
(1963) 03 MAD CK 0012
In the Madras High Court
Case No : Writ Petition No. 504 of 1962

M. Ramasamy Asari

APPELLANT

Vs

Second Income Tax Officer, Madurai.

RESPONDENT

Date of Decision : 14-03-1963

Acts Referred:

Income Tax Act, 1922 — Section 5(7A), 64, 64(1), 64(3), 66

Citation : (1964) 51 ITR 57

Hon'ble Judges : Jagadisan, J

Bench : Single Bench

Judgement

Jagadisan, J.—This writ petition is directed against the order of assessment of the Second Income Tax Officer, Madurai, under the Indian

Income Tax Act. The petitioner, who was the assessee, objected to the jurisdiction of the officer, but failed. The officer passed the order of

assessment on March 19, 1962. The assessee prays for the issue of a writ of certiorari to quash that order stating that the officer had, in the

circumstances of the case, no power or jurisdiction to pass the order.

2. It is not known whether the petitioner (assessee) has filed an appeal against the order of the officer to the Appellate Assistant Commissioner,

which he is entitled to do, under the provisions of the Act. It cannot of course be contended by the petitioner that he has no remedy for canvassing

the correctness or the validity of the order of assessment except by approaching this court under article 226 of the Constitution. We strongly

deprecate the practice of assessee's filing writ petitions against orders of assessments, however illegal or devoid of jurisdiction such orders may be,

when the statute provides for an effective remedy by way of an appeal to the Appellate Assistant Commissioner, a further appeal to the Income

Tax Appellate Tribunal and a further remedy, if the facts should justify, by way of reference to this court u/s 66 of the Indian Income Tax Act. This

writ petition need not however be dismissed on that ground as we have reached the conclusion that the order of assessment made by the Income

Tax Officer, Madurai, was fully within his competence and power.

3. It is necessary only to state a few facts, which are not in dispute, in order to determine whether the contention of the assessee assailing the

jurisdiction of the Income Tax Officer has any substance. The assessee is a native of Okkur in Ramanathapuram District where, it is alleged, he

owns a house. He claims to have been doing money-lending business at Okkur. But this, however, has not been substantiated. Admittedly, he is a

partner of two firms at Madurai carrying on business in the name and style of Nithyakalyani Abarana Maligai and C. Innasi Muthu Mudaliar &

Sons. He has also a business, solely and exclusively his own, at Colombo called Nithyakalyani Stores. It also appears that he has got a residence

at Madurai, having purchased a house at that place in the names of his two wives. Between the assessment years 1948-49 and 1956-57 he was

assessed by the Income Tax Officer, Karaikudi, within whose territorial limits Okkur is situate. For the assessment year 1957-58 the petitioner

submitted a return of his income to the Third Additional Income Tax Officer, Karaikudi. This officer found from the records that the assessee was

carrying on business practically only at Madurai and was also having his place of residence at that place and that he had no business at Okkur at

all. On October 7, 1958, he wrote to the assessee as follows :

On a perusal of the record, it is seen that your principal place of business is at Madurai and that your business activities are entirely confined to

Madurai and Ceylon and you have no business at Okkur except a small house there. Moreover it is seen that you are residing at No. 67, South

Avani Moola Street, Madurai. In these circumstances as you are within the jurisdiction of the III Additional Income Tax Officer, Madurai, I

propose transferring your file to that officer. Please file your objections, if any, on or before October 16, 1958.

4. The authorised representative of the assessee appears to have had some personal discussions with the Income Tax Officer and he sent a reply

on October 27, 1958, observing thus :

With reference to the discussions we had with you on the 23rd instant regarding the above matter, we write to inform you that the assessee has no objections to the file being transferred to Madurai.

5. Thereafter, the assessee's file was transmitted from Karaikudi to Madurai and the assessment proceedings were pending before the Madurai Income Tax Officer.

6. On May 28, 1959, the assessee wrote to the Madurai officer questioning his jurisdiction to proceed further in the matter. The Commissioner of

Income Tax, in exercise of his powers u/s 5(7A) of the Act, passed an order on September 1, 1961, transferring the assessee's file from the Third

Income Tax Officer to the Second Income Tax Officer, Madurai. In the order of assessment made by the Income Tax Officer, Madurai, dated

March 19, 1962, he considered the question of jurisdiction raised by the assessee and held that the objection of the assessee could not be

sustained. He had recorded a finding that the assessee is carrying on business only at Madurai and not at Okkur. He seems to be of the opinion,

though not expressly stated, that the assessee is a resident of Madurai and not of Okkur.

7. Now, the question for consideration is whether the Madurai officer had no jurisdiction to make an assessment against the petitioner in view of

section 64 of the Indian Income Tax Act. Mr. Abdul Karim, learned counsel for the petitioner, has raised the following contentions :

1. The Income Tax Officer, Karaikudi, had no power to transfer the file to the officer at Madurai as the power of transfer is one which is vested

exclusively either in the Commissioner of Income Tax or the Central Board of Revenue by the provision of section 5(7A) or section 64 of the Act.

2. The Income Tax Officer, Madurai, had no jurisdiction to deal with the petitioner's assessment as there is no evidence to show that the assessee's

principal place of business was at Madurai.

3. The order of assessment passed by the Income Tax Officer, Madurai, is vitiated because the officer relies upon an order of the Commissioner of

Income Tax dated September 1, 1961, u/s 5(7A) of the Act.

8. The substantial question that arises for consideration is whether the Madurai officer had jurisdiction to pass the impugned order of assessment.

How the Madurai officer came to possess the file relating to the petitioner,

whether it was as a result of transmission of the records by the Karaikudi officer, or whether it was as a result of the Commissioners order dated September 1, 1961, would not have much bearing on the question of jurisdiction as such. The provisions of the Indian Income Tax Act relating to the jurisdiction of assessing officers are sections 5(7A) and 64 of the Act. We shall now refer to these provisions :

5. (7A) The Commissioner of Income Tax may transfer any case from one Income Tax Officer subordinate to him to another, and the Central

Board of Revenue may transfer any case from any one Income Tax Officer to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the reissue of any notice already issued by the Income Tax Officer from whom the case is transferred.

64. (1) Where an assessee carries on a business, profession or vocation at any place, he shall be assessed by the Income Tax Officer of the area in which that place is situate, or, where the business, profession or vocation is carried on in more places than one, by the Income Tax Officer of the area in which the principal place of his business, profession or vocation is situate.

(2) In all other cases, an assessee shall be assessed by the Income Tax Officer of the area in which he resides.

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner, or, where the question is between places in more States than one, by the Commissioners concerned, or, if they are not in agreement, by the Central Board of Revenue :

Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views :

Provided further that the place of assessment shall not be called in question by an assessee if he has made a return in response to the notice under

sub-section (1) of section 22 and has stated therein the principal place wherein he carries on his business, profession or vocation, or if he has not

made such a return shall not be called in question after the expiry of the time allowed by the notice under sub-section (2) of section 22 or u/s 34 for

the making of a return :

Provided further that if the assessment is called in question by an assessee the Income Tax Officer shall, if not satisfied with the correctness of the

claim, refer the matter for determination under this sub-section before assessment is made.

9. The relative scope of section 5(7A) and section 64 is readily discernible from the provisions themselves. Section 5(7A) clothes the

Commissioner with the power to transfer an assessee's file from one Income Tax Officer to another, both the officers being subordinate to him. The

Central Board of Revenue have power to transfer the file from an officer in one State to an officer in another State. This power of transfer is given

by the statute only for purposes of administrative convenience. It is an overriding power, and, though a misuse of such power is subject to

correction, either in proceedings under article 226 of the Constitution or otherwise, the power is one which is exercisable quite apart from and

independent of the requirements of section 64 of the Act. Section 64 provides that if an assessee carries on business at a particular place he shall

be assessed only by the officer having territorial jurisdiction over that place. Where an assessee is carrying on business in more than one place, then

the officer having jurisdiction over his principal place of business would be the competent officer. If the assessee does not carry on any business,

profession or vocation, and earns income liable to be taxed, the officer having jurisdiction would be the officer within whose territorial limits he

resides. Section 64 of the Act confers a right on the assessee to have the assessment passed by an officer having jurisdiction over his place of

business or principal place of business, if he carries on more business than one, or, over the place of his residence. Any dispute between the

assessee and the department on the question of the jurisdiction of an officer to make an assessment would have to be decided by the

Commissioner after due notice to the assessee. That is made clear by section 64(3). We may also point out that the majority judgment of the

Supreme Court in *Bidi Supply Co. v. Union of India* took the view that the benefit conferred on the assessee by the provisions of section 64(1)

and (2) of the Act is in the nature of a legal right.

10. It is however implicit in the terms of section 64 that in the absence of a controversy or dispute between the department and the assessee, that

is, in a plain case where the assessee carries on business in a single place, or in a case where he has no business but only a place of residence,

there need be no decision by the Commissioner regarding the place of assessment. It is clear that in regard to the business income of an assessee it is only the officer having jurisdiction over the place where his business activities are concentrated that would have jurisdiction; equally clear is the position that where he has no business, it is the place of residence that determines jurisdiction. No other officer except the officer having territorial jurisdiction, either over the place where he is carrying on business or over the place where he is residing if there is no business who would be illegal. But, in order to enable the Commissioner or the Central Board of Revenue to transfer the assessment proceeding from one officer to another which, as stated already, is merely an administrative jurisdiction exercised by the authority, it would be unnecessary to go into the question of the place of residence or business of the assessee. This is because of the power conferred u/s 5(7A) which is a general power unfettered by the restrictions in section 64.

11. We do not think that it is necessary to have any regard to the actual order of transmission by the Karaikudi officer to the Madurai officer of the assessment file of the petitioner. Even without an order of such transmission, if the true position is that the Madurai officer alone has got jurisdiction because of the fact that the assessee's principal place of business is Madurai, or that the assessee's principal place of business is Madurai, or that the assessee's only place of business is at Madurai, then the Karaikudi officer would have no jurisdiction at all, and it would be well within the power of the Madurai officer to call upon the assessee to make his return before him or to assess him on the return already filed.

12. The first two contentions raised by Mr. Abdul Karim, learned counsel for the petitioner, need not be considered or dealt with separately as the real point raised and covered by them is whether the Madurai officer had or had not jurisdiction to make the assessment which is now called in question. So far as this question is concerned, in our opinion, the matter is really concluded by the concession made by the assessee before the Karaikudi officer. We have already referred to the letter written by the Karaikudi officer to the assessee and the reply submitted on his behalf by his authorised representative. In the view of the Karaikudi officer, Okkur was neither the place of residence nor the place of business of the

assessee. The officer has pointed out that the place of residence of the assessee was at No. 67, South Avani Moola Street, Madurai. No doubt,

the officer said that the principal place of business of the petitioner was at Madurai. The implication of the use of the expression "principal place of

business" was not necessarily to hold that the assessee had a business at Okkur. This is made clear by the following sentence in the officers letter

already extracted : "You have no business at Okkur." It was in reply to this letter that the assessee's authorised representative submitted that he had

no objection to the file being transferred to Madurai. A more categorical and unequivocal admission on the part of the assessee that he had neither

a residence nor a business at Okkur cannot be imagined. In these circumstances, the only officer who could make the assessment was the Madurai

officer, and it is now this officer that has passed the order of assessment.

13. This case is free from legal difficulties of any kind. The assessee accepted the position that his place of business or principal place of business

was at Madurai and this meant that the Income Tax Officer, Karaikudi, had no jurisdiction to assess him. The Madurai officer alone had

jurisdiction, and this cannot be defeated by the assessee withdrawing his previous admission. In these circumstances, we see nothing illegal or

improper in the assessment made by the Income Tax Officer, Madurai.

14. Learned counsel on both sides argued the case initially on the footing that there was an order of transfer by the Commissioner u/s 5(7A) of the

Act transferring the file of the assessee from Karaikudi to Madurai. In fact, this was the stand taken by the department in the original counter

affidavit filed in the writ petition. After the conclusion of the arguments, a further affidavit has now been filed on behalf of the department stating that

the order of the Commissioner dated September 1, 1961, was one by which the file of the assessee was transferred from the Third Income Tax

Officer to the Second Income Tax Officer, Madurai. A copy of the order dated September 1, 1961, has also been placed before us. That clearly

shows that the petitioners file was transferred only from one officer to another within Madurai.

15. On the basis of this new material, Mr. Abdul Karim contended that the order of assessment is bad as the officer had relied upon the

Commissioner's order dated September 1, 1961, as clothing him with jurisdiction.

The Income Tax Officer observes in the assessment order as follows :

I would like to mention that the assessee's case has been specifically assigned u/s 5(7A) of the Income Tax Act to the 2nd Income Tax Officer,

Madurai, by Commissioner of Income Tax, Madras, under his order dated September 1, 1961.

16. We do not understand this statement by the officer as meaning that the Karaikudi office ceased to have jurisdiction by reason of the

Commissioner's order. Factually this statement is correct as the file was transferred to the assessing officer from the file of another officer, no doubt

within the city itself, only by reason of the Commissioner's order. Mr. Karim contended that if the order of the Commissioner is irrelevant and has no

bearing on the question of jurisdiction of the Madurai officer to make an assessment, a reference to such irrelevant or extraneous circumstances

would sufficiently vitiate the order to attract the jurisdiction of this court under article 226 of the Constitution. We are aware of decisions holding

that an order of a tribunal or an authority, setting forth several reasons, might be vitiated if one or other of the vital reasons set out in the order is

bad. But we do not think that the said principle can be applied to the facts of the present case, as the Income Tax Officer who made the

assessment and whose assessment is now challenged, did not seek to support his jurisdiction by reason of the Commissioner's order. The reference

to an extraneous matter vitiating the assessment. We have already indicated sufficiently clearly that on the facts and materials available to the

department, jurisdiction to assess vested only with the Madurai officer and not in the Karaikudi officer. The contention of the learned counsel for

the assessee, that it is not the province of the court to decide disputed questions relating to jurisdiction, can be readily accepted as the Act has

entrusted the task of deciding such matters to the prescribed authorities. We are sure that we have not taken upon ourselves any such duty. The

question before us is whether there is any error of law of jurisdiction apparent on the face of the assessment order. By answering the question in

the negative we are not substituting ourselves for the authorities competent to decide the issue of jurisdiction. It is true that the assessee had all

along been assessed only at Karaikudi. But that circumstances would not be

sufficient to detract from the jurisdiction of the Madurai officer in respect of the assessment order with which we are now concerned.

17. Mr. Abdul Karim referred to the decision of the Calcutta High Court in *Tarak Nath Bagchi v. Commissioner of Income Tax*. We are unable to

see how the ratio of that decision can at all be of any help to him in advancing his contentions in the writ petition before us. The headnote in that

case reads :

The effect of sub-sections (1) and (4) of section 64 is that, where two or more Income Tax Officers have territorial jurisdiction in respect of the

same income, they exercise concurrent jurisdiction in the matter of issuing notices to the assessee and where notices have been issued by one

officer it is unnecessary for the other officer to issue the same notices again. Sub-section (3) of section 64 applies only when a question arises as to

the place of assessment and when there is no dispute between the assessee and the Income Tax Officer as to the proper place of assessment the

point need not be referred to by the Commissioner under that sub-section.

18. It would seem that this decision is more against the contentions urged on behalf of the petitioner rather than in his support. In our opinion, this

decision has no bearing on the facts of the present case. In the result, the writ petition fails and is dismissed with costs. The rule nisi is discharged.

Counsels fee Rs. 150.