

(1927) 02 AHC CK 0035
In the Allahabad High Court
In Re: Dina Nath Hem Raj

Date of Decision : 03-02-1927

Acts Referred:

Citation : AIR 1927 All 299 : (1927) ILR (All) 616

Final Decision : Disposed Of

Judgement

1. This is a case stated u/s 66 of the Income Tax Act of 1922. The case has been stated by the Commissioner and printed, a matter of great convenience to the Court. The questions upon which the case was stated are set out on page 4 of the case, and are as follows:

6. The High Court has directed me to state a case with reference to the following points of law:

(1) Whether in view of the facts and circumstances as stated in this special case of the petitioner's business in connexion with the purchase, sale, receipt and distribution of profit, of castor seeds delivered to the East Indian Railway at Manauri, the business was during the material period, carried on in Cawnpore within the meaning of Section 64.

(2) Whether if it is eventually found that the petitioner's business was carried on in Cawnpore, the Income Tax authorities acted in accordance with the Act in assessing them by way of summary assessment while a bona fide dispute was going on as to whether they were liable to be assessed in Cawnpore at all.

(3) Consequent Upon the foregoing questions whether it was the duty of the Income Tax Authorities to obtain a decision u/s 64(3).

(4) Whether having regard to the fact that the Misc. Case No. 512 of 1926, the particular venture had come to an end and the members of the partnership who had taken part in it were no longer carrying on business at all, the Income Tax Authorities at Cawnpore had jurisdiction to make the assessment upon the firm, even if it had carried on business at Cawnpore, such business no longer existing.

2. The Commissioner has requested permission to raise another question, which

we will deal within a moment, and which in substance challenges the jurisdiction of the High Court, to direct a case to be stated in this matter, owing to the provisions of Section 64.

3. Before dealing with this question of jurisdiction it is necessary to make two preliminary observations. As a rule it is better in a statement of a case to confine the case to findings of fact, and to the expression of the Commissioner's opinion upon the points raised, and not to burden the case with arguments, or in this case to question the jurisdiction of the Court, to require a case to be stated. We would not, however, be taken to hold that the Commissioner, or any other body, in a case where the Act provides for a case to be stated, for the opinion of the High Court, has no right to question the jurisdiction of the Court in directing the particular case in question. In order to make our meaning clear, we would point out that an order for a case to be stated, is in the nature of what is known in Calcutta and in England as the issue of rule nisi to show cause on certain questions indicated in the order made by the High Court. The Commissioner; or other authority, in stating the case in effect shows cause against the contention of the other side, and in showing cause he is clearly at liberty, when he appears before the Court to argue the ease, to take the objection that under the law there was no power to issue the rule, or to direct the case to be stated, and that, therefore, the High Court has no jurisdiction to decide the question raised in the case.

4. The second observation is that in strictness the objection should have been taken at the time of the argument namely the 22nd of October 1926, when the question of whether it was a fit case in which a case ought to be directed to be stated was discussed, and this Bench made the order. It so happens that in this particular instance the matter came before the High Court twice. Mr. Justice Kanhaiya Lal and Mr. Justice Ashworth, sitting together on the 14th of July 1926, issued notice to the Commissioner of Income Tax and to the Government Advocate, without direction a case to be stated, so that a further preliminary stage occurred when the Government Advocate appeared on behalf of the Commissioner of Income Tax before this Bench in October. In their order, the above-mentioned learned Judges stated that

It will be a further point of law whether the decision on the evidence, if any, could be arrived at all in those provinces, without reference to the Commissioner of Income Tax of Calcutta.

5. This was clearly directed to Section 64(3), which is the sub-section on which the Commissioner now relies; and the third question of those which this Bench ordered to be stated by their order in October, deals with the same sub-section. No objection was made in October on behalf of the Commissioner that this subsection concluded the matter and ousted the jurisdiction of the High Court u/s 66.

6. It appears to us that the Income Tax Officer of Cawnpore, who dealt with this

matter in the ordinary course of his duty, wholly overlooked this provision, and that the Commissioner's attention was not drawn to it, and further that it is entirely owing to this oversight that the matter has got into the complicated condition in which we now find it.

7. The question which has arisen between the assessee and the Income Tax Authorities is really a perfectly simple one, namely, whether the partnership, or firm, formed for a special undertaking, being the assessee, had its principal place of business in Cawnpore or Calcutta. It is said that the facts of the case are intricate, but we do not agree. As will appear hereafter the facts relating to this particular business, which was only of a temporary character, are by no means uncommon, and according to the ordinary tests, which are applied in such cases, it ought not to be difficult to find as a fact where their principal place of business was, although the matter has now borne before us really as a question of law, to decide whether the Income Tax Authorities had any evidence upon which, having regard to all the facts of the case, they could hold that the principal place of business was in Cawnpore. What is intricate is the legal tangle into which the simple issue, which arose, has been allowed to drift, and the unfortunate delay which has taken place in arriving at a final settlement of the question which became acute in October 1924, and is still unsettled after a controversy of over two years. The initial mistake appears to us to have been the assessment of the firm by the Income Tax Officer in Cawnpore u/s 23(4) of the Act, on December 8, 1924, not of a branch business carried on in Cawnpore, or of the profits arising within the jurisdiction of Cawnpore, but upon the presumption that the principal place of business was in Cawnpore, when a question had arisen between the assessee and the Income Tax Authorities with regard to that very question, and had not been decided in accordance with the provisions of the Act, contained in Section 64(3).

8. That a question had arisen within the meaning of Section 64(3) there cannot be the slightest doubt. In a letter, dated September 8, the Income Tax Officer expressed his intention of making the assessment in Cawnpore of the whole profit of the business in castor seeds, carried on in the former year in partnership. The assessee, the name of the firm being taken from the principal partner, namely Messrs. Dina Nath Hem Raj, 10 Cross Street, Calcutta writing from Calcutta, on the 21st of October, informed the Income Tax Officer that Calcutta was the principal place of business of the partnership, and that they were prepared to prove that fact to the satisfaction of the Income Tax Officer. They stated that they had already filed an affidavit in Calcutta to that effect. On the 24th of October the Income Tax Officer answered that Calcutta could not be considered the principal place of business, and that no part of the business was carried on at Calcutta, and insisting upon his right to assess the profits of the whole business in Cawnpore, and informed the assesses that he had written to the Income Tax Officer at Calcutta to the same effect. Finally the assesses, on the 28th of October, wrote from Calcutta regretting that they were unable to see eye to eye with the Income Tax Officer in this matter. They seem to have acted

with circumspection in this matter except that the branch in Cawnpore failed to produce their books. They went on to say that although it did not matter much where the assessment was made, in Calcutta or in Cawnpore they asked the Income Tax Officer to take into consideration the fact that it would cause serious inconvenience and loss to them if the assessment was made in Cawnpore, and they gave reasons for this contention, pointing out what is admitted to be correct, that the business relating to the castor seeds was done by the Calcutta firm with the East Indian Railway, and that the contract was entered into in Calcutta, and that as a matter of fact the Income Tax Officer in Calcutta was already arranging to take evidence upon the point. There may be some difference in the method of calculating profit in the different provinces.

9. This is a matter for the Income Tax Authorities. We were told that the payments by the East Indian Railway amounted to 14 lacs, and that the Calcutta authorities had assessed the profit at one lac, while in Cawnpore it had been assessed at three lacs. In the former case a profit of one lac, upon an outlay of 13, would be nearly 8 per cent. In the latter case the outlay would be only 11, and the profit 3, equalling more than 26 per cent, but the latter was admittedly arrived at ex parte without any materials provided by the firm, which may account for the very large difference. The suggestion seemed to be made in argument, that the assessee had for this reason contended for Calcutta, and it is therefore right to emphasize that the question about the principal place of business arose before any assessment had been made, and that there is nothing in the case to show that they did not act bona fide in raising the question.

10. It is quite clear, therefore, that in October 1924 a question had arisen within the meaning of the section. It is equally clear that both parties were either unaware of, or ignored Section 64(3). This question having arisen the Income Tax Officer, subject to a proviso, hereafter to be mentioned, had no jurisdiction to decide the question of the principal place of business, and certainly no jurisdiction to assume it, and no right to assess the firm on the profits of the whole business as though its principal business were in Cawnpore, a question which was still undecided. The Act provides that where the question about the principal place of business is between places in more provinces than one, it shall be determined by the Commissioners concerned; and if they are not in agreement, by the Board of Inland Revenue, and that the assessee shall have an opportunity of representing his views. The Act does not go on to say who shall see the Commissioner in motion, but the reasonable inference to be drawn from the language used is that is the duty of the Income Tax Officer. The sub-section itself contains a direct reference to the assessee and provides that the assessee shall have an opportunity of representing his views before the question is determined. An express provision of that kind seems to exclude an implied provision that the duty is thrown upon him of securing the determination of the question. On the other hand the Income Tax Officer is the person who first becomes aware of the question which has arisen, and it seems reasonable to hold, and it certainly simplifies the working of the section that, he should

immediately communicate the fact of such question having arisen to his own Commissioner with whom he is in constant touch, and who is then in a position to exercise the function imposed upon him, as the case may be, giving the assessee an opportunity of representing his views. What is quite clear is that the Income Tax Officer cannot himself decide this question, or act as though it had been determined in accordance with the provisions of this section, and that if he proceeds to prejudge the issue, or to act as though it had been determined and to assess the firm as though their principal place of business was in his own jurisdiction, in spite of the dispute being still undetermined, he is doing something not authorized by the Act, in other words an illegality. It is quite true that the following sub-section, namely Sub-section 4, provides that

notwithstanding anything contained in this section, every Income Tax Officer shall have all the powers conferred by or under this Act on him in respect of any income, profits or gains accruing or arising or received out of the area for which he is appointed.

11. This means that he can proceed to assess a branch, as such, if he has the materials for so doing. What would be the result of such an assessment of the branch if the decision afterwards is that the principal place of business is in another province we need not stop to enquire. It is perfectly clear from the language used by the Income Tax Officer throughout, and in the letters from which we have quoted, which are set out in full in the case, that he proceeded to assess the firm on December 8, 1924, as though its principal place of business was in Cawnpore.

12. We now turn to the actual question raised by the Commissioner. The question is not stated in a very satisfactory manner. He asks: Has the High Court power, u/s 66 of the Indian Income Tax Act of 1922 to overrule a decision of an Income Tax Officer concerning his power to assess in the face of the provisions of Section 64 of the Act, which lay down a special procedure and a special form for the decision of disputes as to that power? In one sense of that embarrassing question the answer must be "No." The High Court indeed has no power to overrule anything done by an Income Tax Officer or the Commissioner. Where such a question, as we have indicated, arises as to the principal place of business, and such question has been determined by the Commissioner, or where the question is between places in more provinces than one, by the Commissioners concerned, or by the Board of Inland Revenue, such decision is final. There is no right of appeal, and no power in the High Court to interfere with it, nor do the provisions of Section 66 which give the assessee a right to require the Commissioner to refer to the High Court any question of law, or in the event of his refusal to apply to the High Court for a statement of the case, apply to a decision made u/s 64. No doubt u/s 66(1) the Commissioner may on his own motion refer a case to the High Court on any question of law arising in the determination of the question u/s 64, but this seems to be the only way in which the determination of such question can be brought before the High Court. On the

other hand the question put by the Commissioner applied to the circumstances of this case, appears to be misleading because it assumes that the High Court was asked to overrule a decision of the Income Tax Officer concerning his power to assess, a decision which in the face of the provisions of Section 64, he had no power to make, and it assumes also that the special procedure and special forum, u/s 64 had been adopted when it is admitted that it had not.

13. We are compelled to hold in this case that there being a total failure on the part of the Income Tax Authorities to apply the plain provisions of Section 64, and on the other hand an illegal assumption of authority by the Income Tax Officer, in Cawnpore to assess the assessee, as though their principal place of business had been determined to be in Cawnpore, the existence of an alternative remedy u/s 64(3), does not affect this case, and cannot be held to be a bar to the right of the appellant to have a case stated, and to the jurisdiction of the High Court to answer those questions in the way in which it holds they ought to be answered.

14. Owing to the disregard of the machinery provided by Section 64(3) to the wholly irregular proceedings, as they appear to us to have been, which have necessarily followed upon the action of the Income Tax Officer in Cawnpore, in assessing the profits of the firm or of this special business as though the principal place of business had been determined to be in Cawnpore, the subsequent proceedings appear to have been irregular in form and infructuous in substance. We need not dwell upon the intermediate proceedings, which took place between the order of the 8th of December 1924 and the order of the Commissioner of the 23rd of December 1926, refusing to state a case on a question of law, which question was undoubtedly raised in the course of the appeal and discussed by the Commissioner in his order, and held by him to be a question of fact only. To refuse to answer the questions on the ground that the procedure by which this stage has been reached is irregular, would in our view be a denial of justice. The responsibility for the tangle, which has occurred, appears to us to lie almost, if not entirely, on the Income Tax Authorities, by which we mean the failure of the Income Tax Officer in Cawnpore to draw the attention of the Commissioner to the fact that a dispute had arisen about the principal place of business. The controversy having drifted away from the prescribed method or machinery for determining it, which is provided by the Act, and each of the parties to it having made up their minds that they were right, it is not surprising that both of them indulged in arguments and indeed in procedure, which appear to us; strictly regarded, to be irregular and as things now stand to be irrelevant but inasmuch as the whole trouble has arisen from the initial irregularity on the part of the Income Tax Authorities, and inasmuch as also the assessee has been assessed, in our view, with fundamental irregularity and in any case in default by an ex parte decision, when as a matter of fact he has committed no default, and inasmuch as also, in our view, if the law is correctly applied to the evidence, the only proper inference which any Court of law could draw from the facts is that the principal place of business is in Calcutta, and not in Cawnpore, it seems to us

that it would be a denial of justice, either for us to refuse to answer the questions raised by the case, or for the Commissioner to deal with the matter finally, otherwise that in accordance with the answers which we now proceed to give.

15. In our previous order we endeavoured to make it plain how a mixed question of fact and law, or how a question, which is no doubt in one sense a question of fact may become a question of law, or in other words how it may be said that taking all the facts together there is no evidence upon which a Court of law could come to any but one conclusion. The facts to be collected from the case are as follows: (1) This firm, which was an unregistered partnership firm for a special venture for dealing with castor seeds under a contract with the East Indian Railway for one year, in 1923-1924, consisted of three existing firms, one the firm of Dina Nath Hem Raj of Calcutta, who held the lion's share, namely 8 annas, and after whose name the temporary partnership, was named, a firm of Messrs. Dewan Chand and Sons of Lahore, who held a 4-annas share, and the firm of Narain Das of Cawnpore who held the other 4-annas share.

(2) The Calcutta firm started and formed the partnership and clearly financed it. The inference may fairly be drawn that it would not have come into existence without their instrumentality. They might have succeeded in inducing other firms in Cawnpore, or Lahore, to join the partnership, but there is nothing to show that either the firm in Cawnpore, or the firm in Lahore, would have formed the partnership, or have become members of any such partnership if it had not been for the Calcutta firm. The Calcutta firm were therefore the moving spirit and apparently the financiers.

(3) The partnership was ultimately dissolved by deed in July 1924 in Calcutta.

(4) The contract with the East Indian Railway was made in Calcutta.

(5) Payments for the seeds supplied, or distributed to the order of the East Indian Railway were made in Calcutta.

(6) A banking account was kept in the Imperial Bank in Calcutta.

(7) The ordering and direction of the seeds, which were purchased and subsequently sold to the East Indian Railway and delivered at Manauri, took place at Cawnpore, and this no doubt was the center of the work which has been carried out in compliance with the contract. It was not unlike a mill or factory in a country district, belonging to a firm with its head office in a neighbouring town.

(8) The firm in Cawnpore, who were partners carried on extensive operations as purchasers of the goods, which were to become the property of the whole partnership, and which were to form the source of profit.

(9) The correspondence with the East Indian Railway was conducted from Calcutta.

(10) There is correspondence from Cawnpore asking Calcutta for funds.

(11) There is correspondence, making reports to Calcutta of the work at the local centers or branches.

(12) There is correspondence asking Calcutta to make arrangements for loading waggons in Moradabad.

16. The test in such a matter may be given in language quoted from Mr. Sastri's excellent book on the Law and Practice of Income tax.

Ordinarily the principal place of business of a firm or company is the place at which the persons directing the company or firm do their business.

17. The fact that goods are manufactured in one place does not make that place necessarily the principal place of business. Where business is carried on in many places, or at different branches, it may be said that the business is carried on in each of those places, though neither of them may be the principal place of business. In our view the Income Tax Officer in particular, and to some extent the Commissioner, misdirected themselves by directing their attention to the fact that extensive business was carried on in Cawnpore. As a matter of law, we think the Commissioner has misdirected himself in relying upon the fact that an expert partner, whose importance was as great as that of any other partner, was doing the practical work in Cawnpore, and that he was at least equal if not greater in importance than financing partner. We also think that he misdirected himself in the case in holding, as he appears to have held, that the fact that the Cawnpore firm were making purchases as far afield as Moradabad, affected the question whether theirs was the principal place of business. Although in the end he answers the first paragraph in the affirmative, he frames this finding on this point in language which is far from being convincing, saying that "it is not established that the business was not carried on in Cawnpore." He rather thinks that it is a fair inference that the business was conducted in Cawnpore. In the way in which these findings are stated, this is not a decision of the question at all. Undoubtedly a great deal, if not the bulk of the practical business was conducted in Cawnpore. But that is not the sole or indeed the important test in considering, in a case like this, whether Cawnpore was the principal place of business.

18. Question (1) was intentionally framed so as to leave open the question whether the business was solely carried on in Cawnpore. But that question is now not open and we have no hesitation in coming to the conclusion that on the facts stated in the case, there is no evidence upon which it can be held that the principal business was in Cawnpore, and that if that had been found to be the fact, in a suit this Court would have been compelled on this evidence to overrule the finding as a question of law in second appeal.

19. The answer to question No. (2) is No. The matter should have been decided in accordance with Section 64(3)

20. The answer to question 3 is "yes."

21. The answer to question 4 is now superfluous; but it is clear that if the business had been carried on wholly in Cawnpore, the fact that it no longer existed would not deprive the Income Tax Authorities in Cawnpore of jurisdiction to make the assessment.

22. We think that although the assessee has been some what hardly treated in this matter, he must have known that he had no business to destroy his books while this important question of appropriate assessment was still outstanding. What effect that destruction may have been upon the ultimate decision arrived at by the Income Tax. Authorities is a matter for them, but having regard to that circumstance we think justice will be done by ordering both parties to pay their own costs of these proceedings.