

(1964) 08 SC CK 0003

In the Supreme Court Of India

Case No : Civil Appeal No. 793 Of 1963

Lalji Haridas

APPELLANT

Vs

R.H. Bhatt and Another

RESPONDENT

Date of Decision : 05-08-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1965) 55 ITR 415

Hon'ble Judges : P. B. Gajendragadkar, C.J.; N. Rajagopala Ayyangar, J; M. Hidayatullah, J; K. N. Wanchoo, J; J. C. Shah, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Gajendragadkar, C.J.—This appeal by special leave arises out of a writ petition filed by the appellant, Lalji Haridas, in the High Court of Gujarat under article 226 of the Constitution in which he prayed for a writ including a writ in the nature of certiorari against respondent No. 1, the income tax Officer, Ward D, Jamnagar, as well as the respondent No. 2, the Union of India, quashing two notices issued by the respondent No. 1 against him on the 14th April, 1960, and the 7th July, 1960. He also prayed that the assessment order passed against him by the income tax Officer on the 17th December, 1958, should likewise be quashed. This petition was dismissed by the High Court in limine without issuing notice to the respondents. Against the dismissal of his petition, the appellant applied for and obtained special leave from this court and it was with this special leave thus granted to him that the appeal has come before us for final disposal today.

2. Having heard Mr. Pathak on behalf of the appellant, we have come to the conclusion that there is no substance in this appeal and it must be dismissed with the costs. In fact, this appeal illustrates how an assessee can prolong the assessment proceedings by adopting judicial proceedings available to him under the law and thereby postpone indefinitely the final disposal of the said

proceedings by the income- tax authorities.

3. The appellant is the resident of Jamnagar and the order of the assessment was passed against him on 17th December, 1958, assessing him to pay income tax on Rs. 4,74,046. Before making this order of assessment, notice has been issued against the appellant on 20th December, 1957, u/s 46(1) (a) of Saurashtra income tax Ordinance, 1949. This section corresponds to section 34(1) (a) of Indian income tax Act. It appears that respondent No. 1 came to know that for the assessment year 1949-50, a large amount of income received by the appellant had escaped assessment. That is why notice was issued against him calling upon him to make a return of his income for the relevant year. The appellant thereupon made a return showing an income of Rs. 46 for the year in question. Respondent No. 1 had come to know that several amounts had been credited in the account books of the appellant and appeared to represent his income. On the 24th October, 1948, for instance two sums of Rs. 1 lakh each had been credited in the names of M/s. Bhagirath Madangopal & Co., Bombay, and Mulji Manilal Kamdar respectively. The latter amount was subsequently transferred to the account of another firm of M/s. Bhagirath Kasat & Co. On the 7th March, 1949, another sum of Rs. 1,80,000 was transferred to the said company. Further credits to the tune of Rs. 74,000 and Rs. 20,000 were also discovered. In submitting his return, the appellant attempted to say that these amounts did not represent his income at all and showed "benami" transactions entered into by him on behalf of other persons. Respondent No. 1 was not satisfied with the explanation given by the appellant, and so he passed the order of assessment as indicated above.

4. Against this order of assessment, the appellant preferred an appeal to the Appellate Assistant Commissioner of income tax, Rajkot. Before the appellate authority, the appellant contended that all his witness were not allowed to be examined by respondent No. 1 and that some of the evidence which was given by his witness was also not properly recorded. The appellate authority partly accepted his contention and by its order passed on the 3rd September, 1959, it remanded the proceedings to respondent No. 1 and directed him to submit a report after examining the witness whom the appellant wanted to cite. Even while making this order of remand, the Appellate Assistant Commissioner commented on the fact that the appellant appeared to be determined to adopt dilatory proceedings and delay as much as he can the final disposal of the proceedings taken against him.

5. After the matter was thus remanded to respondent No. 1, the appellant was required by two letters dated 13th April, 1960, and 7th July, 1960, to appear before respondent No. 1 and give his evidence. Instead of complying with the requisition contained in the said letters, the appellant moved the Gujarat High Court on the 9th July, 1960, by his present writ petition. It appears that he also preferred an appeal from the remand order to the income tax Appellate Tribunal. The High Court summarily rejected the writ petition filed by the appellant, and it

is against this summary dismissal that the appellant had come to this court.

6. From the petition for special leave, it would appear that at the time of admission, the appellant presumably urged before this court that the Saurashtra income tax Ordinance under which the present proceedings had been commenced against him was invalid. In any event, that is one of the grounds taken in the petition for special leave. Mr. Pathak for the appellant frankly conceded that he was not in the position to justify or substantiate the said contention, and so the only ground taken in the petition which, prima facie, appears to be a ground of law and jurisdiction, is not pressed. Meanwhile, the proceedings after remand before respondent No. 1 have been stayed and in that sense, the object of the appellant in preferring this appeal has been substantially achieved.

7. Mr. Pathak for the appellant attempted to argue that the notice issued against the appellant, is on the face of it, invalid, because it is barred by time. We did not allow Mr. Pathak to develop this point, because we took the view that a plea of this kind must ordinarily taken before respondent No. 1 himself. The jurisdiction conferred on the High Court under article 226 is not intended to supersede the jurisdiction and authority of the income tax Officers to deal with the merits of all the contentions that the assessee may raise before them, and so it would be entirely inappropriate to permit an assessee to move the High Court under the article 226 and contend that a notice issued against him is barred by time. That is the matter which the income tax authorities must consider on the merits in the light of the relevant evidence.

8. Apart from this aspect of the matter, however, the plea of limitation sought to be raised by Mr. Pathak was not even specifically made as it should have been in the writ petition filed before the High Court. One of the grounds taken in the writ petition was that the Appellant Assistant Commissioner had "instead of treating the assessment order a nullity and having the same set aside, illegally remanded the case back to the income tax Officer to save limitation". It would be noticed that at its highest, this ground can mean that the result of the remand order was to attempt to save limitation; it has no relevance on the point sought to be raised by Mr. Pathak that the notice issued against the client initially was barred by time. But, as we have already indicated, a plea of this kind cannot be permitted to be raised in writ proceedings, and so we refused Mr. Pathak permission to develop this point.

9. The order point which Mr. Pathak wanted to raise was that for the transactions in question other persons that had been taxed, and he suggested that an order which have been passed by respondent No. 1 on the 17th December, 1958, was in the nature of levy of protective assessment, and so it should be set aside. This point again ought to be raised before the income tax Officer and cannot be allowed to be urged before the High Court under article 226. Even in respect of this point, the plea taken is extremely vague and the appellant has not even stated on oath that other persons have in fact paid assessment in respect of

transactions which respondent No. 1 regards as his. All that the appellant's writ petition says is that he is given to understand that the amounts sought to be included in the assessments of the appellant have already been found by the income tax department, Bombay, to be the income of the said Mulji Manilal Kamdar and that he has been assessed on the same amounts by the 6th income tax Officer,

10. The result is, the appeal fails and is dismissed with costs.

11. Appeal dismissed.