
(1987) 11 CAL CK 0020
In the Calcutta High Court
Case No : Matter No. 1129 of 1982

J.S. Atwal and Others (HUF)

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 24-11-1987

Acts Referred:

Appellate Tribunal Rules, 1963 — Rule 11

Citation : (1988) 68 CTR 10 : (1988) 172 ITR 585

Hon'ble Judges : Dipak Kumar Sen, Acting C.J.; Shyamal Kumar Sen, J

Bench : Division Bench

Judgement

Dipak Kumar Sen, Actg. C.J.

1. M/s. J.S. Atwal & Ors. (HUF), the assessee, was assessed to wealth-tax in the assessment years 1961-62, 1962-63, 1963-64, 1964-65 and 1965-66 in the status of a Hindu undivided family as declared in its returns. The assessee preferred appeals from the said assessments before the Appellate Assistant Commissioner of Wealth-tax who upheld all the assessments and dismissed the appeals.

2. The assessee went up in further appeal before the Income Tax Appellate Tribunal. In the appeals before the Tribunal, the assessee sought to raise for the first time the following additional grounds :

" 1. For that the appellant is governed by the Hindu Succession Act of 1956 and as the entire property is received on the death of G. S. Atwal who died intestate on January 20, 1961, therefore, the Hindu Succession Act, 1956, is well applicable in the instant case which being the general law applicable to all Hindus which includes Buddhists, Jains and Sikhs.

2. For that the appellant claimed 15% deduction from immovable property for the joint ownership.

3. For that the Samadhi valued by the Valuation Officer at Rs. 45,026 has

substantial sentimental and religious value for the family but may not have any value in the open market. Thus to be excluded from the value of Rs. 4,31,240 as valued on December 31, 1966, by the Valuation Officer."

3. The Tribunal held that the grounds Nos. 1 and 2 involved mixed questions of law and fact and there was no material on record in the relevant assessment proceedings that G. S. Atwal whose properties and assets had devolved on the assessee had died intestate. It was also held that there was no material on record to show that the immovable properties for which the assessee claimed deduction were held in joint ownership. So far as the third additional ground was concerned, the Tribunal held that the same involved investigation into facts, viz., whether there was any "Samadhi" which were not on record.

4. It was contended by the assessee that in the subsequent assessment years, the Appellate Assistant Commissioner had permitted the assessee to raise such additional grounds and had brought certain materials on record. The Tribunal held that the same would not constitute materials on record for the years under consideration. The application of the assessee was rejected and the additional grounds were not permitted to be raised.

5. On an application of the assessee u/s 27(3) of the Wealth-tax Act, 1957, the Tribunal was directed to refer the following question as a question of law arising out of its order for the opinion of this court:

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in refusing to entertain the three additional grounds raised by the appellant even though the same admittedly involved a mixed question of fact and law or the said refusal was unreasonable or perverse ?"

6. At the hearing before us, the learned advocate for the assessee submitted that the Tribunal erred in rejecting the application of the assessee to raise the additional grounds inasmuch as the facts relevant thereto were already on record in the wealth-tax assessments of the assessee in subsequent years and no fresh investigation was necessary. In any event, the said grounds raised mixed questions of fact and law and the Tribunal was required to consider and adjudicate on the additional grounds to the extent they raised the question of law which went to the root of the assessments. In support of his contentions, the learned advocate for the assessee cited the following decisions :

(a) IN RE MOOLJI SICKA AND OTHERS., . In this case, five partners of a firm who were being assessed to Income Tax as individuals contended that each of them ought to be assessed as a Hindu undivided family. It was found that some of the partners did not have any son and it was held that they could not constitute a Hindu undivided family only with female coparceners. So far as the others were concerned, it was found that their capital was not ancestral and they had always treated the same as separate and had not thrown their property or income into common stock. The partners relied on an affidavit where it was declared that the property was joint. It was contended that the said declaration which was

irrevocable ipso facto created a Hindu undivided family and that the said partners and their sons became coparceners.

This contention was rejected by the High Court which held that the declaration contained in the affidavit was not conclusive. Such declaration might have been made to defeat the claims of the Revenue and had been disbelieved by the authorities. Such a declaration was no more conclusive than a declaration about the intention to separate, where the question whether the partition had been effected or not still had to be determined.

(b) *Gangadas Sarda Vs. Commr. of Income Tax B. and O.,* . In this case, the assessee was sought to be assessed in respect of certain cash credits in his account books which were detected and treated as income from undisclosed sources. At the final hearing before the Tribunal, the assessee sought to urge an additional ground of law contending that as there could be no previous year in respect of an undisclosed source other than the financial year next preceding the assessment year, the assessee was not liable to be taxed in the assessment year involved in respect of the said cash credits. The Tribunal refused to allow the said additional ground to be raised. On a reference, it was held by a Division Bench of the Patna High Court that the question of law related to assess-ability in a particular accounting year and went to the root of the assessment and the Tribunal should have exercised its discretion judicially and entertained the additional ground.

(c) *Hukumchand Mills Ltd. Vs. Commissioner of Income Tax, Central Bombay and Others,* . In this case, the assessee was a company incorporated in a native State outside British India and was assessed as a non-resident under the Indian Income Tax Act, 1922. After the Constitution of India came into force, the native State became a Part B State within India and the Indian Income Tax Act was brought into force in the said State with effect from April 1, 1950. For the assessment years 1950-51 to 1952-53, a question arose as to what was the proper written down value of the building, machinery and other fixed assets of the assessee for calculating depreciation allowances. The Tribunal permitted the Revenue to raise the contention that depreciation had already been allowed under the law prevailing in the native State and the same should be taken into consideration for computing the written down value under the Taxation Laws (Part B States) (Removal of Difficulties) Order, 1950. The Tribunal remanded the matter to the Income Tax Officer to ascertain the position. The decision of the Tribunal was challenged by the assessee. On these facts, it was held by the Supreme Court that the Tribunal had sufficient power u/s 33(4) of the Indian Income Tax Act, 1922, to entertain the contention of the Revenue and to remand the matter and such power was not affected by the procedural Appellate Tribunal Rules.

(d) *Commissioner of Income Tax, Madras Vs. Mahalakshmi Textile Mills Ltd.,* . This decision was cited for the following observations of the Supreme Court (p. 713):

" There is nothing in the Income Tax Act which restricts the Tribunal to the determination of questions raised before the departmental authorities. All questions whether of law or of fact which relate to the assessment of the assessee may be raised before the Tribunal: If for reasons recorded by the departmental authorities in rejecting a contention raised by the assessee, grant of relief to him on another ground is justified, it would be open to the departmental authorities and the Tribunal, and indeed they would be under a duty, to grant that relief. The right of the assessee to relief is not restricted to the plea raised by him. "

(e) Commissioner of Income Tax, Madras Vs. S. Nelliappan, . This decision of the Supreme Court was cited for the following observations (headnote):

" In hearing an appeal, the Tribunal may give leave to the assessee to urge grounds not set forth in the memorandum of appeal and in deciding the appeal the Tribunal is not restricted to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal. "

(f) Commissioner of Income Tax Vs. Gangappa Cables Ltd., . This decision of the Andhra Pradesh High Court was cited for the proposition that where there was sufficient evidence on record to support a claim, neither the Appellant Assistant Commissioner nor the Tribunal was barred from entertaining such a claim notwithstanding the fact that such a claim had not been raised at earlier stages.

7. Learned advocate for the Revenue contended to the contrary. He submitted that in the instant case, the assessee had at no stage raised any contention as to its status and had all along been assessed as a Hindu undivided family. The assessee also did not bring any evidence on record to establish that it did not constitute a Hindu undivided family. The contention was raised before the Tribunal for the first time by way of additional grounds. The Tribunal acted properly in exercising its discretion and declining to allow the assessee to raise the said additional grounds. The decision of the Tribunal was justified on the facts. In support of his contentions, learned advocate for the Revenue cited The Additional Commissioner of Income Tax, Gujarat Vs. Gurjargravures Private Ltd., . In this case, the assessee in its appeal before the Appellate Assistant Commissioner claimed the benefit of Section 84 of the Income Tax Act, 1961. No such claim had been made before the Income Tax Officer when the assessment was made nor was there any material on record supporting such a claim. In subsequent years, relief under the said Section 84, however, had been allowed to the assessee. The Appellate Assistant Commissioner refused to entertain the claim. On further appeal, the Tribunal held that as the entire assessment was open before the Appellate Assistant Commissioner, there was no reason why the claim of the assessee could not be entertained and directed the Income Tax Officer to allow the relief claimed. On a reference, the High Court of Gujarat affirmed the decision of the Tribunal. The matter was finally decided in the Supreme Court. It was held that no claim for relief u/s 84 of the Income Tax Act having been made before the Income Tax Officer nor there being any material on

record in support thereof, from the mere fact that such a claim had been allowed in subsequent years, it could not be held that such a claim should be entertained and accepted.

8. To appreciate the controversy raised, it is necessary to consider Rule 11 of the Appellate Tribunal Rules which reads as follows:

"11. Grounds which may be taken in appeal.--The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal under this rule:

Provided that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground."

9. It appears that under the rules, the Tribunal might allow or disallow an additional ground to be raised. This is left to the discretion of the Tribunal. In the instant case, the assessee declared its status to be that of a Hindu undivided family and was assessed accordingly. In the appeal before the Appellate Assistant Commissioner, it did not challenge the determination of its status. Before the Tribunal, it sought to raise the contention regarding status for the first time by way of additional grounds. Admittedly, the question whether the assessee is a Hindu undivided family or not is a mixed question of law and fact. To determine the said question, it would be necessary to enquire, inter alia, into the relationship of the members of the assessee, property inherited by them from the predecessor-in-interest and also the way the assessee had dealt with its properties and assets. These are primarily questions of fact which were not on record in the assessment years involved. In the subsequent assessment years, the assessee was permitted to raise this contention and some materials were brought on record. But the law is well-settled that the principles of *res judicata* are not applicable in revenue matters and it would have been necessary for the Tribunal in the assessment years involved to determine afresh whether the assessee constituted a Hindu undivided family. A fresh investigation into facts would be necessary by the Tribunal.

10. The question referred is a limited one. All we have to determine is whether the Tribunal acted reasonably and justifiably in refusing to entertain the additional grounds of appeal. In our view, it cannot be held that the Tribunal acted perversely or unreasonably. Admittedly, the questions raised were mainly questions of fact and there was no material on the record of the assessment years involved on the basis of which the said questions could be adjudicated. The records of the subsequent assessment years, in our view, could not have been treated as the records of the earlier assessment years involved and, as noted earlier, a further investigation would have been necessary to ascertain the facts pertaining to the assessment years involved.

11. For the reasons as aforesaid, we are unable to accept the contentions of the assessee and we answer the question referred in the affirmative and in favour of the Revenue. There will be no order as to costs.

12. Learned advocate for the assessee prayed for a certificate from us that this was a fit case for appeal to the Supreme Court. We are unable to accede to this prayer as we feel that the law on the controversies involved in the appeal to be well-settled by the decisions of various High Courts as also of the Supreme Court.

Shyamal Kumar Sen, J.

13. I agree.