(1932) 01 AHC CK 0042

In the Allahabad High Court

In Re: B. Bhagwati Prasad Rais

Date of Decision : 15-01-1932

Acts Referred:

Citation : (1932) 01 AHC CK 0042

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mukerji, J.—This is a reference by the learned Commissioner of Income Tax, made in pursuance of an order of this Court, dated 19th June 1931.

2. It appears that an assessment u/s 23, Clause (4), Income Tax Act, 1922, was made against the assessee, one Babu Bhagwati Prasad of Gorakhpur. He filed an appeal before the Assistant Commissioner and one of his contentions was that the Income Tax Officer was not in the circumstances justified in treating the case as one falling u/s 23, Sub-section (4).

3. The Assistant Income Tax Commissioner scrutinized the memorandum of appeal and the assessment order of the Income Tax Officer, but he did so behind the back of the assessee or his counsel. He came to the conclusion that the order u/s 23(4) had been rightly made, in the circumstances of the case. He refused to admit the appeal and directed that the appellant, the assessee, should be informed of the fact. The assessee went before the Commissioner of Income Tax, and he contended that the Commissioner should state the case before this Court. The Commissioner having declined, the assessee came to this Court and he obtained the order, dated 19th June 1931.

4. The two questions that really arose in the case were indicated in the order of this Court and were:

(1) Was the assessee entitled to be heard before the Assistant Commissioner in order to show that in the circumstances of the case the Income Tax Officer was not justified in making an assessment u/s 23, Sub-section (4)?

(2) Was the notice issued u/s 22, Sub-section (4) rightly ''issued, although an inquiry into the assessment had started?

5. The learned Commissioner in stating the case has framed the question No. (2), but in framing the question No. (1) has missed the point that really arose for decision.

6. It has been held in this Court in two cases; and that opinion has been followed by the Bombay High Court, that it is open to a High Court to resettle the issues arising in the case and to answer them. The cases decided in this Court are Shiva Prasad Gupta Vs. Commissioner of Income Tax, and In Re: Kajori Mal Kalyan Mal of General Ganj, The Bombay case is Commissioner of Income tax, Bombay Presidency v. National Mutual Life Association of Australasia Ltd. AIR 1931 Bom. 448.

7. We consider that in this case we ought to resettle issue 1 and answer it. It is obvious that if issue (1) be answered in the affirmative, issue (2) will not require any answer, nor will issue (3) as framed by the learned Commissioner.

8. The contention of Dr. Katju on behalf of the assessee is that the mere fact, that the Income Tax Officer quoted Section 23, Sub-section (4) in his assessment order, was not enough to preclude an appeal. To shut out an appeal there must be a genuine-case u/s 23, Sub-section (4). The Assistant Commissioner in hearing an appeal, must satisfy himself, on hearing the assessee or his counsel, and not by an ex parte examination of the records in his chambers, that the case fell within the purview of Section 23, Sub-section (4) and was-therefore not open to appeal. The learned Government Advocate has argued that Section 27 furnishes the real remedy of the assessee and that instead of appealing he should follow the procedure laid down in Section 27.

9. We are of opinion that Section 27 is applicable to the particular cases noted therein, and the present case does not fall within the purview of Section 27. Further, where Section 27 is applicable, it may still be open to the assessee, if he has a good case, to file an appeal and to show that the order u/s 23, Sub-section (4) was not justified.

10. Our view is supported by two Full Bench decisions of the Patna and Punjab High Courts respectively and they are (Kunwarji) Ananda Vs. Commissioner of Income tax, and Duni Chand v. Commissioner of Income Tax AIR 1929 Lah. 593.

11. Our answer to issue 1 as resettled above, is that the Assistant Commissioner should have heard the assessee or his counsel and then should have decided whether the case really fell u/s 23(4), Income Tax Act.

12. As no other question arises, we direct that a copy of this judgment be sent, under the seal of the Court to the Commissioner of Income Tax. The Government must pay the costs of this reference to the assessee. The Government Advocate is entitled to a fee of Rs. 100 to-which he will certify within the period allowed by the rules of this Court. There-was a previous hearing of this case on. 19th June

1931, and we assess the fee of the learned Government Advocate for that day at the same figure of Rs. 100. The gentleman, who officiated as the-Government Advocate on that day, will on receipt of the fee certify within the prescribed period.

