
(1984) 07 PAT CK 0015
In the Patna High Court
Case No : Taxation Case No. 78 of 1974

Mahalliram Ramniranjan Das	Vs	APPELLANT
Commissioner of Income Tax		RESPONDENT

Date of Decision : 19-07-1984

Acts Referred:

Income Tax Act, 1961 — Section 124(5), 124(6), 256(1)

Citation : (1985) 47 CTR 65 : (1985) 156 ITR 885 : (1986) 29 TAXMAN 44

Hon'ble Judges : S.K. Jha, J; Nazir Ahmad, J

Bench : Division Bench

Advocate : G.C. Bharuka and Vijay Pratap Singh, for the Appellant; B.P. Rajgarhia, for the Respondent

Judgement

Nazir Ahmad, J.—This is a reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter to be referred to as " the Act "), by the Income Tax Appellate Tribunal, Patna Bench "A", Patna, in the matter of assessment of Income Tax on M/s. Mahalliram Ramniranjan Das, Patna City, for the assessment year 1963-64.

2. The following question of law has been referred to this court for opinion by the Tribunal:

" Whether, on the facts and in the circumstances of the case, the Tribunal was correct in not annulling the assessment and in confirming the order of the AAC setting aside the assessment ? "

3. It appears that the jurisdiction of the Income Tax Officer, C-Ward, Patna, was challenged. The Income Tax Officer has pointed out that in the course of proceedings, the assessee objected to the exercise of jurisdiction by him over his case. He has pointed out that he holds jurisdiction over all hotel business and their partners. Since the assessee is a partner in M/s. Marwari Hotel, Frazer Road, Patna, which is assessed by him, his objection challenging the jurisdiction of the Income Tax Officer has no merit and is overruled. Assessment order of the Income Tax Officer is annexure " A " to the statement of the case.

4. The other facts are; available from the order of the Appellate Assistant Commissioner. Before the Appellate Assistant Commissioner, an argument was advanced that the Income Tax Officer, C-Ward, Patna, made assessment without jurisdiction. It was stated that the assessment had been made by the Income Tax Officer, A-Ward, Patna, and the assessee had filed a return before him on October 20, 1964. The Income Tax Officer, A-Ward, thereafter, issued notices under Sections 143(1) and 143(2) and the assessee appeared before him and produced the books of account. Before the assessment could be made, the Commissioner issued a circular regarding the jurisdiction of the various Income Tax Officers of Patna on December 30, 1967. by which this case was transferred to the Income Tax Officer, C-Ward, Patna. The Income Tax Officer, C-Ward, issued a notice u/s 142(1) which was received by the assessee on February 14, 1968. On February 20, 1968. the assessee stated that the jurisdiction over the case was with the Income Tax Officer, A-Ward, and not with the Income Tax Officer, C-Ward, and requested the Income Tax Officer for determination of the question of jurisdiction before the assessment was taken up on merits. The jurisdiction was challenged once again on March 12, 1968, and the Income Tax Officer asked the Inspector to enquire into the matter relating to the actual location of the assessee's business. The Inspector reported that the business came under Ward No. 30 which was under the jurisdiction of the Income Tax Officer, A-Ward. The Income Tax Officer referred the matter to the Inspecting Assistant Commissioner and he ordered that the jurisdiction was with the Income Tax Officer, C-Ward. The Appellate Assistant Commissioner has pointed out that this was presumably because the assessee was a partner in a firm, named and styled as Marwari Hotel and the assessment was made on March 30, 1968, by the Income Tax Officer, C-Ward, and so the Income Tax Officer held that since the assessee was a partner in Marwari Hotel, he had jurisdiction in the matter.

5. The predecessor of the Appellate Assistant Commissioner had referred the matter back to the Income Tax Officer for a report on this point. The Income Tax Officer merely referred to an order of the Commissioner dated December 30, 1967, in which it was stated that all the persons under Ward No. 30 should be assessed by the Income Tax Officer, A-Ward, except those having hotel business which should be under the Income Tax Officer, C-Ward, and all the partners of a firm were to be assessed by the Income Tax Officer assessing the firm. It was submitted before the Appellate Assistant Commissioner that the principal place of business of the assessee was in Ward No. 30 and he had only a small income from Marwari Hotel. It was also submitted before him that the cases of two other partners of Marwari Hotel were not transferred to the Income Tax Officer, C-Ward. One of them continued to be assessed by the Income Tax Officer, Bhagalpur, and the other by the Income Tax Officer, A-Ward, Patna, even after the circular of the Commissioner and so the jurisdiction of the Income Tax Officer did not depend on his income from Marwari Hotel.

6. The Appellate Assistant Commissioner has pointed out that as the report of the Income Tax Officer was not exhaustive, he obtained a copy of the argument

of the assessee and sent it again to the Income Tax Officer, C-Ward, Patna, for a detailed report. The Inspector in his report submitted that there was some vagueness in the circular of the Commissioner which may result in genuine confusion with regard to the jurisdiction of the Income Tax Officer in cases of such nature. The Appellate Assistant Commissioner has pointed out that Section 124(6) of the Act clearly states that in cases where an assessee raises an objection questioning the jurisdiction of the Income Tax Officer and if the objection is within the limits prescribed by Section 124(5), the matter is compulsorily to be referred to the Commissioner if the Income Tax Officer is in doubt. He has further observed that in this case the Income Tax Officer could not determine the matter himself. What he did was to seek instructions from the Inspecting Assistant Commissioner. No reference was made to the Commissioner as laid down in the Act. He, therefore, held that the assessment was made without properly determining the jurisdiction and, therefore, the assessment was set aside and he directed the Income Tax Officer to make a fresh assessment after examining all the facts and after giving the assessee proper opportunity of hearing. The order of the Appellate Assistant Commissioner is annexure B to the statement of the case.

7. Against this order of the Appellate Assistant Commissioner, the assessee filed an appeal before the Income Tax Appellate Tribunal. The Tribunal has pointed out that the assessee is an Hindu undivided family and Shri Gopi Krishna Konandia is its karta and it has several sources of income including M/s. Bharat Cold Storage which is in Ward No. 30 of the Patna, Municipal Corporation and besides other sources, the assessee is also a partner in M/s. Marwari Hotel, Frazer Road, Patna. It has also been pointed out that the jurisdiction of the assessee was always with reference to Ward No. 30 and the Income Tax Officer, A-Ward, Patna, had the jurisdiction over this area. For the assessment year 1963-64, the return of income was filed before the Income Tax Officer on October 20, 1964, and the Income Tax Officer, A-Ward, proceeded with the hearing of the case in 1967. On December 30, 1967, the Commissioner by a general order made a redistribution of jurisdiction. According to this order, the cases filed in Ward No. 30 were assigned to the Income Tax Officer, A-Ward, and the assessee, having income from hotel business, was assigned to C-Ward. This order also provided that all the partners of a firm were to be assessed by the Income Tax Officer assessing that firm. The Appellate Tribunal has also pointed out that although the question of jurisdiction was raised the Income Tax Officer did not refer the objection to the Commissioner as provided in Section 124(4) of the said Act.

8. Before the Tribunal, it was argued that the Appellate Assistant Commissioner, instead of setting aside the assessment, should have annulled it as it was an illegal order. Learned advocate for the assessee submitted that the assessment should be annulled as the order of the Appellate Assistant Commissioner setting aside the assessment was not correct. The learned counsel relied upon the decisions in Commissioner of Income Tax, Coimbatore Vs. Estate of Late Sri N. Veeraswami Chettiar, and in N. Naganatha Iyer Vs. Commissioner of Income Tax,

Madras, .

9. The Appellate Tribunal held that this was not a case of inherent lack of jurisdiction. This was merely a case where due to certain confusion regarding the interpretation of the order of the Commissioner, the assessment proceedings of the assessee were carried on and completed by a particular Income Tax Officer, whereas, according to the assessee, it should have been completed by another Income Tax Officer. The question of jurisdiction is not a question which can be decided in appeal. The Appellate Tribunal held that in this case the provisions of Sub-section (5) could not apply as the assessee was not objecting to the assessment as such but only to an assessment by the Income Tax Officer who came on the scene much after the time prescribed in Sub-section (5) of Section 124. The Tribunal held that the Appellate Assistant Commissioner found that it was a case of irregularities. The Tribunal held that the plea of the assessee that the assessment should be annulled cannot be accepted as the irregularity, if any, supervened at a later stage and not in the very beginning and the proceedings did not become ab initio void or a nullity. The Tribunal, therefore, held that the irregularity occurred in the proceedings at a later stage and, as such, the irregularity can be corrected by setting aside the matter and putting them to that stage where the irregularity supervened. The Tribunal also held that the Appellate Assistant Commissioner was justified in setting aside the assessment and in not annulling it. The Tribunal further held that the cases relied upon by the assessee do not help him as they were regarding the legality of the initiation of proceedings and no such irregularity has taken place in this case. Order of the Appellate Tribunal is annexure-C to the statement of the case.

10. Thus, the only question which arises for decision by this court is whether the assessment by the Income Tax Officer, C-Ward, is liable to be annulled or the setting aside of the assessment was justified.

11. The facts as found by the Appellate Assistant Commissioner and the Tribunal are not in dispute. Section 124(1) of the Act lays down that the income tax Officers shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income or of such cases or classes of cases as the Commissioner may direct. Section 124(4) of the said Act lays down that where a question arises under this section as to whether an Income Tax Officer has jurisdiction to assess any person, the question shall be determined by the Commissioner. Section 124(5) of the Act lays down that no person shall be entitled to call in question the jurisdiction of an Income Tax Officer--(a) after the expiry of one month from the date on which he has made a return under Sub-section (1) of Section 139 or after the completion of the assessment, whichever is earlier ; (b) where he has made no such return, after the expiry of the time allowed by the notice under Sub-section (2) of Section 139 or u/s 148 for the making of the return. Section 124(6) of the said Act lays down that subject to the provisions of Sub-section (5), where an assessee calls in question the jurisdiction of an Income Tax Officer, then the Income Tax Officer

shall, if not satisfied with the correctness of the claim, refer the matter for determination under Sub-section (4) before assessment is made. Section 124(7) lays down that notwithstanding anything contained in this section or in Section 130A, every Income Tax Officer shall have all the powers conferred by or under this Act on an Income Tax Officer in respect of any income accruing or arising or received within the area for which he is appointed.

12. In this case, admittedly, the return of income was filed before the Income Tax Officer, A-Ward, on October 20, 1964, and the Income Tax Officer proceeded with the hearing of the case. Various dates of hearing were fixed. When the assessee appeared before the Income Tax Officer, A-Ward, his books of account were examined. On December 30, 1967, the Commissioner of Income Tax by a general order, made a redistribution of jurisdiction. According to this order, the cases filed in Ward No. 30 were assigned to the Income Tax Officer, Ward-A, and the assessee, having income from hotel business, was assigned to Ward-C. This order also provided that all the partners of a firm were to be assessed by the Income Tax Officer assessing that firm. The Income Tax Officer, C-Ward, issued a notice u/s 142(2) which was received by the assessee on February 14, 1968. On February 20, 1968, the assessee questioned the jurisdiction of the Income Tax Officer, C-Ward, and requested him to determine the question of jurisdiction first. The Income Tax Officer, C-Ward, perhaps consulted the Inspecting Assistant Commissioner and completed the assessment of the assessee on March 30, 1968. The Income Tax Officer, C-Ward, did not make any reference regarding the assessee's objection to the Commissioner as provided in Section 124(4) of the said Act and this was to be determined by the Commissioner.

13. Learned counsel for the petitioner Mr. G.C. Bharuka conceded before us that the decisions relied on before the Tribunal, i. e.t Commissioner of Income Tax, Coimbatore Vs. Estate of Late Sri N. Veeraswami Chettiar, and N. Naganatha Iyer Vs. Commissioner of Income Tax, Madras, were not applicable to the facts of this case. Mr. G.C. Bharuka relied on the case reported In Re: Dina Nath Hem Raj, . In this case, there was an observation at p. 302, column I, that " what is quite clear is that the Income Tax Officer cannot himself decide this question, or act as though it had been determined in accordance with the provisions of this section, and that if he proceeds to prejudge the issue, or to act as though it had been determined and to assess the firm as though their principal place of business was in his own jurisdiction, in spite of the dispute being still undetermined, he is doing something not authorised by the Act, in other words, an illegality ". However, in column 1 at p. 303, it was pointed out that " owing to the disregard of the machinery provided by Section 64(3) to the wholly irregular proceedings, as they appear to us to have been, which have necessarily followed upon the action of the Income Tax Officer in Cawnpore, in assessing the profits of the firm or of this special business as though the principal place of business had been determined to be in Cawnpore, the subsequent proceedings appear to have been irregular in form and infructuous in substance ". It has also been observed at p. 303 in column 1 that " the controversy having drifted away from the prescribed

method or machinery for determining it, which is provided by the Act; and each of the parties to it having made up their minds that they were right, it is not surprising that both of them indulged in arguments and indeed in procedure which appear to us, strictly regarded, to be irregular and as things now stand to be irrelevant but inasmuch as the whole trouble has arisen from the initial irregularity on the part of the Income Tax Authorities and inasmuch as also the assessee has been assessed, in purview, with fundamental irregularity and in any case in default by an ex parte decision, when as a matter of fact he has committed no default, and inasmuch as also, in our view, if the law is correctly applied to the evidence, the only proper inference which any court of law could draw from the facts is that the principal place of business is in Calcutta and not in Cawnpore." In that case, question No. 2 was to the effect:

" Whether if it is eventually found that the petitioner's business was carried on in Cawnpore, the Income Tax authorities acted in accordance with the Act in assessing them by way of summary assessment while a bona fide dispute was going on as to whether they were liable to be assessed in Cawnpore at all ? "

14. The answer to question No. 2 was that the matter should have been decided in accordance with Section 64(3) of the Act. Question No. 3 was to the effect:

" Consequent upon the foregoing questions whether it was the duty of the Income Tax authorities to obtain a decision u/s 64(3) ? "

and the answer was yes.

15. The decision does not show that on the ground of non-compliance of Section 64(3), the assessment was annulled. It only says that the court held that the principal place of business was Calcutta and not at Cawnpore. Thus, this decision is not helpful to the assessee. It may be stated here that Section 64(3) of the Indian Income Tax Act, 1922, is similar to sections 124(4) and 124(6) of the said Act.

16. Mr. G.C. Bharuka, learned counsel for the petitioner, has relied on the decision of the Delhi High Court in the case of Kanjimal and Sons Vs. Commissioner of Income Tax, New Delhi, . This case also does not support the assessee. It has been pointed out at page 402 of this decision that the present controversy regarding jurisdiction appears to be only on the basis of what may be termed as "territorial" jurisdiction and not because of any special jurisdiction conferred by the Commissioner on the basis of income or class of assessees. It has also been observed at page 402 that there being no specific order passed by the Commissioner on the basis of any classification, the only question that arises is whether it is Ward-D Officer or Ward-E Officer or neither of them that had territorial jurisdiction over the present case. It has also been observed at page 403 of the decision that a case may perhaps arise where an assessee may ostensibly question the jurisdiction of an Income Tax Officer but the issue of jurisdiction may be so plain and clear that the Income Tax Officer does not consider that there is any real question for determination. But this is not such a

case. It has also been pointed out in this decision that in this case the Income Tax Officer himself in the assessment order refers to doubts having been raised regarding his jurisdiction. This is a case where two Income Tax Officers are seeking to proceed against the assessee. It has also been pointed out that the assessee had raised an objection to the jurisdiction soon after the receipt of the notice u/s 148 and there was ample time for the Income Tax Officer to refer the matter for decision by the Commissioner but no explanation appears to have been attempted at any stage why this mandatory procedure outlined in the section has not been followed. It has also been observed at page 403 that it is really unfortunate that a technical but vital issue which could have been resolved at the earlier stage by following the mandate of the statute has been allowed to become a matter of prolonged controversy at the risk, in case the assessee eventually succeeds, of the entire reassessment becoming vitiated altogether and being annulled on the ground of lack of jurisdiction. It appears from pp. 403 and 404 that the assessee's plea before the Appellate Assistant Commissioner was that the Income Tax Officer, Ward-D, could not exercise jurisdiction over the assessee's case in the face of the assessee's challenge thereto until and unless the matter of jurisdiction was referred by Mm to the Commissioner and his decision obtained. In that connection, it was observed at page 404 that the Act no doubt envisages that where an objection regarding the jurisdiction of the Income Tax Officer is desired to be taken, it should be raised within the period specified by the section and should be decided by the Commissioner as envisaged by the section. It has also been observed that it is settled law that this is a matter on which the final decision rests with the administrative and not the appellate authorities under the Act. It has also been observed at page 404 of the decision that if the assessee raised the issue but the Income Tax Officer did not refer the question to the Commissioner as in the present case, what will be the result of such failure ? It was held that one answer to the question would be that this failure should not be held to vitiate the assessment altogether and that it should be open to the appellate authority to set aside the assessment for being redone in accordance with law after having the matter referred to the Commissioner and obtaining his decision. It was also observed that there is nothing wrong in adopting this course and it will not prejudice anyone. By adopting this course, the appellate authority will not be deciding the question of jurisdiction itself but will only be getting it done by the appropriate authority and the appellate order will not also help the department in any way if eventually the Commissioner comes to the conclusion that the Income Tax Officer who completed the assessment had no jurisdiction in the matter and it will not confer any right on any other Income Tax Officer having jurisdiction to proceed against the assessee, if he is otherwise not competent to do so. At page 405 of the decision, the Delhi High Court observed that the above approach to the issue derives support from the recent decision of the Supreme Court in the case of Kapurchand Shrimal Vs. Commissioner of Income Tax, Andhra Pradesh, Hyderabad, . In that case, the Income Tax Officer completed the assessments of a Hindu undivided family without disposing of the claim for partition that had

been made by the members of the family. Before the Tribunal, the assessee contended that the assessments should be cancelled but the department contended that even if there had been a violation of Section 25A of the Act, the proper order to be passed was either to direct the Income Tax Officer to give effect to Section 25A or to set aside the assessments with a direction to the Income Tax Officer to pass fresh orders of assessment. The Tribunal came to the conclusion that the assessments were in clear violation of the procedure prescribed for that purpose in Section 25A and cancelled the same. The Supreme Court held that this was not the right procedure to be adopted. The Supreme Court observed that it is well known that an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeal and to issue, if necessary, appropriate directions to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statute. It was, therefore, held that the order of the Appellate Assistant Commissioner can be supported in the light of the above observations of the Supreme Court. It has also been observed at page 406 of the decision that it will also be appreciated that this is only fair, for, if really the Income Tax Officer had jurisdiction in the matter, there is no reason why the assessment should fail merely for the reason that the decision was not given earlier and if he did not, then the assessee will not be prejudiced as the assessment cannot stand and will have to be attempted afresh by some officer only if otherwise permissible in law. It has been observed at page 406 of the decision that it is possible to look at the matter from another point of view and that it can be said that the issue involved is one of jurisdiction and when an assessee puts it in challenge immediately he receives a notice or files a return, it must be resolved one way or the other in the manner provided for in the statute before the Income Tax Officer can assume jurisdiction to proceed further and complete an assessment. The statute requires this to be done before the assessment is made and failure to do so will render the assessment null and void and without jurisdiction. However, at page 406 towards the end, the Delhi High Court has held that it "is not necessary for us to express a final conclusion on the above question though prima facie we are inclined to the former view". However, at page 418, while giving the conclusion, the Delhi High Court observed that (1) the assessee having raised an objection to the jurisdiction of the Income Tax Officer which was not flimsy or baseless but of substance, it was the duty of the Income Tax Officer to have referred the matter to the Commissioner and he could have proceeded to complete the assessment only after the Commissioner's decision had been received and in the light thereof and (2) the failure of the Income Tax Officer to follow the above procedure may not render the assessment invalid. A view is possible that, in an appeal, it is open to the Appellate Assistant Commissioner or the Tribunal to set aside the assessment and direct fresh assessment after following the procedure mentioned in Sections 124(4) and (6) of the said Act provided such a direction does not prejudice or affect the right of the assessee to challenge the reassessment as not being in accordance with any other provision of the Act. In that case, the only question which was to be

considered was whether the assessment was covered by Section 124(7), and it was held that an examination of the question whether Ward-D or Ward-E Officer had any territorial jurisdiction over the assessee, even if answered in the affirmative, will not be sufficient to uphold the assessment under consideration as, admittedly, the income of the assessee accrued or arose or was received in various territorial jurisdictions and the Act does not contemplate a piecemeal or partial assessment of income nor has any such assessment been made or purportedly made in this case and so the assessment should have been annulled as being without jurisdiction and the Tribunal should not have remanded the matter to the Appellate Assistant Commissioner for disposal.

17. Thus, in this decision, a principle was laid down that when a question of jurisdiction is raised and it is not referred to the Commissioner and assessment is made, then the assessment can be set aside and fresh assessment can be ordered to be made with a direction that it should be done after following the procedure mentioned in sections 124(4) and (6) of the said Act. This decision does not help the assessee.

18. Moreover, this is not a case of initial lack of jurisdiction. The assessee filed a return before the Income Tax Officer. In this case the assessee had originally filed a return before the Income Tax Officer, A-Ward, Patna, on October 20, 1964, and the Income Tax Officer issued notices under sections 143(1) and 143(2) of the said Act and the assessee appeared before him and produced books of account. However, on December 30, 1967, the Commissioner of Income Tax passed an order regarding the jurisdiction of the various Income Tax Officers of Patna and he directed that the cases of the assessee under Ward No. 30 will remain under the jurisdiction of the Income Tax Officer, A-Ward, but the cases of the assessee having income from hotel business were to be assessed by the Income Tax Officer, C-Ward. As the assessee had income from Marwari Hotel, the Income Tax Officer, C-Ward, issued notice to the assessee u/s 142(1) of the said Act and even when the assessee objected to the jurisdiction of the Income Tax Officer, C-Ward, he completed the assessment on March 30, 1968. Thus, it is evident that there was some confusion and probably it was not clarified by the Commissioner whether, in a case where the principal place of business of the assessee is Ward No. 30 but he has also hotel business, whether in such a case also the Income Tax Officer, C-Ward, will have jurisdiction. Thus a confusion was created by the order of the Commissioner of Income Tax. The Income Tax Officer, C-Ward, felt that in view of the order of the Commissioner specifying the jurisdiction of the various Income Tax Officers at Patna, the Income Tax Officer, C-Ward, was competent to complete the assessment. Of course, when the assessee raised an objection, the matter should have been referred to the Commissioner of Income Tax for clarification as required under sections 124(4) and (6) of the said Act. , Thus, it was not a case of lack of total jurisdiction.

19. It has been held in the case of GUDUTHUR BROS. Vs. Income Tax OFFICER, SPECIAL CIRCLE, BANGALORE., , by their Lordships of the Supreme Court that

having issued a notice to the appellants u/s 28(1)(a) of the Indian Income Tax Act, 1922, to show cause why penalty should not be imposed for failure to file a return in time, the Income Tax Officer proceeded to impose penalty without affording a hearing. The Appellate Assistant Commissioner set aside the order imposing penalty as defective and directed refund of any penalty that might have been recovered. On receipt of the Appellate Assistant Commissioner's order, the Income Tax Officer issued a further notice calling upon the appellants to appear before him so that they might be given an opportunity of being heard. It was under these circumstances that their Lordships of the Supreme Court held that as the Appellate Assistant Commissioner pointed out only to an illegality which vitiated the proceedings after they were lawfully initiated, the notice issued u/s 28(1)(a) of the said Act did not cease to be operative and it was open to the Income Tax Officer to take up the matter at the point at which the illegality supervened and to correct the proceedings and that the notice u/s 28(1)(a) having remained still to be disposed of, the proceedings started after the order passed by the Appellate Assistant Commissioner could be described as during the course of the assessment proceedings, because the action would relate back to the time when the first notice was issued and that the Income Tax Officer had jurisdiction to continue the proceedings from the stage at which the illegality had occurred.

20. In the present case, the irregularity has occurred at the stage after a petition was filed objecting to the jurisdiction of the Income Tax Officer, C-Ward, to proceed with the case and the Income Tax Officer without referring the matter to the Commissioner of Income Tax for deciding the matter himself completed the assessment. Thus the irregularity was at that stage and so the case has to be restored to that stage and so the Appellate Assistant Commissioner was justified in setting aside the assessment order for making a fresh assessment according to law and the Appellate Tribunal was justified in upholding the order of the Appellate Assistant Commissioner.

21. The learned standing counsel for the Income Tax Department, Mr. B. P. Rajgarhia, relied on the case of PANNALAL BINJRAJ AND ANOTHER Vs. THE UNION OF INDIA AND OTHERS. (AND OTHER CASES)., . In the first place, this case related to the petition under, article 32 of the Constitution and the question considered was whether articles 14 and 19(1)(g) of the Constitution were violated. Mr. B. P. Rajgarhia has relied specially on the point that if an assessee has acquiesced in the jurisdiction of the Income Tax Officer to whom a case has been transferred u/s 5(7A) of the Indian Income Tax Act, 1922, he cannot subsequently object to the jurisdiction of the officer and seek to get the order of transfer quashed by invoking the jurisdiction of the court under article 32 or 226 of the Constitution. Firstly, the assessee in the case before me had not acquiesced in the jurisdiction of the Income Tax Officer, as the assessee objected to the jurisdiction of the Income Tax Officer, C-Ward, by petition dated February 20, 1968, and the jurisdiction was again challenged on March 12, 1968. Secondly the decision was under articles 32 and 226 of the Constitution. Hence,

this decision is not helpful on the point.

22. Mr. B. P. Rajgarhia for the opposite party also relied on the case of Rai Bahadur Seth Teomal Vs. The Commissioner of Income Tax and The Commissioner of Excess Profits Tax, . In this decision, it has been laid down that u/s 64(3) of the Indian Income Tax Act, 1922, the question of determination as to the place of assessment arises only if an objection is taken by the assessee and the Income Tax Officer has any doubts as to the matter but the determination is to be made by the Commissioner or the Central Board of Revenue and the Act does not contemplate any other authority and that the objection as to the place of assessment cannot be made in an appeal to the Appellate Assistant Commissioner or before the Appellate Tribunal and that the scheme of the Act shows that no appeal in regard to the objection to the place of assessment is contemplated under the said Act.

23. However, the circumstances of this case are peculiar. The case was pending before the Income Tax Officer, A-Ward, and in the meantime the order of the Commissioner was passed on December 30, 1967, specifying the jurisdiction of the various Income Tax Officers, and then the Income Tax Officer, C-Ward, issued a notice u/s 142(1), It was received by the assessee on February 14, 1968, and then immediately afterwards on February 20, 1968, the assessee challenged the jurisdiction of the Income Tax Officer, C-Ward. In spite of it, the Income Tax Officer, C-Ward, completed the assessment on March 30, 1968, without referring the matter to the Commissioner. Under such circumstances, when the jurisdiction was challenged and the assessment was completed, the only remedy to the assessee was by way of appeal before the Appellate Assistant Commissioner. Hence, the Appellate Assistant Commissioner was bound to set aside the assessment and to restore the proceeding's of assessment at the stage at which irregularity supervened. Under such circumstances, the Appellate Assistant Commissioner was justified in setting aside the assessment for making a fresh assessment according to law and the Appellate Tribunal was also justified in upholding the order of the Appellate Assistant Commissioner.

24. In view of my above findings, the answer to the questions has to be in the affirmative to the effect that the Tribunal was correct in not annulling the assessment and in confirming the order of the Appellate Assistant Commissioner setting aside the assessment, and so the answer to the question referred by the Tribunal is in favour of the department-opposite party and against the assessee-petitioner. However, in the peculiar circumstances of the case, the parties will bear their own costs.

S.K. Jha, J.

25. I agree.