(1962) 01 BOM CK 0002

In the Bombay High Court

Case No : Criminal Revision Application No. 1142 of 1960

MULJI MANILAL KAMDAR	APPELLANT
Vs	
STATE OF MAHARASHTRA and ANOTHER.	RESPONDENT

Date of Decision : 30-01-1962

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 195
Evidence Act, 1872 — Section 3
Income Tax Act, 1922 — Section 23

Citation : (1962) 45 ITR 257

Hon'ble Judges : Chainani, C.J

Bench : Division Bench

Judgement

CHAINANI C.J. - The facts giving rise to this criminal revision application briefly are that the Income Tax Officer, Jamnagar, was holding proceedings u/s 23 of the Income Tax Act, 1922, in regard to the assessment of the income of the second respondent, hereinafter referred to as the respondent. During the course of those proceedings the Income Tax Officer, Jamnagar, came to Bombay and examined the petitioner on oath. The respondents case is that the petitioner then made statements, which to the knowledge of the petitioner were false. He, therefore, filed a complaint against the petitioner for an offence u/s 193, Indian Penal Code, in the court of the Presidency Magistrate, 19th court. An objection was raised to the maintainability of the complaint by the petitioner. It was contended by him that an Income Tax Officer is a revenue court within the meaning of clause (b) in sub-section (1) of section 195, Criminal Procedure Code, and that, consequently, the court could not take cognizance of any offence u/s 193, Indian Penal Code, alleged to have been committed by the petitioner in the course of proceedings before the Income Tax Officer, except on a complaint in writing by the Income Tax Officer or of some other authority to whom he was subordinate. This objection was overruled and the learned magistrate rejected the application made by the petitioner, in which he had raised this preliminary objection. Against the order made by him the present application has been made.

The question, which we have to determine, is whether an Income Tax Officer, while holding proceedings u/s 23 of the Indian Income Tax Act, is a court within the meaning of clause (b) in sub-section (1) of section 195, Criminal Procedure Code. The word "court" is not defined in the Code. Section 3 of the Indian Evidence Act defines "court" as including all judges and magistrates and all persons except arbitrators legally authorised to take evidence. This definition has been held to be not exhaustive but framed only for the purposes of the Evidence Act and is not to be extended beyond its legitimate scope : see Queen - Empress v. Tulja and Brajnandan Sinha v. Jyoti Narain. As pointed out by Fry L. J. in Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson there are many courts which, though not courts of justice, are nevertheless courts according to law. The word "court" does not, therefore, have a uniform meaning in all the enactments. The question whether a particular tribunal is a court must, therefore, be decided in each case having regard to the provisions of the enactment under which that tribunal is constituted.

Section 195(1) (b) provides as follows :

"(1) No court shall take cognizance -......

(b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except on the complaint in writing of such court or of some other court to which such court is subordinate."

Sub-section (2) of section 195 is in the following terms :

"(2) In clauses (b) and (c) of sub-section (1), the term court includes a civil, revenue or criminal court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877."

The object of this section is to protect persons from being harassed by baseless and vexatious prosecutions at the instance of individuals actuated by malice, ill will or motive of revenge and to save the time of the courts from being wasted by frivolous and needless prosecutions. Having regard to this object, it has been held that the word "court" in section 195 should be given a wide meaning : see Raghoobuns Sahoy v. Kokil Singh alias Gopal Singh in which at page 875 it was observed :

"The word court is not defined in the Criminal Procedure Code, and it certainly has a wider meaning than a court of justice as defined in the Penal Code. Having regard to the obvious purpose for which section 195 was enacted, we think that the widest possible meaning should be given to the word court as therein mentioned, and that it would include a tribunal empowered to deal with a particular matter and authorised to receive evidence bearing on that matter in order to enable it to arrive at a determination."

In that case it was held that a Collector, acting in appraisement proceedings under sections 69 and 70 of the Bengal Tenancy Act, is a court within the meaning of the term as used in section 195. The observations made in the above case that the widest possible meaning should be given to the word "court" as occurring in section 195 were cited with approval in Nanchand Shivchand, In re in which a District Judge hearing an election petition u/s 22 of the Bombay District Municipalities Act was held to be a court within the meaning of section 195(1) (b), Criminal Procedure Code Wide meaning to the word "court" has also been given in other cases. In Queen-Empress v. Munda Shetti a Tahsildar, when holding an inquiry as to whether a transfer of names in a land register should be made or not, was held to be a revenue court. A similar view was taken in Emperor v. Narayan Ganpaya Havnik in which it was held that the Mamlatdar holding an inquiry relating to Record of Rights, under Chapter XII of the Land Revenue Code, is a revenue court within the meaning of section 195(1) (c), Criminal Procedure Code : see also Emperor v. Rachappa Yellappa. I may here mention that sub-section (2) of section 195 originally defined the term "court" as meaning a civil, revenue or criminal court. By Act 18 of 1923 the word "includes" was substituted for the word "means". The definition was, therefore, enlarged to bring within the scope of section 195 tribunals, which are not courts in the accepted sense of the word "court".

An Income Tax Officer is not a civil or criminal court. The question, therefore, arises as to whether he can be said to be a revenue court. The term "revenue court" is not defined in the Criminal Procedure Code. The question as to what meaning should be given to this term was considered by a full bench of this court in In re Punamchand Maneklal. At page 651 Scott C.J. observed :

"The term revenue court is not in general use but it has been used occasionally by local legislatures in this country in connection with the decision of questions relating to revenue by officers specially and exclusively empowered to decide them. See, for example, the City of Bombay Revenue Act and the Revenue Code of Oudh, the United Provinces and the Punjab (U. P. Act II of 1901, sections 59-62; U. P. Act III of 1901, section 189 et seq.; Oudh Act XXII of 1886, section 109; Punjab Act XVI of 1887, section 101). Speaking generally, revenue questions are removed from the cognizance of civil courts and the officer charged with the duty of deciding disputed questions relating to revenue between the individual and the Government would be invested with the functions of a revenue court."

In that case it was held that a Collector holding proceedings under Chapter IV of the Income Tax Act, 1882, was a revenue court within the meaning of that term as used in clauses (b) and (c) of section 195(1), Criminal Procedure Code. At page 651 it was observed :

"We also think that inquiries conducted according to the forms of judicial procedure under Chapter IV of the Income Tax Act and execution proceedings under Chapter V (which provides that an order passed by a Collector on a petition under Chapter IV shall have the force of a decree of a civil court in a suit in which the Government is the plaintiff and the defaulter is the defendant) are proceedings in a revenue court."

This decision of the full bench has been followed by a division bench of this court in State v. Nemchand Pashvir Patel in which a Sales Tax Officer appointed under the Bombay Sales Tax Act, 1953, was held to be a court within the meaning of section 195 (1) (c), Criminal Procedure Code. At page 1059 Shah J. observed :

"That the Sales Tax Officers under the Bombay Sales Tax Act, 1953, are authorised to decide questions relating to revenue cannot be denied, and the jurisdiction of other courts to deal with those questions has been expressly excluded by section 29 of that Act. It is clear, therefore, that the Sales Tax Act confers jurisdiction to decide questions relating to revenue upon officers specially and exclusively empowered to decide them. The Sales Tax Officer, having been invested with powers which are the normal attributes of a court or a tribunal authorised to adjudicate upon disputed questions of law or fact relating to rights of citizens must be regarded as a revenue court within the meaning of section 195(1) (c), Criminal Procedure Code."

It seems to us that the principle underlying these two decisions will also apply to an Income Tax Officer holding assessment proceedings u/s 23 of the Income Tax Act, 1922. In this connection it is necessary to refer to the relevant provisions of this Act. Section 22 provides for the submission of returns of income by persons whose total income during the previous year exceeded the maximum amount, which is not chargeable to Income Tax. Sub-section (1) of section 23 provided that if the Income Tax Officer is satisfied that a return made u/s 22 is correct and complete, he shall assess the total income of the assessee and shall determine the sum payable by him on the basis of such return. Sub-section (2) states that if the Income Tax Officer is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made u/s 22 is correct and complete, he shall serve on such person a notice requiring him to attend the Income Tax Officers officer or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return. Sub-section (3) is in the following terms :

"On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income Tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income Tax Officer may require, on specified points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment."

Sub-section (4) empowers the Income Tax Officer to make the assessment to the best of his judgment, if a person has failed to make a return u/s 22 or has failed to comply with the notice issued to him under sub-section (2). Section 30 provides for an appeal against the assessment made, u/s 23. The proviso to sub-section (3) of section 31 states that at the hearing of any appeal against an order of an Income Tax Officer shall have the right to be heard either in person or by a representative. Sub-section (2) of section 33 provides that the Commissioner may, if he objects to any order passed in appeal by an Appellate Assistant Commissioner u/s 31, direct the Income Tax Officer to appeal to the Appellate Tribunal against such order. Sub-section (1) of section 37 confers on the Income Tax Officer the powers vested in a court under the CPC of discovery and inspection, of enforcing the attendance of any person and examining him on oath, of compelling the production of account books and other documents, and of issuing commissions. Sub-section (2) authorises an Income Tax Officer to enter and search any building or place where he has reason to believe that any books of account or other documents, which in his opinion will be useful for or relevant to any proceeding under this Act, may be found and examine them, if found, to seize any such books of account or other documents or place marks of identification thereon or make extracts or copies therefrom, and to make a note or an inventory of any other article or thing found in the course of any search under this section, which in his opinion will be useful for a relevant to any proceedings under this Act. Sub-section (4) states that any proceeding before any authority refereed to in this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code. Section 46 contains provisions regarding the mode of recovery of tax to which a person has been assessed. Sub-section (2) states that the Income Tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector on receipt of such certificate shall proceed to recover the amount specified therein as if it were an arrear of land revenue. The proviso to this sub-section confers upon the Collector all the powers which a civil court has under the CPC for the purpose of the recovery of an amount due under a decree. Sub-section (5A) empowers the Income Tax Officer to require any person, from whom money is due or may become due to the assessee, to pay to the Income Tax Officer so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears of Income Tax and penalty. Section 67 bars the jurisdiction of a civil court to entertain any suit to set aside or modify any assessment made under the Act.

It will be seen from these provisions that the power to determine the amount of Income Tax payable by an assessee is vested in the Income Tax Officer. If he is not satisfied with the return submitted by the assessee, he has to hear the assessee and allow his to produce any evidence, on which the assessee may wish to rely, in support of the return submitted by him, before he can make an order against him. He has also the same powers as are vested in a civil court to enforce the attendance of any person, to examine persons on oath, to compel the production of documents, and to issued commissions. The relevant provisions of this Act are similar to those of the earlier Income Tax Act (II of 1886). Two differences have been pointed out to us. Under the earlier Act, the power to assess the tax was vested in the Collector, who was revenue officer. Under the present Act the assessment has to be made by an Income Tax Officer appointed u/s 5 of the Act. Secondly, under the former Act the assessing officer, that is, the Collector, could himself take steps to recover the tax assessed by him. Under the present act, the Income Tax Officer has to send a certificate to the Collector and ask the Collector to recover the tax due from the assessee. He himself has limited powers of execution under sub-section (5A) of section 46 of the Act. These differences are, however, not such as would justify us in holding that the decision of the full bench in In re Punamchand Maneklal, which was followed in State v. Nemchand Pashvir Patel, is no longer good law.

Mr. Gupte, who appears for the respondent, has referred to the decision of the Supreme Court in Virindar Kumar Satyawadi v. State of Punjab. In that case it was held that a returning officer deciding on the validity of a nomination paper u/s 36 of the Representation of the People Act, 1951, is not a court for the purposes of section 195(1) (b) of the Code of Criminal Procedure. At page 157 it was observed :

"It may be stated broadly that what distinguishes a court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of its. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law."

These attributes are possessed by an Income Tax Officer. The assessee is entitled to be heard as a matter of right and to adduce evidence in support of his contentions. There is also an obligation on the Income Tax Officer to decide the matter of assessment on a consideration of the evidence adduced and in accordance with law. He has also to make an order determining the sum payable by the assessee. Mr. Gupte has, however, urged that in proceedings before the Income Tax Officer there is no lis, in which persons with opposing claims are entitled to have their rights adjudicated in a judicial manner. He has also contended that in any case a lis cannot arise until the Income Tax Officer makes the order of assessment. Similar argument was advanced before the Supreme Court in Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh, the Supreme Court dealt with this argument in the following terms :

"Finally, Sri Ganapathy Iyer faintly urges that until actual assessment there can be no lis and, therefore, no right of appeal can accrue before that event. There are two answers to this plea. Whenever there is proposition by one party and an opposition to that proposition by another a lis arises. It may be conceded, though not deciding it, that when the assessee files his return a lis may not immediately arise, for u/s 11 (1) the authority may accept the return as correct and complete. But if the authority is not satisfied as to the correctness of the return and calls for evidence, surely a controversy arises involving a proposition by the assessee and an opposition by the State. The circumstance that the authority who raises the dispute is himself the judge can make no difference, for the authority raises the dispute in the interest of the State and in so acting only represents the State."

In view of this decision of the Supreme Court, the above argument of Mr. Gupte cannot be accepted.

Mr. Gupte also laid stress on the provisions of sub-section (2) of section 37, which confers the powers of search and seizure on an Income Tax Officer, and the proviso to sub-section (3) of section 31, which gives the Income Tax Officer a right to be heard in an appeal filed against the order made by him. It may be that while acting under these provisions the Income Tax Officer may not be functioning as a court. But that by itself would not lead to an inference that he is not a court when he is holding assessment proceedings u/s 23 of the Act.

Mr. Gupte also relied on sub-section (4) of section 37, under which any proceeding before an Income Tax Officer is to be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. Mr. Gupte contended that the use of the words "deemed to be" indicates that proceedings before an Income Tax Officer are not judicial proceedings, but that by a legal fiction they are to be regarded as judicial proceedings for the purposes of the three sections mentioned in sub-section. The word "deemed" is, however, sometimes used by the legislature in order to remove any doubt in the matter. In St. Aubyn v. Attorney-General Lord Radcliffe observed :

"The word deemed is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible."

Mr. Gupte also relied on two decisions of the Madras High Court in R. M. Seshadri v. Second Additional Income Tax Officer and in Chaparala Krishna Brahman v. Guduru Govardhanaiah. In the former case it was held that the Appellate Tribunal constituted u/s 33 of the Income Tax Act is not a court. In the latter case the view taken was that an Income Tax Officer is not a court within the meaning of section 195, Criminal Procedure Code. A contrary view was taken in In re Nataraja Iyer in which it was held that a divisional officer hearing appeals under the Income Tax Act (II of 1886) was a court. In Merchant Flour Mills Co. Ltd. v. Commissioner of Income Tax the Punjab High Court held that an Assistant Commissioner of Income Tax is a revenue court for the purposes of the Court Fees Act.

It seems to us that we are bound by the decision of the full bench in In re Punamchand Maneklal, which was followed in State v. Nemchand Pashvir. Following that decision, we hold that an Income Tax Officer, while holding proceedings u/s 23 of the Income Tax Act, 1922, is a revenue court within the meaning of clause (b) in sub-section (1) of section 195, Criminal Procedure Code. It is not necessary for us to decide, and we do not decide, whether he would be a court for purposes of other enactments.

We, therefore, make the rule absolute and direct that the complaint filed by the second respondent against the petitioner should be dismissed.

Rule made absolute.

