
(1941) 09 BOM CK 0004

In the Bombay High Court

Case No : Income-tax Application No. 2 of 1941

In re: Govindram Gordhandas

Date of Decision : 26-09-1941

Acts Referred:

Income Tax Act, 1961 — Section 27, 5(2)

Citation : (1941) 43 BOMLR 1009

Hon'ble Judges : Kania, J; John Beaumont, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Beaumont, C.J.—This is an application asking us to direct the Commissioner of Income Tax, (Central), to state a case. The learned Commissioner has refused to state a case, not because he denies that a point of law arises, but because he considers that he has no jurisdiction to deal with the matter. That is the question which we must decide on this application.

2. The assessee was assessed on March 31, 1939, by the Income Tax Officer, Special Circle, and on the next day the amendments to the Indian Income Tax Act came into operation. On April 15 a demand for payment was made on the assessee. He applied u/s 27 of the Act to get the assessment set aside, but his application was rejected. On April 18 the Central Board of Revenue, acting u/s 5(2) of the Act, as amended, transferred the case of the assessee by name to the Commissioner of Income Tax (Central). Now, this Court held in *Dayaldas Kushiram v. Commissioner of Income Tax, Central*¹, that cases transferred u/s 5(2) of the Act could not include assessments already completed. That decision binds us, and it follows that the assessment, which was completed on March 31, 1939, was not included in the transfer of the assessee's case; any further proceedings relating to the assessee were validly transferred, but the completed assessment was not transferred.

3. On May 10 the assessee appealed against his assessment, and his appeal was admittedly disposed of by the Appellate Assistant Commissioner, Sections I to VI, A-Range, Bombay. In my view, that Assistant Commissioner would have been the

tribunal to hear the appeal, whether the transfer made on April 18 embraced this assessment or not, so that his entertainment of the appeal is a neutral act. The original assessment was made by the Income Tax Officer, Special Circle, and by virtue of notifications 46 and 47, published in the Gazette of India of June 3 and 10, 1939, "Sections I to VI, (Central)" were in effect substituted for "Special Circle", and by Notification of February 24, 1940, the Central Board of Revenue directed that the Appellate Assistant Commissioner of Income Tax, Bombay, "A" Range, should perform his functions in respect of assessee who had preferred appeals against the assessments made or orders passed by the Income Tax Officer, Special Circle, Bombay, and whose appeals were pending on June 3, 1939. That includes the appeal of the present assessee. If the case had been properly transferred to the Commissioner of Income Tax (Central), there is no doubt that the appeal would have been heard by the Assistant Commissioner, Bombay, A-Range, dealing with Sections I to VI (Central), which included all cases transferred to the Commissioner of Income Tax (Central). If it was not transferred, it seems to me that the same gentleman must have heard the appeal under the notification of February 24, 1940. The question, therefore, is, whether the Assistant Commissioner heard the appeal as an officer subordinate to the Commissioner of Income Tax, Bombay Presidency, Sind and Baluchistan, that is to say, the local Commissioner, or whether he heard it as an officer subordinate to the Commissioner of Income Tax (Central) u/s 5(7).

4. Now, u/s 5(2) of the Act, the Commissioner of Income Tax (Central) can only deal with cases which had been transferred to him, and that must mean validly transferred to him. Therefore, one comes back to the question whether the assessment of March 31, 1939, had been validly transferred to the Commissioner of Income Tax (Central), and, as I have said, on the authority of the case decided by this Court, we must hold that it had not been transferred. If that is so, the Commissioner of Income Tax (Central) has no jurisdiction to entertain this case. If that is so, it may follow that u/s 5(7) the Commissioner of Income Tax, Bombay Presidency, Sind and Baluchistan, has jurisdiction to state a case u/s 66(2), but we are not concerned with that. All we have to determine is whether the Commissioner of Income Tax (Central) has jurisdiction to state a case u/s 66(2); and, in my opinion, if this assessment of the assessee has not been validly transferred to such Commissioner, he cannot state a case, and he has no jurisdiction to entertain the matter at all. That was the view he took, and as we agree with him that he has no jurisdiction to state a case, we cannot order him to do so.

5. The petition, therefore, must be dismissed with costs.

Kania, J.

6. Two points arise for consideration on this application. (1) Whether, after the assessment was made on March 31, 1939, the order transferring the case to the Commissioner of Income Tax (Central) by the Central Board of Revenue, and thereafter by the order of the Commissioner of Income Tax (Central) to the

Income Tax Officer (Central) was valid in law, having regard to the fact that the assessment order was made before the amended Income Tax Act of 1939 came into operation. (2) If that transfer was invalid, whether the decision of the Appellate Assistant Commissioner, as given, was in his capacity as a subordinate to the Commissioner of Income Tax, Bombay Presidency, Sind and Baluchistan, or as a subordinate to the Commissioner of Income Tax (Central).

7. It may be noticed that before the amendment of 1939 the Income Tax Act provided for the appointment of a Commissioner of Income Tax, and it was within his power to distribute the work and allot functions to Assistant Commissioners and Income Tax Officers. By the amendments made in 1939 the appointment of Commissioners without any reference to areas was contemplated, and Assistant Commissioners were appointed by the Central Board of Revenue and functions were allotted to them by that Board.

8. As regards the first point, the question of the right of an assessee in respect of assessment orders made before April 1, 1939, for reassessment came to be considered by this Court in *Dayaldas Kushiram v. Commissioner of Income Tax, Central* [1940] Bom. 650. In the judgment of the learned Chief Justice there are observations which deal with the right of appeal against an assessment order before March 31, 1939. On the principles adopted in that case, he considered it logically to follow that such rights as had been acquired in respect of the orders of assessment, whether they were in respect of reassessment or appeal, stood on the same footing. As the point did not arise in the reference, I expressed no views on that question. In my opinion, on the facts, that question is not material here.

9. The appeal from the assessment order dated March 31, 1939, should be decided by the Assistant Commissioner having power to decide appeals against assessment orders made in the Special Circle. The Appellate Assistant Commissioner, "A Range", appointed after the amendment, at first had jurisdiction to hear appeals in respect of orders made by Income Tax Officer of "Special Circle", Sections I to VI (Central) and also specified wards. He was a named individual. Under the old as also the amended Act there is no objection to appoint one Assistant Commissioner with powers to hear appeals in all such cases. The hearing of the appeal over the order in this matter by that individual, therefore, will be when he was Assistant Commissioner having jurisdiction to hear appeals in all those matters. By reason of the amendments made in the order of his appointment, and published in the Government of India notification on June 3 and 10, 1939, the words "Special Circle" were omitted from the original order. The result was that the Appellate Assistant Commissioner remained invested with the powers to hear appeals in respect of Sections I to VI (Central), and Wards A to AA. It appears, therefore, to be contended on behalf of the assessee that that Assistant Commissioner had no jurisdiction to hear the appeal in respect of his assessment order passed when the assessee was under the Special Circle. To remove that difficulty, an order was issued and notified in

the Gazette of India on February 24, 1940. The terms of that notification are material and have been quoted in the judgment of the learned Chief Justice. It is clear from that notification that the Central Board of Revenue invested the Appellate Assistant Commissioner, Bombay, "A Range," with powers to hear appeals in respect, of assessment orders made by Income Tax Officers in the Special Circle. That Assistant Commissioner, whose jurisdiction was otherwise defined in the notification published on July 15, 1939, thus acquired jurisdiction in respect of all appeals against orders made by the Income Tax Officer, Special Circle. The question is, whether the appeal decided in this case by the Assistant Commissioner, "A Range", under the powers given by the notification dated February 24, 1940, is by the Assistant Commissioner subordinate to the Income Tax Commissioner (Central), or to the Income Tax Commissioner, Bombay Presidency, Sind and Baluchistan. Having regard to Section 5(7), it is clear that the function to hear this appeal was not assigned to him by the Commissioner of Income Tax without reference to area, that is, Central. He was given those powers by the Central Board of Revenue under the notification mentioned above. If so, the Assistant Commissioner was subordinate to the Commissioner of Income Tax for the area, that is, the Commissioner of Income Tax for Bombay Presidency, Sind and Baluchistan. Therefore, the application to be made by the assessee for stating a case u/s 66(2) should be to the Commissioner of Income Tax, Bombay Presidency, Sind and Baluchistan. Clearly he has not done that.

10. It was argued before us that the Commissioner of Income Tax (Central), who is the opponent here, kept the papers before him for over two months and gave his decision after six months. It is pointed out that in the affidavit filed in reply it is not disputed that a question of law, which is referable u/s 66(2), arises. The only contention urged is that the opponent is not the person who is to make the reference, as he has no jurisdiction. An appeal was made to the Court that this was unfair, and revenue authorities should not act in that manner. But the remedy for that is with the assessee. He should apply to the proper authorities, and as public officers there is no reason to believe that if their department has committed an error or allowed proceedings to drift whereby the rights of the subject are prejudiced in any way, they will not put the matter right. The Court is not concerned with the moral aspects. The Court is called upon to decide on the construction of the Income Tax Act, whether the opponent should be compelled to state a case as asked for. To that the clear answer appears to be that he cannot be asked to do so.

11. I agree, therefore, that the application fails and must be dismissed with costs.