
(1970) 11 GUJ CK 0004

In the Gujarat High Court

Case No : Wealth-tax Application No. 19 of 1970

Commissioner of Wealth-tax

APPELLANT

Vs

Sayaji Mills Ltd.

RESPONDENT

Date of Decision : 04-11-1970

Acts Referred:

Income Tax Act, 1961 — Section 255(5)
Wealth Tax Act, 1957 — Section 27(3)

Citation : (1971) 82 ITR 662

Hon'ble Judges : P.N. Bhagwati, C.J;B.J. Divan, J

Bench : Division Bench

Advocate : J.M. Thakore, -General and M.G. Doshit, for the Appellant; R.H. Kaji, for the Respondent

Judgement

Divan, J.—This application raises an interesting question regarding the procedure to be followed by the Income Tax Appellate Tribunal in making a reference to the High Court under the Wealth-tax Act or under the Income Tax Act or similar statutes. The question arises in this manner. The petitioner before us is the Commissioner of Wealth-tax and the respondent is the assessee. After the decision of the Tribunal was given in the particular case an application as required by law was made asking the Tribunal to refer a certain question of law which according to the revenue arose from the decision of the Tribunal. When the statement of the case was to be finalised, the Tribunal decided that out of the three questions which the department wanted the Tribunal to refer to the High Court, only one question should in fact be referred and it decided not to refer the other two questions to this High Court. That reference has already been made and Wealth-tax Reference No. 21 of 1970, which is now pending before this court, is in connection with the one question which the Tribunal decided to refer to the High Court. At the time when the statement of the case was to be finalised, both the department and the assessee were heard by the Tribunal and in paragraph 2 of the statement of the case the Tribunal has set out the questions which the Commissioner wanted to be referred to the High Court. The

department's stand was that, apart from question No. 3, which the Tribunal actually decided to refer, questions Nos. 1 and 2 indicated by the Commissioner in his application asking for the reference should also be referred in view of the fact that this High Court had directed a reference on the same points in another case, viz., the case of Shri Kantilal Manilal, which arose u/s 23 of the Wealth-tax Act. In the case of Kantilal Manilal the Tribunal refused to make a reference and the department came to the High Court and the High Court called for a reference from the Tribunal. In view of this background, on behalf of the department, it was urged before the Tribunal at the stage of finalization of the statement of the case that questions Nos. 1 and 2 should also be referred to the High Court. In reference to this contention the Tribunal proceeded to state in the statement of the case :

"Now, an interesting question has arisen as to the scope and ambit of the powers of the Tribunal to refer those two questions also, once it having been held that they do not arise as per their order, dated October 17, 1969, which is styled as "statement of the case--draft for the table." At the outset it may be mentioned that there is no rule under the rules regulating the procedure before the Tribunal u/s 255(5) of the Income Tax Act, 1961, for placing a draft for the table, but it appears this procedure is being followed all through. The purpose for which the draft is placed is only to enable the parties to make suggestions with regard to statement on facts as there may not be any dispute as to particular question on facts when ultimately the reference is heard by the hon'ble High Court. Shri Gupte's contention is that since this order which is called a "statement of the case" and a "draft for the table" is only tentative, the Tribunal can alter the order and refer those questions which were originally refused to be referred. Shri Talati appearing for the respondent has supported the view of Shri Gupte."

2. The Tribunal felt that though the earlier order dated October 17, 1969, in the instant case was styled as: "statement of the case--draft for the table", it was in fact a decision arrived at by the Tribunal after hearing the parties on the reference application. The order consisted, according to the Tribunal, of two parts, one rejecting certain questions of law, which were sought to be raised and the other allowing one out of the three questions of law. So the conclusion reached by the Tribunal refusing to refer certain questions of law was final and this portion of the order of the Tribunal could not be altered as it would amount to reconsideration or review of the order which was not authorised under the provisions of law. According to the Tribunal, the only portion which was not finalised was the statement of the case containing the facts on record out of which the particular question of law agreed to be referred by the Tribunal arose. The Tribunal proceeded to add :

"The statement of the case is placed before the parties by calling it a draft, so that the parties may suggest certain modifications or additions with regard to factual aspects which have to be incorporated in the statement of the case. These modifications, additions or corrections do not affect the conclusion reached

by the Tribunal which, as already stated, is final and binding. Therefore, we hold that it is not permissible for any party to reargue a point concluded by the decision of the Tribunal. In other words, a question which has been refused to be referred by the Tribunal by its order while preparing the statement of the case cannot be reopened when the matter is placed for finalising the statement of the case on the question the Tribunal desires to make a reference."

3. In view of this conclusion, the Tribunal did not allow a reference to be made as regards questions Nos. 1 and 2 and did not allow those two questions to be reargued.

4. Both the learned Advocate-General appearing on behalf of the petitioner and Mr. Kaji, appearing on behalf of the respondent, are agreed that the practice which is followed by the Appellate Tribunal in making a reference under the Income Tax Act or under the Wealth-tax Act or similar allied statutes is as follows :

5. After a reference application is made either by the assessee or by the department asking the Tribunal to refer to the High Court certain questions of law on the ground that such questions of law arise from the decision of the Tribunal, the reference application is put down for hearing and both the assessee and the department are heard as to whether a question of law does or does not arise from the decision of the Tribunal. After the Tribunal comes to the conclusion that a question of law does arise, it passes an order of the type which is passed in the instant case on October 17, 1969, viz., "statement of case--draft for the table." Thereafter, the draft statement of the case is drawn up and it is shown to both the parties and then the matter is put down for finalization of the draft statement of the case. The Tribunal seems to have taken the view in the instant case that once the Tribunal decides to refer a particular question to the High Court, it is deemed to have rejected the remaining questions which are also sought to be referred by the applicant in the reference application.

6. In Commissioner of Income Tax (Central), Calcutta Vs. Mcleod and Co. Ltd., the Supreme Court has thrown considerable light on this aspect of the practice and procedure required to be followed in connection with reference to the High Court. There the Supreme Court observed :

"When a statement of case, with the question of law framed by the Tribunal is filed in court for disposal, if a party is aggrieved and wants to contend that certain further facts ought to be stated, or certain questions of law should be raised, he can make an application by way of notice of motion. That should be heard along with the case stated by the Tribunal for the court's opinion. At that time the court will consider whether the statement of case is complete for the question of law raised by the Tribunal. The court can also consider whether on the case stated by the Tribunal the proper question is raised or not. That is the proper time for an aggrieved party to bring to the notice of the court that certain further and other facts are necessary to be stated or certain further or other

questions of law arise and should be brought for decision by the court."

7. In laying down this practice, the Supreme Court approved of the observations of Kania J. in *N. V. Khandvala v. Commissioner of Income Tax* [1946] 14 ITR 636 (Bom.) as approved in *Lakshmiratan Cotton Mills Co. Ltd. Vs. Commissioner of Income Tax, Uttar Pradesh*, and the decision in *McLeod & Co.*'s case is partly based on the practice which has been followed in the High Court of Bombay as also in the High Court of Calcutta, viz., that an aggrieved party who wants to contend that certain further facts ought to be stated or certain further questions of law should be raised, can approach the High Court by making an application by way of notice of motion. The practice which is being followed in our High Court is that after a reference is made to the High Court by the Tribunal and notice of the filing of the reference is served on the assessee and the department, the assessee or the department, as the case may be, applies to the High Court within the prescribed period of limitation for a direction from the High Court to the Tribunal that certain questions of law should be referred to the High Court. The High Court considers that application and decides whether these questions of law do or do not arise and if a direction is given by the High Court to the Tribunal asking that certain questions of law should be referred or that certain further facts ought to be stated, a further statement of the case is filed or a further reference is made as directed by the High Court and then the entire matter is disposed of either by hearing both the references together or by hearing the original reference made by the Tribunal together with the further statement of the case as the case may be.

8. It is clear that the period of limitation for making an application to the High Court by which directions are sought from the High Court directing the Tribunal to make a reference or to make a further statement of the case, will only start to run from the date when the party is served with a notice of the filing of the reference in court and when he comes to know as to what is the exact question which the Tribunal has referred to the High Court and what is the exact statement of the case which the Tribunal has finalized after hearing both the parties. It is only at that point of time that the department or the assessee, as the case may be, will come to know about the exact question of law referred or about the actual statement of the case drawn up by the Tribunal. In the instant case, we may point out that a tentative decision of the Tribunal was made on October 17, 1969, and the finalized statement of the case by which the question was referred to the High Court was dated March 9, 1970. It was thereafter that the matter was filed in court and notices of the filing of the reference were served on the Commissioner as well as on the assessee. Therefore, the period of 90 days which is the prescribed period u/s 27(3) would begin to run from the time when the notices of the reference having been filed in the court are served on the department or the assessee. We may point out that under the Income Tax Act, the period of limitation is six months and not 90 days for making a similar application.

9. The difficulty about which the department complains in the instant case has arisen because the Tribunal has treated as final and conclusive its decision on 17th October, 1969, when it orally decided that only one question, out of the three questions asked for by the department, should be referred to the High Court. It is clear from the passage we have just quoted from the decision of the Tribunal at the stage of finalizing of the statement of the case, that the Tribunal treated its order, dated October 17, 1969, as the final decision by the Tribunal that only one question out of the three should be referred and the application for reference as regards the other two questions should be rejected. In view of the decision of the Supreme Court in *Mcleod Co.*'s case it is only when a statement of the case is filed in court that the party which is aggrieved and which wants to contend that certain facts ought to be stated or certain other or further questions of law arise, is required to make an application asking for reference or a further statement of the case. We may point out that till the stage when the reference is actually filed in court, the earlier stages which the Tribunal goes through are tentative stages and not final and at no intermediary stage can it be said that a final decision is taken by the Tribunal. It is possible that in a particular case in the process of formatting the questions of law, the Tribunal may feel that its earlier decision regarding how many questions out of the questions suggested by the applicant should be referred to the court, should be recast or reconsidered. It is obvious that the statement of the case will have to be drawn up in the light of the questions that are actually decided by the Tribunal as questions requiring to be referred to the High Court. Under these circumstances, if the earlier stages of the proceedings before the Tribunal on reference application are tentative stages, the Tribunal's conclusion in the instant case that the order, dated 17th October, 1969, was final and that the department could not re-agitate its request for referring questions Nos. 1 and 2 to the High Court, cannot be said to be correct.

10. However, we may point out in the instant case that the Commissioner of Income Tax has filed the present application on March 12, 1970, at a stage before the reference was actually filed in this High Court and before the department was served with the notice of the filing of the reference in this High Court. The Tribunal's order after the statement of the case was finalised actually referring the question of law to the High Court was passed on March 9, 1970, and thereafter the reference was filed in court and the notice of the filing of the reference was served on the Commissioner much later. Under these circumstances, in view of what has been stated by Supreme Court in *Mcleod & Co.*'s case the present application of the Commissioner is premature. It would be open to the department to apply within the period of limitation prescribed by Section 27(3) of the Wealth-tax Act that the High Court should direct the Tribunal to refer the two questions of law, which according to the Commissioner arise from the decision of the Tribunal in the main appeal in this case and that application will be dealt with in due course on its own merits.

11. In view of the fact that the present application is premature, we dismiss the same and discharge the rule ; but we have clarified the practice that should be

followed by the Tribunal so that no stage of the reference application prior to the actual filing of the reference in the High Court is treated as final and conclusive so far as the Tribunal is concerned. This application is, therefore, dismissed and the rule is discharged. There will be no order as to costs of this application. A copy of this judgment be forwarded to the Appellate Tribunal.