
(1977) 07 CAL CK 0015

In the Calcutta High Court

Case No : Income-tax Reference No's. 32 to 36 of 1971

Kali Charan Ram Chander

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 15-07-1977

Acts Referred:

Income Tax Act, 1961 — Section 253

Citation : (1978) 112 ITR 405

Hon'ble Judges : S.C. Deb, J;C.K. Banerji, J

Bench : Division Bench

Advocate : Debi Pal and P.K. Pal, for the Appellant;B.L. Pal and Ajit Sen Gupta, for the Respondent

Judgement

Deb, J.—We are concerned in this reference u/s 256(2) of the Income Tax Act, 1961, with the following questions of law :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in setting aside the order of the Appellate Assistant Commissioner and restoring the appeal to his file with a direction for investigation, in the light of observations made by the Tribunal as to the question whether Bindawalla Trading Co. was a branch of the firm "Kali Charan Ram Chander" and dispose of the appeal according to law ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in setting aside the order of the Appellate Assistant Commissioner granting registration and restoring the matter to his file for consideration afresh ?"

2. The relevant facts stated and found by the Tribunal may be briefly stated as follows : The assessee is a firm. It was constituted on March 3, 1959. Its partners were Mahadeo Prosad Agarwalla, Tarachand Bindawalla and Prabhudayal Mahawar. It carried on commission agency business in grains as Aratia. Bindawalla Trading Company was constituted on November 11, 1958. Its

partners were Kali Charan Agarwalla and Gindi Debi Bindawalla. Kali Charan was the son of Mahadeo Prosad Agarwalla. Gindi Debi was the wife of Tarachand Bindawalla.

3. The Income Tax Officer added the income of Bindawalla Trading Company as the income of the assessee-firm in the assessment proceedings for three years involved in this reference with a finding that it was a branch of the assessee-firm.

4. The Appellate Assistant Commissioner set aside the addition and directed the Income Tax Officer to ascertain eight facts specified in his appellate order and to decide afresh the question as to whether Bindawalla Trading Company was a branch of the assessee-firm.

5. The same Income Tax Officer sustained the additions in the de novo assessment proceedings after making findings on six out of those eight facts and opined that his earlier order was correct and that it was wholly unnecessary for him to make any findings on two other facts specified in the aforesaid order of the Appellate Assistant Commissioner.

6. Another Appellate Assistant Commissioner set aside those additions and held that Bindawalla Trading Co. was not a branch of the assessee-firm.

7. The department filed three appeals in respect of three assessment years and contended before the Tribunal that the Appellate Assistant Commissioner was not correct in his approach in determining the question in issue before him. It argued that the issue, namely, whether Bindawalla Trading Co. was a branch of the assessee-firm or not could only be determined on the basis of a finding as to whether there was any inter-lacing or inter-locking of two firms and that there was ample material on the record to hold that there was such inter-lacing or inter-locking. It also filed a copy of the order of the penalty proceedings in which additional facts were found by the Inspecting Assistant Commissioner. The aforesaid contentions were disputed before the Tribunal on behalf of the assessee and reliance was placed on the orders of the Appellate Assistant Commissioner. Objection was also raised regarding the filing of the aforesaid order in the penalty proceeding and certain accounts were also filed on its behalf before the Tribunal.

8. The Tribunal held that the issue before it could only be determined by taking into account all relevant facts and the circumstances of the case. The Tribunal found that no investigations were made regarding the financial position of these two firms and the sharing of profits, if any, relating to these two firms and that those investigations were necessary in order to determine whether there was any inter-lacing or inter-locking of these two firms. It further observed that the Income Tax Officer should have obeyed the direction given by the Appellate Assistant Commissioner regarding the investigation of those two facts.

9. The Tribunal found that the said issue before it could not be determined in the absence of the relevant facts and set aside the order of the Appellate Assistant

Commissioner and restored the appeals to his file. The Tribunal directed the Appellate Assistant Commissioner to consider the matter afresh in the light of the observations made by the Tribunal in its order and to decide the appeals according to law. The Tribunal also gave the following directions :

"The parties will be free to produce any evidence which they may like to produce in this regard in support of their respective contentions. It will also be open to the Appellate Assistant Commissioner to either deal with the matter himself or to send the case back to the Income Tax Officer for further enquiry and/or to call for a remand report from him."

10. Mr. Pronab Kumar Pal, learned counsel for the assessee, rightly says that if the answer to question No. 1 goes against the assessee, question No. 2 should necessarily be answered also against the assessee.

11. He argues that it was not even argued before the Tribunal that a fresh enquiry was necessary for ascertaining facts regarding the inter-lacing or inter-locking of these two firms and that since it was argued on behalf of the department that there were sufficient materials on the record to come to a finding in this behalf, the Tribunal should not have remanded the matters and should have decided them one way or the other on the materials before it. He also cites several cases as stated later on. He also argues that none of the parties wanted any further opportunity of adducing any further evidence and, therefore, the Tribunal should not have given any opportunity to the parties to adduce further evidence on remand. Alternatively, he submits that the Tribunal should have directed the Income Tax Officer to make investigation on those two facts on which he did not make any enquiry as directed by the Appellate Assistant Commissioner and, thereafter, it should have decided the appeals itself on the basis of the remand report of the Income Tax Officer.

12. The first case cited by him is the case of *Raj Narayan Kundu v. Sheikh Murad Ali* [1948] 52 CWN 671 , in which the learned subordinate judge hearing the appeal could not make up his mind one way or the other on the materials before him and remanded the matter to the trial court with a direction to give further opportunities to the parties to prove their case. In those circumstances, the High Court set aside the order of the learned subordinate judge and directed him to decide the appeal on the materials before it with an observation that the appellate court below had no power to direct rehearing of the suit merely because it was unable to make up its mind one way or the other on the materials before it.

13. The next case is the case of *Promotha Nath Mazumdar v. Nagendra Nath Mazumdar* [1929] 33 CWN 1211 . In this case, it has been held that when the evidence has been fully placed before the trial court and it had decided the several points involved in the suit, the appellate court must come to a proper finding on those materials before it and that it was entirely wrong to send the case back for a de novo trial with an exposition of points of law involved in it.

The last case is the case of Hiralal v. Ratanlal, AIR 1944 All 293. In this case, the party failed to prove his case and the appellate court remanded the matter with a direction to the trial court to give a further opportunity to that party to prove his case. It was held by the High Court that the appellate court below was not justified in making that order.

14. The relevant facts for determining the appeals one way or the other were before the appellate courts below in the aforesaid cases, whereas in the absence of the relevant facts it was not possible for the Tribunal to decide the issue before it and, therefore, the principles stated in those cases do not apply to the facts and circumstances of the case before us.

15. Ordinarily, an appeal should be decided by the Tribunal on the materials before it. This rule is, however, subject to a further rule, namely, that if the Tribunal is unable to decide the appeal on the materials before it or if the relevant facts for deciding the appeal are not before it, it may adopt anyone of the three alternative courses which are open to it in order to do substantial justice between the parties.

16. It may admit further evidence and decide the appeal. Or it may keep the appeal pending before it and direct anyone of the authorities below to ascertain further facts which are essential for the purpose of determination of the appeal and then on the basis of the remand report may decide the appeal. The third alternative course is the course which has been adopted by the Tribunal in the instant case before us.

17. In the absence of the relevant and essential facts, the Tribunal was unable to decide whether Bindawalla Trading Company was a branch of the assessee-firm which was the only subject-matter of the appeals before it. Merely because the parties did not ask for an opportunity of adducing further evidence, it cannot be said the Tribunal was debarred from directing the Appellate Assistant Commissioner to take additional evidence on the lines indicated in its order and on the basis of such additional evidence to decide those appeals.

18. Since three alternative courses were open to the Tribunal, it cannot be said that it went wrong in law in adopting the course which it has adopted in the facts and circumstances of the case. We may add here that we are also in agreement with the decision of the Gujarat High Court in the case of Commissioner of Income Tax, Gujarat-II Vs. Sayaji Mills Ltd., , regarding the power of the Tribunal in order to do substantial justice between the parties.

19. In this view of the matter, we are unable to accept the contentions of Mr. Pronab Kumar Pal and answer both the questions in the affirmative and against the assessee. There will be no order as to costs.

C.K. Banerji, J.

20. I agree.