
(1978) 08 KL CK 0026
In the High Court Of Kerala
Case No : Income Tax R. 59 of 1975

Dayalan Rajes

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 09-08-1978

Acts Referred:

Culcutta Municipal Act, 1951 — Section 553, 554, 555

General Clauses Act, 1897 — Section 27

Income Tax Act, 1922 — Section 17, 17(2), 18, 19, 31

Citation : (1978) 08 KL CK 0026

Hon'ble Judges : Gopalan Nambiyar, C.J.;Kader, J

Bench : Division Bench

Advocate : C.M. Devon and C.R. Bhima Rao, for the Appellant; Government Pleader, for the Respondent

Judgement

Gopalan Nambiyar, C.J.—This is a reference sent up by the Agricultural Income Tax Appellate Tribunal, Trichur u/s 60(1) of the Agricultural Income Tax Act. The question of law which has been referred for our opinion is:

Whether on the facts and in the circumstances of the case, the Agricultural Income Tax Appellate Tribunal was right in holding that the assessment was not barred by limitation?

The Karapara Estate is owned by four persons viz., M/s M.S.P. Rajas, Dayalan Rajas, Mohan Rajas and Smt. Thankammal. The last named person is the Assessee with whom we are concerned in the present Reference. The assessment in question was for the year 1965-66, and was completed on 15th December 1965 on the basis that the four persons concerned were tenants-in-common. A return had been filed by M.S.P. Rajah on the basis that the Estate was an "association of persons". On appeal to the Agricultural Income Tax Appellate Tribunal the Tribunal allowed the appeal and held that the four persons should be considered as an "association of persons". It set aside the assessment order. Thereafter, the Inspecting Assistant Commissioner issued notice, dated 21st

March 1969 to M.S.P. Rajah and to the Assessee u/s 35 of the Agricultural Income Tax Act. O.P. No. 2306 of 1969 was moved in this Court to quash the above said notice as barred by limitation. The same was allowed (vide M.S.P. Rajah and Another Vs. Inspecting Assistant Commissioner of Agricultural Income Tax and Sales Tax, (Special) Kozhukode, . The decision was confirmed on appeal by a Division Bench of this Court in W.A. No. 267 of 1971. The matter is now stated to be pending in the Supreme Court. In W.A. No. 267 of 1971 it was observed:

By the time Ext. P-1 and P-1(a) (these were notices) were issued on 21st March 1969, it was more than three years from the close of the assessment year 1962-63. It is clear that the assessment is barred u/s 35(2); it is equally clear that the 2nd proviso to the sub-section cannot apply to the case.

2. For the year 1965-66, an assessment was then made on 26th March 1970. Notices were served on the major partners on 2nd April 1969 and 10th April 1969 and order u/s 35(2) of the Act was passed on 26th March 1970. An appeal to the Deputy Commissioner was dismissed. That officer took the view that as the matter had been remanded to it by the Appellate Tribunal, there was no question of limitation. The Tribunal also dismissed the Assessee's appeal on a ground different from that given by the Appellate Assistant Commissioner. The Tribunal found that the last day for the issue of the notice was 31st March 1969 and the notices issued on 29th March 1969 were in time. Notices were served on 2nd April 1969 and 10th April 1969 and the assessment completed on 26th March 1970 was within time from date of service. This was the reasoning of the Tribunal. This tax revision has been filed against the order of the Tribunal.

3. The contention raised by counsel for the Assessee squarely and briefly was this: that although the notice was issued within the time limit indicated by Clause (1) of Section 35 of the Act, it was actually served on the Assessee beyond the said time limit; that in the circumstances, the section has to be so read and understood as requiring and insisting on the order of assessment itself having been served and not merely issued within the time limit indicated; and that thus understood the proceedings u/s 35 cannot be sustained. We may read Section 35 of the Agricultural Income Tax Act.

Section 35. Income escaping assessment. -- (1) If for any reason agricultural income chargeable to tax under this Act has escaped assessment in any financial year or has been assessed at too low a rate, the Agricultural Income Tax Officer may, at any time within (five years) of the end of that year serve on the person liable to pay the tax or in the case of a company on the principal officer thereof a notice containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 17 and may proceed to assess or reassess such income and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section:

Provided that the tax shall be charged at the rate at which it would have been

charged if such income had not escaped assessment or full assessment, as the case may be:

Provided further that the "Agricultural Income Tax Officer shall not issue a notice under this sub-section unless he has recorded his reasons for doing so.

(2) No order of assessment u/s 18 or of assessment or reassessment or under Sub-section (1) of this section shall be made after the expiry of the (five years) from the end of the year in which the agricultural income was first assessable:

Provided that where a notice under Sub-section (1) has been issued within the time therein limited, the assessment or reassessment to be made in pursuance of such notice may be made before the expiry of one year from the date of the service of the notice even if at the time of the assessment or reassessment the (five years) aforesaid have already elapsed:

Provided further that nothing contained in this section limiting the time within which any action may be taken or any order, assessment or reassessment may be made shall apply to --

(a) a reassessment made u/s 19; or

(b) an assessment or reassessment made in consequence of, or to give effect to --

(i) any finding or direction contained in, an order u/s 31 or Section 32 or Section 34 or Section 60; or

(ii) an order or decision of any court.

3. In computing the period of limitation for the purposes of this section, any period during which the assessment proceeding is stayed by an order of injunction of any court or other competent authority shall be excluded.

Section 35(1) only used the expression "assess" or "reassess" in contra distinction to the "issuance" of a notice referred to towards the closing part of the said sub-section. So that, on the actual language of the section, it is arguable that while the "issuance" of a notice is specifically referred to, as far as the "assessment" or "reassessment" is concerned, there is no requirement that the orders relating to the same should be actually "issued" or "served" on the Assessee. Instead we only get the expression "proceed to assess or reassess". Counsel for the Assessee would contend that the effect and the proper understanding of the section read in the light of the first proviso to Sub-section (2) would require that the assessment order should also be served within the time limit indicated. That proviso refers to the issuance of a notice and the making of an assessment in pursuance of such notice before the expiry of one year from the date of service of the notice. The argument was that Sub-section (1) of Section 35 read in the light of the second proviso to Sub-section (2) is capable of being understood as requiring that the order of assessment also should be made and served within one year from the date of the service of the

notice. As authority for the proposition, counsel for the Assessee relied on the decision of the Supreme Court in *Banarasi Devi Vs. Income Tax Officer, Calcutta*, which has followed and referred to with approval, the decision of the Bombay High Court in *Commissioner of Income Tax, Bombay South Vs. D.V. Ghurye*, . Counsel referred also to the decision of the Allahabad High Court in *SRI NIWAS AND OTHERS Vs. THE Income Tax OFFICER, A WARD, SITAPUR.*, which has taken the same view. We may examine these decisions and the position disclosed in these cases. In *Banarsi Debi's Case (2)* noticing the similar provision of Section 34 of the Income Tax Act, 1922 it was observed by the Supreme Court:

This brings us to the question of construction of the provisions of Section 4 of the Amending Act. The crucial word in the said section is "issued". The section says that though a notice was issued beyond the time within which such notice should have been issued, its validity could not be questioned. If the word "issued" means "sent", we find that there is no provision in the Act prescribing a time-limit for sending a notice, for, u/s 34(1)(a) of the Act, a notice could be served only within 8 years from the relevant assessment year. It does not provide any period for sending of the notice. Obviously, therefore, the expression "issued" is not used in the narrow sense of "sent". Further, the said expression has received, before the amendment, a clear judicial interpretation. u/s 34(1)(a) of the Act the Income Tax Officer may in cases falling under Clause (a) at any time within 8 years serve on the Assessee a notice. The proviso to that section says that where the notice u/s 34(1)(a) is within time therein limited, the assessment or reassessment to be made in pursuance of such notice may be made before the expiry of one year from the date of the service of the notice even if such period exceeds the period of 8 years or 4 years as the case may be. In *Commissioner of Income Tax, Bombay South Vs. D.V. Ghurye*, it was argued that a notice sent before 8 years, though served beyond 8 years, was in compliance with the section; and in support of that argument the expression "issued" in the proviso was relied upon to limit the meaning of the word "served" in the substantive part of the section. Rejecting the argument, Chagla, C.J., speaking for the court, observed:

In other words, the attempt is to equate the expression "served" used in Section 34 with the expression "issued" used in the proviso to Sub-section (3). Now we must frankly confess that we find it difficult to understand why the legislature has used in the proviso the expression "where a notice under Sub-section (1) has been issued within the time therein limited". In Sub-section (1) no time is limited for the issue of the notice: time is only limited for the service of the notice; and therefore it is more appropriate that the expression "issued" used in the proviso to Sub-section (3) should be equated with the expression "served" rather than that the expression "served" used in Sub-section (1) should be equated with the expression "issued" used in the proviso to Sub-section (3).

This decision equated the expression "issued" with the expression "served". The Allahabad High Court in *SRI NIWAS AND OTHERS Vs. THE Income Tax OFFICER*,

A WARD, SITAPUR., has also interpreted the word "issued" to mean "served". The relevant rule of construction is clearly stated by Viscount Buckmaster in *Sarras v. Aberdeen Steam Trawling and Fishing Co., Ltd.* (1933) A.C. 402, thus:

It has long been a well established principle to be applied in the consideration of Act of Parliament that where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statute which incorporate the same word or the same phrase in a similar context, must be construed so that the word or phrase is interpreted according to the meaning that has previously been assigned to it.

Section 4 of the Amending Act was enacted for saving the validity of notices issued u/s 34(1) of the Act. When that section used a word interpreted by courts in the context of such notices it would be reasonable to assume that the expression was designedly used in the same sense. That apart, the expressions "issued" and "served" are used as interchangeable terms both in dictionaries and in other statutes. The dictionary meaning of the word "issue" is the act of sending out, put into circulation, delivery with authority or delivery". Section 27 of the General Clauses Act, 1897 (X of 1897), reads thus:

Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions, "give" or "sent" or any other expressions is used, then, unless a different intention appears the service shall be deemed to be effected by properly addressing prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

It would be seen from this provision that Parliament used the words "serve", "give" and "send" as interchangeable words. So too, in Sections 553, 554 and 555 of the Calcutta Municipal Act, 1951, the two expressions "issued to" or "served upon" are used as equivalent expressions. In the legislative practice of our country the said two expressions are sometimes used to convey the same idea. In other words, the expression "issued" is used in a limited as well as in a wider sense. We must, therefore, give the expression "issued" in Section 4 of the Amending Act that meaning which carries out the intention of the legislature in preference to that which defeats it. By doing so we will not be departing from the accepted meaning of the expression, but only giving it one of its meanings accepted, which fits into the context or setting in which it appears.

We spare ourselves a separate examination of the decisions of the Bombay and the Allahabad High Courts and the other decisions referred to in the long quotation that we have made. We are of the opinion that the reasoning adopted with respect to the Section 34 of the Income Tax Act, applies with full force to the provisions of Section 35 of the Agricultural Income Tax Act, which is in *pari materia*.

4. Counsel for the Revenue realised the force and weight of the authorities cited and the principle of law laid down; but he contended that the decision in W.A. No. 267 of 1971 is now pending in appeal before the Supreme Court, and the matter cannot be said to have been finally decided. But we are afraid as far as this Court is concerned, the pronouncement in W.A. No. 267 of 1971 is binding on us, and must be followed. Regarding the applicability of Clause (b) of the second proviso to Sub-section (2) of Section 35, on which Counsel for the Revenue would place reliance alternatively, to support the assessment order, the question was directly dealt with in M.S.P. Rajah and Another Vs. Inspecting Assistant Commissioner of Agricultural Income Tax and Sales Tax, (Special) Kozhukode, confirmed in W.A. 267 of 1971. The learned Single Judge referred to the second proviso to Section 35(2) at page 49 and held, following the Allahabad High Court's judgment in Jawahar Lal Mani Ram Vs. Commissioner of Income Tax, that Clause (b) of the second proviso had no application as the Assessee became first assessable as tenants-in-common by the finding of the Appellate Tribunal which resulted in the remand, and the impugned assessment was therefore beyond the prescribed period of limitation. Such a contention was held to be unsustainable in view of the Supreme Court decision in Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara Vs. D'costa Brothers, and it was ruled that the second proviso can apply only to a person who is a party to the proceeding which resulted in the remand. The learned Judge recorded agreement with this view.

5. The learned Government Pleader endeavoured to show, as was sought to be done in the case just noticed, that this view of the Supreme Court that only a party affected by the order of the Tribunal can invoke the second proviso, has been somewhat qualified by the judgment of the Supreme Court in Daffadar Bhagat Singh and Sons v. Income Tax Officer, Daffadar Bhagat Singh and Sons Vs. The Income Tax Officer, A-Ward, Ferozepore, . This again was noticed by the learned Judge and found against in M.S.P. Rajah and Another Vs. Inspecting Assistant Commissioner of Agricultural Income Tax and Sales Tax, (Special) Kozhukode, . As the said decision was confirmed by a Division Bench in W.A. 267 of 1971 we are bound by the same. Following the said view, we hold that the second proviso to Section 35(2) has no applicability to the present case, subject to any view which the Supreme Court may take in the case stated to be pending before it.

6. In the result, we set aside the order of the Tribunal and answer the question referred in the negative i.e., in favour of the Assessee and against the Revenue.

A copy of this judgment under the seal of the Court and the signature of the Registrar, will be communicated to the Tribunal, as required by law.