
(1944) 09 BOM CK 0009

In the Bombay High Court

Case No : Income-tax Reference No. 2 of 1944

Hanmantram Ramnath

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 21-09-1944

Acts Referred:

Income Tax Act, 1961 — Section 66

Citation : (1945) 47 BOMLR 183

Hon'ble Judges : Leonard Stone, J;Kania, J

Bench : Division Bench

Judgement

Leonard Stone, Kt., C.J.—This reference must go back to the Appellate Tribunal for the finding of further facts. As this is the second reference we have been constrained to send back out of the last ten which have come before us, and as in these cases not only is public time and money wasted, but there is also obviously a hardship) cast upon the assesseees, it is in my opinion necessary that certain matters should be stated for the guidance of the Appellate Tribunal in preparing future cases.

2. Section 66 of the Indian Income Tax Act is the section under which these references are made, and by Sub-section (1) of that section it is provided:

Within sixty days of the date upon which he is served with notice of an order under Sub-section (4) of Section 33, the assessee or the Commissioner may, by application in the prescribed form, accompanied where application is made by the assessee by a fee of one hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court.

Pausing there for a moment, it is to be observed that all that is to be referred to the High Court is a question of law.

Sub-section (4) of Section 66 is as follows:

If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

3. As the Appellate Tribunal is the ultimate fact-finding authority, it is incumbent upon it to make full and proper findings of fact in order that this Court, which is only concerned with questions of law, may fully appreciate all the relevant facts and be in a position to deal with such questions as are referred to it.

4. The position, in the case before us, is as follows : the Appellate Tribunal delivered their judgment on May 31, 1943, and some time thereafter (on what date is not specified) the assessee made an application for a statement of the case; and that application shows that the point which the assessee desired should be raised was : Whether on the facts as alleged in para. 3 of that application a trust had been created, which would enjoy exemption under the exception contained in Section 4(3)(i) of the Act? In passing be it said that there is nothing in that application which shows that any point is to be raised that a trust could not be created, because the assessee was a member of a joint Hindu family. The answer was put in on November 10, and is an extremely short document; and it does not raise any further contention or point than that adumbrated in the application to which I have just referred. On those two documents the Appellate Tribunal proceeded, and in my opinion correctly proceeded, to state the case without raising in it that there was any point of law with regard to the assessee being a member of a joint Hindu family and, therefore, unable to create a trust out of the family property. In their statement of the case, by para. 3, the Tribunal say as follows:

The material undisputed facts are stated in para. 2 of our judgment.

Then they purport to recapitulate the facts in an abridged form, but the governing words are : "The material undisputed facts are stated in para. 2 of our judgment," and therefore it is to that paragraph which this Court has to look in order to ascertain the statement of facts. The first twelve lines of that paragraph, although they contain some statement of facts, are not relevant to what we have to determine, as they state that subsequently to the year in question a trust was in fact created and so on. The relevant statement is in these words

The appellant's story is that he was lying ill with paralysis from the beginning of 1937. and had lost power of speech. It is also said that he regained the power about the time of Diwali and immediately afterwards made a declaration in the presence of his two sons and several others to the effect that he had decided to put two lacs of rupees in trust for maintenance of a dharmashala, feeding of the poor, and in aid of an ayurvedic hospital, founded in his late fathers "name some time before.

So far, be it observed, there is no finding of fact at all. The judgment continues:

The evidence on this point consists of the sworn affidavits of his manager, Mr. Hiralal, his son Shrinivas and one or two others, besides an entry in the assessee's books. All that this evidence establishes is that Rao Bahadur Hanmantram did make a declaration creating a trust.

Up to this point there is still no finding of fact as such, and the statement, that this evidence establishes that a declaration was made creating a trust, is a statement of mixed fact and law. The paragraph continues:

But Section 4(3)(i) of the Indian Income Tax Act requires that the property must be held in trust before its income can be exempted from taxation. In other words, the declarant must divest himself of all interest in the fund so that it might be held in trust by himself or others as trustees.

That is merely an adumbration of the law. Then the paragraph continues:

In the present case all that was done was to place a sum of two lacs of rupees to the credit of the trust in the assessee's books. The money remained in the assessee's business and used to be managed by his genitive brother Hiralal just as he was managing the business itself.

Except for the assertion that two lacs of rupees were placed to the credit of the trust, which presupposes that the question of law has been answered in favour of there being a trust, this is the whole of the relevant part of para. 2 of the judgment, and it is wholly insufficient as findings of fact for us to deal with this reference. What should have been done was to set out succinctly as statements or findings of fact : First of all, what was actually said, or the substance of what was actually said, on the occasion when it is alleged that the assessee orally created or expressed the intention of creating a trust. Secondly, there should be specifically set out what the entries in the books are, and in what books those entries are made. What the result of that oral statement and those entries is, is a matter which we will have to determine. The above must not be considered as exhaustive, but it covers the main facts which will have to be found before on this reference it is possible for us to deal with the points of law. Where evidence led before it is conflicting, the Tribunal must expressly state as a finding of fact what evidence it accepts, and not simply state, as in this case, such expressions as : "The appellant's story is...." "It is also said that..." without stating whether such allegations are accepted as true.

5. I desire to add that considerably more care must be taken in drawing up these cases, and that there should either be a paragraph or paragraphs in the case itself, which sets out findings of fact as such, or, if such findings have been properly set out in the judgment, then there is no reason why they should not be incorporated in the case by reference by stating that the material facts are sufficiently found and set out in such and such a paragraph or paragraphs of the judgment. But the present practice of mixing up together allegations of fact and statements of fact with arguments and questions of law, makes it very difficult, if not impossible, for this Court to deal with any reference which is submitted in

that form.

6. Costa will be costs in the reference.

Kania, J.

7. In this reference the Court is invited to give its opinion on the question:

Whether, in the circumstances of the case, the sum of Rs. 9,750 is income derived from

property held under trust or other legal obligation wholly for religious or charitable purposes within the meaning of Section 4(3)(i) of the Income Tax Act?

8. To decide this, it is essential that the Court should be informed of the relevant and material facts. The duty to find facts is on the Tribunal. That is the final fact-finding authority in these Income Tax matters under the Act.

9. In making the reference the Tribunal has referred to para. 2 of their judgment for the facts. The Court has thus to look into the judgment to find on what facts the question of law is based. As there is an express reference to para. 2 in the letter of reference, it must be considered that in the remaining portion of the judgment the Tribunal has merely recited facts as a matter of history, which it does not consider relevant or material in respect of the question submitted for the Court's opinion. In para. 2 of the judgment, the Tribunal has stated that, after the assessee recovered from an attack of paralysis and regained normal powers about Diwali time, he made a declaration in the presence of his two sons and several others to the effect that " he had decided to put" two lacs of rupees in trust for maintenance of a dharmashala, etc. They next summarize the evidence, which, in their opinion, consists of sworn affidavits and an entry in the assessee's books. They next record that, all that the evidence establishes is that the assessee made " a declaration creating a trust." They next, discuss the provisions of Section 4(3)(i) of the Indian Income Tax Act, which requires that the property must be held in trust before its income can be exempted from taxation. They construe those words to mean that the declarant must divest himself of all interest in the fund so that it might be held in trust by himself or others as trustees. In the next sentence they record what they think is a finding of fact, namely, that in the present case all that was done was to place a sum of two lacs of rupees to the credit of the trust in the assessee's books. A little later they further record as follows:

We also feel no doubt that the income was as a fact devoted to charitable and religious purposes.

From these facts they came to the conclusion that the declarant had not divested himself of all interest in the fund, and in their opinion there was not a valid trust.

10. It is clear that the question, whether there is a valid trust or not, is a mixed question of law and fact. It is essential, therefore, for the fact-finding authority to set out clearly all the material facts, and then decide whether the conclusions

of law should be drawn from the same. In the present case, we do not know what was the declaration made by the assessee after he recovered from his illness. We do not know in whose books the entry is made. We do not know in what book, that is, cash book, journal, ledger, the entry is made. We do not know whether this was a cash receipt by the assessee, and on account of the credit entry the trust became the creditor of the firm or the assessee in whose books the entry was made. We are not informed what happened about interest : whether the interest was credited in the account; whether it was the usual rate of interest allowed to depositors in the money lending business; whether the whole interest was used, and, if not, what happened to the balance? In order to decide whether the declarant had completely divested himself of all interest in the fund, which in this case is said to be two lacs of rupees in cash, all these facts are obviously necessary to be found. I cannot summarize all that could be there on the record of the Tribunal in this connection. It have only suggested facts which on first impression appear to be relevant and material to decide the question of law. If in addition to these there exist other facts relevant to the questions whether there was a proper declaration, and whether the assessee had completely divested himself of all beneficial interest in the same so as to make it available for the benefit of charity, the Tribunal should put them before this Court. I do not suggest that they should put before the Court all materials that exist. Their duty is to apply their mind to all the materials and state, as facts, what they hold are relevant and material. In recording their finding it is open to them to submit to the Court the accounts, in which interest was credited or from which money was spent, and show what part of it was spent.

11. Having regard to these deficiencies, we are compelled to send the case back to the Tribunal to complete the statement of facts. To avoid unnecessary expenditure and trouble to all parties concerned in these matters, it is desirable that the Tribunal, as the final fact-finding authority, should make up their mind and state clearly their conclusions on facts, and not leave the Court to collect them from different documents which are part of the record. It is essential that the facts which they hold as proved, should be stated as such in the judgment and clearly set out in the statement of case sent to the Court. While the attempt to be brief is desirable, it should not be allowed to override the duty to record and report all conclusions on the facts.

12. Mr. Setalvad urged that, as the Court is sending back the matter, the Court should also raise a question of law, namely, whether under Hindu law manager of a joint family had authority to set apart a sum of two lacs of rupees, having regard to the means of this family, and whether the trust could be validly made at all by the manager. The Tribunal delivered their judgment on May 31, 1943. The assessee then made an application for referring the question of law, which he considered to have arisen on that judgment. That application was sent to the Commissioner. The Commissioner's "common answer" was as follows:

The respondent agrees that the findings of the Bench gives rise to a question of

law. He submits, however, that the question which arises might be stated as follows:

He then formulated the question, which in exact words is submitted by the Tribunal for the Court's opinion. It was urged on behalf of the Commissioner that this question, as submitted, covered this contention urged by Mr. Setalvad. I entirely disagree. The question whether the settlor had power to make a trust at all, is quite independent of the question whether the income from property held in trust was used for religious purposes within Section 4(3)(i) of the Indian Income Tax Act. In making the application Mr. Setalvad stated that he was not prepared to state that this question was argued before the Tribunal. He did not say or contend that para. 1 of the judgment of the Tribunal was connected in any way with the point now urged to be raised. Having regard to these circumstances he had to state that he did not want any fresh inquiry, but he wanted the Tribunal only to report their finding on what materials they had on record. In my opinion, this is entirely unwarranted by Section 66 of the Indian Income Tax Act. If the question was raised before the Tribunal, there appears no reason why the final fact-finding authority would make no reference in their judgment to the two vital points covered by this contention. It appears, therefore, that this question was not argued before the Tribunal. The question suggested must necessarily involve an inquiry into the estate of this joint family, whether there were adults who had consented, or whether the minor's share was likely to be affected, and, if so, to what extent. In the judgment of the Tribunal there is nothing to show that these facts were discussed before them. References were made to the order of the Income Tax Officer. In my opinion, that is quite irrelevant, and cannot be relied upon in discussing a reference made to the Court. This Court has only to look to the judgment of the Tribunal to ascertain the questions of law. It is not open to the parties to refer to other orders if they have knowingly or inadvertently failed to raise the contention before the Tribunal.

13. In my opinion on the present materials the question suggested by the Commissioner cannot be answered.