cases and having had the trust deed before it that the trust was valid. It applied the decisions of the earlier cases in the appeals. Instead of detailed discussions of the facts in the judgment, it dismissed the appeals upon holding that the liabilities of the assessee vis-a-vis the trust had been decided in the earlier appeals. It was held that the trust was an independent and distinct entity having a separate status. The Tribunal, however, held that the act of reliance on its earlier decisions was no decision, either on law or on facts. This is a seeming contradiction, a paradox. Admittedly, there is a decision by the Tribunal. Can it be said it was neither a decision on law nor decision on facts? Can such a decision exist? The issue involved in the appeals could not have been decided without resolving the questions of facts and/or law. It is a misgiving to assume that issues can be decided without a determination of the questions of facts and/or law. An appeal cannot be decided on abstract law severed from the facts of the case. A precedent is an authority for the proposition as to what it decides and not what can be deduced from it. While applying the principles of law in a decided case, the authority applying the principles of law must cogitate the facts of the previous decision and also its ratio. If the facts are the same or similar, the ratio of the prior decisions may be applicable in a subsequent case. However, if the facts of the case are dissimilar or distinct, the principles of law enunciated in the proceeding cannot be made applicable in a later case. A decision is a precedent on its own facts. An adjudged case or a decision is considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law. It means that a principle of law actually presented to an authority for consideration and determination has, after due consideration, been declared to serve as a rule for future guidance in the same or analogous cases. Each case presents its own distinct features. The Tribunal as well as the income tax authorities can apply the ratio of a decision to the facts of a particular case on notation of similarities and differences of the case with the facts and circumstances of the case in hand. When they find the facts to be same or similar and the principles of law enunciated in the earlier decision are appropriate, reasonable and fitting, they should apply the principles—otherwise not. When the Tribunal applied the ratio of its earlier decisions in these appeals it applied the ratio upon holding expressly or by necessary implication that the facts of the cases in hand were similar to, or identical with, those of the prior decisions. As such the facts and circumstances of the earlier decisions including the facts and law of the precedent got merged in the present appeals. They were engrafted by the Tribunal. Therefore, we have no hesitation in arriving at the conclusion that the learned Tribunal committed an

error in assuming that the facts of the case as well as the questions of law cannot be discerned in the present appeals. In our opinion, the facts and circumstances as narrated by the Tribunal as well as the judgment of the previous cases relied on by it, will be the facts and circumstances of the present appeals as well.

7. The second facet is that the questions of law involved in these appeals were the questions of law involved in the former appeals. The principles of law of the previous decisions were applied in the appeals surely upon holding that the principles of law were fit to be applicable in the appeals as well. The Revenue claims that in the previous decisions the Tribunal had referred the very same questions of law to this court upon holding that they had arisen out of the decisions. The assessee has not controverted the claim of the Revenue. It is indubitable that the aforesaid questions of law are pending in this court, in several income tax Reference Cases, including income tax Reference Nos. 3 of 1978, 4 of 1978 and 10 of 1978. These were off-shoots of income tax assessment proceedings and the questions referred were the same as in the present appeals. As such, we find that in the earlier appeals there were two segments of the appeal proceedings. First, the decision in appeal which went against the Revenue. Secondly, the order of the Tribunal u/s 256(1) of the Act making a reference of the very questions to this High Court for its decision. The learned Tribunal dismissed the appeals in view of its decisions in the former appeals and accepted the first part of the said appeal proceedings. However, it did not follow the order pertaining to the second part of the proceedings in the instant appeals. It is difficult to accept how the learned Tribunal who had followed the first part of the order in appeals could refuse to apply the second part of the order arising out of the same proceedings. When the Tribunal had held in the former proceedings that the very questions arose out of its former decisions and they were questions of law, it had no jurisdiction to depart from its decision in respect of the second part of the proceedings. In the fitness of things, the Tribunal should have, following the known practices and principles of law, meticulously acted in accordance with the second part of the order or should have given judicious reasons for its departure. These aspects of the matters were completely overlooked by the learned Tribunal while rejecting the prayer of the Revenue u/s 256(1) of the Act. Therefore, we do not find grounds Nos. 1 and 2 were just and appropriate ground for refusal to make a reference.

8. Now, let us consider the third ground. The Tribunal held that when the cases of the trust will be decided by the High Court, the Tribunal would give effect to the order in the trust cases in exercise of the powers u/s 260 read with section 153(3), Explan. 3, of the Act and the Revenue would be entitled to ask for completion of the assessment or reassessment on the basis of the decisions in the said case. There are two facts to be looked into. First, as to whether an alternative remedy prohibits a party to ask for a reference. Section 153 deals with an extension of time-limit for the completion of an assessment or reassessment. One can at best say that if there is positive relief without asking

for a reference upon the decision of another case, it might be said that the references are merely asking for decision of academic questions. Nothing could be shown before us that in the event of decisions in favour of the Revenue in the trust cases pending before the High Court, it would be possible to grant reliefs to the Revenue in the present assessment proceedings by applying the rules contained in section 153(3), Expln. 3, read with section 260(1) of the Act. Very many intricacies and complications will arise or are likely to arise even if the decisions are in favour of the Revenue in the trust cases. First, as to the power of the Tribunal u/s 260(1) of the Act. On the basis of the decision of each reference of the trust, the Tribunal is competent to pass such orders as are necessary to dispose of the case conformably to such judgment. The decision empowers the Tribunal to pass an order in respect of the case conformably to the judgment of the High Court. Nothing could be shown by the counsel for the assessee that the Tribunal has ancillary powers to pass necessary orders in respect of the present assessee-HUF, in different assessment proceedings although somewhat connected. Be that as it may, the party in the trust case is a different entity and the present assessment is against a different entity in a different status. The present assessee is an HUF whereas in the trust case it is a different entity in a different status. The fresh assessment u/s 153 can be done afresh on the same entity in the same status. Therefore, it is a doubtful proposition whether section 153(3), Expln. 3, can be attracted in the instant case. The proceedings are different and the parties are also different. Therefore, the applicability of section 153(3), Expln. 3, is obscured in doubt or at least debatable. This apart, it is uncertain whether the petitioner has a right to claim reassessment. It may be the preserve of the income tax authorities or the Tribunal, if at all the same is permissible under the law. Explanation 3 provides that where, by any of the orders referred to in section 153(3)(ii), any income is excluded from the total income of an assessee holding it to be the income of another person, then, an assessment of such income on such "other person shall be deemed to be one made in consequence of or to give effect to any finding or direction contained in that order provided such other person was given an opportunity of being heard before such order was passed. Explanation 3 has no doubt eroded the iron jacket of the meaning of the expression "any person", explained by the Supreme Court in *Income Tax Officer, A-Ward, Sitapur Vs. Murlidhar Bhagwandas, Lakhimpur Kheri*, , and widened it to include any person whether or not intimately connected with the appellant, only if such person is called upon by order giving authority to meet the charge that the particular income did factually belong to him. In the reference, the HUF is not a party, in the status of HUF. Further, there is no question referred as to whether the income of the trust should be includible in the total income of the present assessee. It is doubtful whether the High Court can in a reference direct that the income of the trust property should be included in the total income of the present assessee. In the absence of any such question the High Court may not give any direction to include the income of the trust properties in the total income of the present assessee. Therefore, the application of section 153(3), Expln. 3, is debatable. Be that as it may, the Revenue as it

appears has no right to claim reassessment as a matter of right. We are of the opinion that the application of section 153(3), Expln. 3, is debatable in the instant cases for the reasons set out above. Similarly, the power of the Tribunal to grant relief to the Revenue in exercise of power u/s 260 is doubtful. No decision of any court has been placed before us to show that we can safely arrive at the conclusion that the present petitioner shall be entitled to the requisite relief u/s 260(1) read with sec. 153(3), Expln. 3. Further, there is a likelihood of multiplicity of proceedings, appeals, references, questioning the applicability of section 260 read with section 153(3), Expln. 3, of the Act in all the assessment proceedings. Therefore, instead of refusing the references, the learned Tribunal should have stated the cases and referred the questions of law for the decision of the High Court in exercise of its power u/s 256(1) of the Act. We hold that the grounds for rejection of the application u/s 256(1) are not good grounds for such refusal.

9. Now, having disposed of the reasons of the Tribunal as unacceptable grounds, let us turn to consider whether the questions fashioned by the Tribunal are questions of law or not. The questions are prima facie questions of law—they are live questions of law. These questions were referred by the Tribunal as questions of law in its earlier decisions. This is a strong factor to hold that these are questions of law. We are of the view that the questions of law do arise out of the decisions of the Tribunal. We have already stated that the Revenue raised the questions for the decision of the Tribunal but the Tribunal summarily rejected them on the score that it had negatived the contentions earlier. The assessee has not filed any return to the Rules stating that the questions of law were never raised by the Revenue in their memorandum of appeal or orally. In our opinion, the Tribunal has impliedly answered the questions in the negative, on the authority of its earlier decision wherein it had turned down the contentions. Without a determination of these questions expressly or impliedly, the Tribunal could not have reached the conclusion that the trust properties were not the properties of the assessee and the ITO was not justified in assessing the trust properties in the hands of the assessee-HUF. Thus, the Tribunal had determined the questions impliedly against the Revenue.

10. For the foregoing reasons we hold that we are not satisfied with the correctness of the decision of the Tribunal. We are of the opinion that the questions posed do arise out of the decisions of the Tribunal. Therefore, we require the learned Tribunal to state the cases and refer the questions of law in accordance with law.

11. In the result the applications are allowed. However, there is no order as to costs.

Civil Rule No. 5(M) of 1981:

12. The facts are the same. The assessment year is 1976-77. However, in the instant case, the Revenue has asked for a reference of only one question reading:

(1) Whether, on the facts and in the circumstances of the case, and on a proper construction of section 171(1) of the income tax Act, 1961, and having regard to the rights and titles of the assessee-HUF under Hindu law over the income, business and the properties with which the business was carried on, the income arising from the business comprised in Shri Mahabir Rice Mills is not properly assessable in the hands of the assessee-HUF?

13. For the reasons set out above we hold that the learned Tribunal was not correct in rejecting the application of the Revenue u/s. 256(1) of the Act. We hold that the grounds of refusal are not justified in law. The question is prima facie a question of law, this is a live question of law. We are of the opinion that the question posed does arise out of the decision of the learned Tribunal. Therefore, we require the learned Tribunal to state the case and refer the question of law in accordance with law. In the result, this application is allowed. However, there is no order as to costs.

T.C. Das, J.

I agree.