(1962) 12 SC CK 0014

In the Supreme Court Of India

Case No : Appeal (civil) 585 of 1960

P.V. Godbole APPELLANT

Vs

Jagannath Fakirchand RESPONDENT

Date of Decision : 12-12-1962

Acts Referred:

Constitution of India, 1950 — Article 132(1), 133(1), 14
Income Tax Act, 1961 — Section 34, 34(1), 34(3)

Citation : AIR 1963 SC 1399 : (1963) 49 ITR 88 : (1962) 1 SCR 130

Hon'ble Judges : S. K. Das, J;Raghubar Dayal, J;M. Hidayatullah, J;J. L. Kapur, J;A. K. Sarkar, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

S.K. Das, J.—The facts of this appeal have been stated by my learned brother, Kapur J. As I am in agreement with him, I need not re-state the facts.

2. The assessment years were 1944-45, 1945-46 and 1946-47. The notice was issued by the income tax Officer on February 18, 1957, pursuant to a direction given by the Appellate Assistant Commissioner in an appeal of another assessee. The only question is whether the second proviso to sub-s (3) of s. 34, as amended in 1953 saves the proceedings impugned.

3. For the reasons given by me in S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others, , in which judgment has been delivered to-day, I would dismiss the appeal with costs.

Kapur, J.

4. This is an appeal brought on behalf of the Revenue against the judgment and order of the High Court of Bombay on a certificate granted by that Court.

5. In W.P. No. 1400/57 the present respondent challenged that jurisdiction of the income tax Officer to issue notice u/s 34(1) of the Indian income tax Act,

hereinafter called the "Act". The assessment years are 1944-45, 1945-46 and 1946-47 and the notice was issued by the income tax Officer on February 18, 1957, pursuant to a direction given by the Appellate Assistant Commissioner in an appeal of another assessee that the income was the income of a partnership of which the respondent and the other assessee were partners. The High Court held that the respondent was a stranger to the proceedings before the Appellate Assistant Commissioner and that the second proviso to s. 34(3) of the Act under which the notice was given was unconstitutional as it offended Art. 14 of the Constitution.

6. The facts of the appeal are these : The respondent was the karta of a Hindu Undivided Family which carried on business as merchants and commission agents in cotton, grains and other commodities. That Hindu Undivided Family was assessed for the assessment years 1944-45, 1945-46 and 1946-47. The assessment for the year 1944-45 was completed by the income tax Officer on March 14, 1949, and an appeal was taken against that assessment to the Appellate Assistant Commissioner and was decided on February 9, 1956, and then an appeal was taken to the income tax Appellate Tribunal which has not been shown to have been decided. For the assessment years of 1945-46 and 1946-47 the assessment was completed in March and May, 1950, respectively. Appeals were taken against these assessments to the Appellate Assistant Commissioner who remanded the cases to the income tax Officer and they have not yet been decided. As regards the assessment year 1946-47 an notice under s. 34(1) was issued and the order in that case was passed on March 6, 1956. Against that order an appeal was taken to the Appellate Assistant Commissioner which is still pending. It appears that for the year of assessment 1945-46 no notice u/s 34(1) of the Act was issued.

7. In 1946 the respondent on behalf of the Hindu Undivided Family filed a suit against one Jagannath Ramkishan for rendition of accounts as the Munim of the respondent. His defence was that he was a partner and not a Munim which was accepted and the suit was dismissed. An appeal against that decree was dismissed by the High Court. Jagannath Ramkishan died during the pendency of the appeal and his widow Kalavati was impleaded. In the meantime proceedings under s. 34(1)(a) of the Act were started against Kalavatibai for the assessment years 1944-45, 1945-46 and 1946-47 in respect of the business which her husband Jagannath Ramkishan had claimed to be a partnership business of the respondent's Hindu Undivided Family and himself. Two orders were passed by the income tax Officer for those years. Kalavati took appeals against those orders and the Appellate Assistant Commissioner on October 10, 1956, in allowing those appeals gave a finding that the business belonged to the partnership as claimed by Jagannath Ramkishan and the income tax Officer was authorised to make assessments under the provisions of s. 34 on the said partnership as also on the respondent for the assessment years 1944-45, 1945-46 and 1946-47. Thereupon, a notice was issued with regard to the three assessment years on February 18, 1957, against M/s Jagannath Fakirchand and Jagannath Ramkishan.

These notices were challenged and were held to be illegal. Against that order of the High Court this appeal is brought on a certificate of the High Court under Art. 132(1) and Art. 133(1)(b) of the Constitution.

8. For the reasons given in S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others, , judgment in which has been delivered today, this appeal is dismissed with costs.

Sarkar, J.

9. This case is concerned with the three assessment years 1944-45, 1945-46 and 1946-47. The assessee is the respondent Jagannath Fakirchand, the Karta of the Hindu undivided family who had been assessed as such for the years 1944-45, to 1946-48 and appeals from the assessment orders in respect of these years were pending.

10. The assessee had filed in 1946 a suit against an ex-employee, Jagannath Ramkishan, for accounts of certain transactions. Jagannath Ramkishan contended that he was not an employee but the transactions were the transactions of a business carried on in partnership between him and the assessee. The trial court upheld the contention of Jagannath Ramkishan. The assessee appealed to the High Court of Bombay against the decision of the trial court but in the meantime Jagannath Ramkishan had died and his wife, Kalavatibai, had been substituted in his place in that appeal. The High Court dismissed the appeal but said nothing as to whether Jagannath Ramkishan was a partner.

11. In view of the decision in the appeal mentioned in the preceding paragraph, the revenue authorities started proceedings agains Kalavatibai under s. 34(1)(a) of the income tax Act and assessed her on the entire income in the aforesaid three years, realised from the said transactions. Kalavatibai the appealed from this assessment and in the appeal she contended that her husband's estate was not liable for the tax on the entire income as the income belonged to a firm of which her husband was only one of the partners. The Appellate Assistant Commissioner accepted this contention of Kalavatibai and observed : "In view of my finding .... that the business belonged to the partnership .... the income tax Officer is hereby authorised to make assessments under the provisions of s. 34 on the said partnership as also on the other partner, Shri Jagannath Fakirchand for the assessment years 1944-45, 1945-46 and 1946-47."

12. In pursuance of this order the income tax Officer started proceeding under s. 34(3) of the income tax Act, 1922, against the assessee by issuing a notice on February 18, 1947, calling on him to file a return in respect of the aforesaid three assessment years as that income had escaped assessment. Thereupon the assessee moved High Court of Bombay under Art. 226 of the Constitution for a writ to quash the aforesaid notice and to prohibit proceedings being taken thereunder. The High Court allowed to writ. Hence this appeal.

13. The only question in this appeal is whether the second proviso to s. 34(3) of the income tax Act, 1922 as amended in 1953, could save the proceedings impugned. For the reasons mentioned in my judgment in Commissioner of Income Tax Vs. Sardar Lakhmir Singh, , I think that proviso is invalid as offending Art. 14 of the Constitution and affords no protection to the revenue authorities. It may be added that the impugned notice was issued in consequence of any order under s. 31 in a proceeding to which the assessee was not a party.

14. In the result the appeal is dismissed with costs.

15. For the Judgment of Hidayatullah and Raghubar Dayal, JJ., see S. C. Prashar, income tax Officer v. Vasantsen Dwarkadas, ante p. 29.

16. BY COURT : In accordance with the opinion of the majority, this appeal is dismissed with costs.

17. Appeal dismissed.