

(1944) 01 CAL CK 0022
In the Calcutta High Court

Naba Kumar Singh Dudhoria

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 14-01-1944

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Income Tax Act, 1961 — Section 22(2), 30(1)

Citation : AIR 1945 Cal 104

Hon'ble Judges : McNair, J;Gentle, J

Bench : Full Bench

Judgement

McNair, J.—Two questions of law have been referred to this Court by the income tax Appellate Tribunal. Question (1):

Whether in an appeal u/s 30(1) the validity of an assessment u/s 23 (4) can be challenged when no proceeding u/s 27 of the Act was taken to cancel the order u/s 23 (4).

2. It appeared that the question had been framed by mistake leaving out the words "under Section 33 (1) from a decision in an appeal" after the words with which the question starts, namely, "whether in an appeal," and the question as re-framed after consultation and agreement with the advocates appearing now reads, "whether in an appeal u/s 33 (1) from a decision in an appeal u/s 30 (1)" and so on as originally framed. The second question is,

Whether on the facts of the case the lands taken over by the assessee in satisfaction of a debt should be independently valued and such valuation should be considered for the purpose of arriving at the figure of income.

3. The assessees are a Hindu undivided family carrying on business as money-lenders. On 10th June 1939, the income tax Officer served them with a notice u/s 22 (2), income tax Act, calling upon them to make a return of income for the year 1939-40. A return was submitted but was signed in Hindi by a person who is said to be the ammuksar of the assessees. Apparently the income tax Officer

did not notice that the signature was not the signature of the assessee and he accepted the return and issued a notice u/s 23 (2) calling for evidence in support of the return. During the proceedings initiated by Section 23 (2) the income tax Officer had reason to believe that certain items of interest had not been disclosed in the return. He thereupon issued a notice on 1st August 1940 calling upon the " assessee to show cause why a penalty should not be imposed u/s 28 (1) (e) of the Act. On receipt of that notice the assessee through their pleader informed the income tax Officer that the tax proceedings were misconceived inasmuch as the return was invalid since it had not been signed by the karta of the Hindu family. The income tax Officer on scrutinising the return accepted the view put forward by the assessee and treated the return as invalid. He then proceeded to assess : them u/s 23 (4) on the basis that no return had been made. The assessee contended before the Appellate Assistant Commissioner of income tax that the assessment should have been made u/s 23 (3) on the ground that the income tax Officer had in the first instance accepted the return as a valid return. The Appellate Assistant Commissioner, however, upheld the assessment u/s 23 (4) on the ground that the return was invalid as the assessee had themselves claimed, and he held further that the income tax Officer was therefore entitled to make the assessment u/s 23(4). The appellate Tribunal held that the assessee could not raise this question in appeal inasmuch as they had not adopted the procedure u/s 27 of the Act, which is provided by the Act for having the assessment re-opened. It is admitted that the assessee did not adopt the procedure u/s 27 but it is contended before this Court that the assessee can nevertheless question the validity of the assessment by way of appeal.

4. It is further contended that although machinery is provided by Section 27 for challenging the assessment there is a further and alternate remedy open to the assessee u/s 30, income tax Act as now amended. Prior to amendment there was a specific proviso u/s 30 that no appeal shall lie in respect of an assessment made u/s 23 (4) or under that sub-section read with Section 27. That proviso has now been deleted and Section 30 provides, so far as is material, in sub-Section (1) that any assessee objecting to the amount of income assessed u/s 23 or Section 27 or the amount of tax determined u/s 23 or Section 27 or denying his liability to be assessed under this Act or objecting to a refusal of an income tax, Officer to make a fresh assessment u/s 27 or objecting to penalties and to other matters which are specifically set out in the section, may appeal to the appellate Assistant Commissioner against the assessment or against such refusal or order.

5. The learned advocate on behalf of the assessee has called in aid the procedure which is given under the CPC when a decree has been passed ex parte, and although he appreciates the difficulty of attempting to construe one Act by reference to another he suggests that the analogy from the Code may be helpful. The Code u/s 96 (2) provides that an appeal may lie from an original decree passed ex parte and Order 9, Rule 13 of the Code contains provisions for setting aside ex parte decrees under which the defendant must satisfy the Court that the

summons was not duly served or that he was prevented by sufficient cause from appearing when the suit was called on for hearing. Under Order 9, Rule 13, the procedure is by an application to the Court for setting aside the decree which, as the learned advocate points out, is a form of procedure entirely separate from the procedure which is available by way of appeal. It is true that under the Code there is a procedure under Order 9, R, 13, and, although there has been some conflict amongst the Courts as to whether a Court of appeal may go into the question whether the decree should or should not have been passed ex parte, there are decisions to the effect that the Court of appeal is entitled not only to deal with the merits and the material on the record, but may further consider the questions which, if I may say so, would more properly arise on an application under Order 9, Rule 13. But the CPC contains the further provisions in Section 105 which provide that:

Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

It has also been suggested that the Court has inherent powers of dealing with the question whether the ex parte decree was or was not properly made u/s 151. It is clear, therefore, that the CPC contains provisions which are not present in the income tax Act and which may be said to give the Court very much wider powers when dealing with appeals from an ex parte decree. In my view little assistance can be gained from a reference to these provisions of the Civil Procedure Code. Coming now to the provisions of the income tax Act, Section 30 gives the assessee the right to object to the amount of income assessed u/s 23 or Section 27. They may also object to the amount of tax determined under those sections and they may appeal if they object to the refusal of the income tax Officer to make a fresh assessment u/s 27. To that extent only has the proviso in the same section of the Act prior to the amendment been limited. What the assessee is apparently trying to do now as it appears to me is to raise an objection not merely to the amount of the assessment or to the amount of tax determined under any provision of Section 23, but to object to the validity of the assessment. Although Section 30 as amended grants them a right of objecting to the quantum of the assessment, it does not in my view give them the right to leave aside the machinery which has been provided by Section 27 and to come to the Court and ask that the Court should deal with it without having had the matter dealt with, as provided by the Act, by the income tax authorities. It appears to me that on repealing the proviso in the old section the Legislature has expressly limited the manner in which appeals may be allowed against decisions u/s 23 or Section 27, and by inserting the words applicable to Section 23 or Section 27 with the word "amount" they have definitely intended that the assessee's right of appeal u/s 30 should be limited as regards those sections to the quantum of the assessment or tax.

6. Reference has also been made to Section 31, income tax Act. Section 31 (3) provides that in disposing of an appeal the Appellate Assistant Commissioner may in the case of an order of assessment--(a) confirm, reduce or enhance or annul the assessment or (b) set aside the assessment and direct the income tax Officer to make a fresh assessment after making such further enquiry as the income tax Officer thinks fit or the Appellate Assistant Commissioner may direct. Section 31 then provides that in the case of an order refusing to make a fresh assessment u/s 27 the Appellate Assistant Commissioner may confirm such order or cancel it and direct the income tax Officer to make a fresh assessment. Section 31 supports the contention that the Appellate Assistant Commissioner should deal with orders which had been made u/s 27 specifically. Sub-sections (a) and (b) of Section 31 (3) are not appropriate to a case such as that which is now under consideration, which has been specifically provided for in sub-section (c). The first question must, therefore, be answered in the negative.

7. The second question, it is contended, does not arise if the first question is answered in the negative, because if there is no appeal the assessment as an assessment to the best of the judgment of the income tax Officer u/s 23(4) must stand. The matter has, however, been discussed on the merits, and I propose to deal with it shortly. The assesseees are money-lenders. A lady named Sm. Bela Rani Chowdhurani borrowed moneys from the assesseees which we may take it amount to the sum of Rs. 41,542. In the year of account with interest the loan amounted to Rs. 60,382. The debtor and the creditor came to an arrangement that the debtor should make over zemindary properties to the creditor along with the outstanding rents due from the tenants for the total sum of Rs. 60,000, and they decided further that the balance of Rs. 382 would be remitted or written off as a bad debt. In entering the transaction in their books the assesseees have valued the three different properties separately, Krishnapur at Rs. 30,000, Ahiran at Rs. 16,000 and Durki at Rs. 4000 making a total of Rs. 50,000, and have assessed the arrears of rent at Rs. 10,000. It is contended that this arrangement was an arrangement between a debtor and a creditor for the convenience of the two parties and that it does not truly represent the actual value of the properties. It is contended further that the income tax Officer should not have accepted these figures as the true value but that he should have instituted an enquiry to ascertain from other sources what would be the true value of the lands. In support of this argument reference has been made to a decision of Rangoon High Court in Commissioner of income tax, Burma v. P.L.S.M. Concern, Minhla AIR 1934 Rang. 274 and to the remarks by the learned Chief Justice, Sir Arthur Page, to the effect that

money-lenders are compelled to take over lands from their debtors at what may be merely an arbitrary and fictitious figure and that the assesseees may be in a position to prove that the figure at which the lands have been valued in their books of account bears no relation to the real value of the lands that have been transferred in satisfaction of the debt.

8. That is true, but the facts here are entirely different, and the difference is brought out by Baguley J. in his judgment at p. 426 of the report. He points to the method which had been adopted there and says:

It is not as though he (the assessee) had entered the acquisition of the land as equivalent to the receipt of a certain amount of money in a profit and loss account, or as though he had done anything else of that nature in which he definitely recognised the land as being the equivalent of a certain amount of money for purposes of calculating his profits.

9. That appears to me to be exactly what has been done in the present case. The assessee has definitely valued each property and the income tax Officer, particularly when he was making an assessment to the best of his judgment, would in my opinion be amply justified in taking the value which had been placed upon these properties by the assessee themselves as the true value. In AIR 1933 108 (Privy Council) the Board had to consider a somewhat similar transaction which had been entered into by the Maharajadhiraj of Darbhanga who was there the assessee. Among the items which had been entered in the assessee's accounts was the Kajora Collieries, which had been valued at over seven lakhs of rupees. The Board held that the Kajora Collieries had been taken over as the equivalent of cash or money's worth. At p. 339 of the report Lord Macmillan, who delivered the judgment of the Board, said:

"In their Lordships' view the solution of the problem is to be found in a consideration of the nature of the particular transaction out of which it has arisen. The assessee agreed to accept the transfer of the colliery in part satisfaction of Kumar Ganesh Singh's liability to him on the footing that it was valued for Rs. 7,37,399."

In the same way in the present instance the assessee appears to me to have accepted the lands in question as the equivalent in value of Rs. 50,000. In any event this was a summary assessment, and in my opinion, the income tax Officer was not bound to make any further enquiries into the circumstances under which the properties had been accepted since he had an entry showing the valuation placed upon the property by the assessee themselves. In my view the assessee's contention that they have suffered from not being allowed to give evidence as to the value of the properties has no weight. The second question must also be answered in the negative.

Gentle, J.

10. I agree and I desire to add one short observation with regard to the second question and the facts relating to it. The appeal, so far as it concerned the acquisition of the properties totalling the value as entered in the books of Rs. 60,000 and the amount of the income derived from the transaction and the amount of tax determined upon that income, was in my view a matter which was the subject of an appeal as to amount and comes expressly within the provisions of Section 30 (1), income tax Act.

11. The assesseees must pay the costs which we assess at Rs. 200 plus the costs of the paper book assessed at Rs. 50.