
(1962) 11 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writs No"s. 2094, 2095 and 2096 of 1962

RAJA AJAI VARMA

APPELLANT

Vs

ASSESSING AUTHORITY, POWAYAN AND OTHERS.

RESPONDENT

Date of Decision : 06-11-1962

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1964) 51 ITR 308

Final Decision : Dismissed

Judgement

These three writ petitions under article 226 of the Constitution are consolidated for the sake of convenience. The writ petitions are directed against the order of the assessing authority under the Agricultural Income Tax Act (hereinafter referred to as the Act) and of the order of the Board of Revenue dated 26th March, 1962, whereby the order of the Additional Commissioner remanding the case to the assessing authority for making a fresh assessment in accordance with law was set aside.

The facts leading up to these writ petitions are these. The relevant assessment years are 1361, 1362 and 1363 Fasli. The petitioner was served with a notice under the Act calling for a return of income. In the provisional assessment which was completed, the assessing authority included in the assessment of the assessee the income from the land which was standing in the separate name, possession and cultivation of his wife, sons and the daughters.

The petitioner filed an objection against the inclusion of the land belonging to and entered in the name of his family members. The assessing authority, however, overruled the objection and made the assessment by invoking the provisions of section 4A of the Act.

Appeals were filed by the petitioner to the learned Commissioner who remanded the case to the assessing authority for consideration of the question whether the petitioners wife, sons and daughters had separate cultivation or not over the land which stood in their names.

On remand, oral and documentary evidence was led by the petitioner but the assessing officer was not persuaded to exclude the land standing in the names of the wife, sons and daughters of the petitioner and, therefore, once again made an assessment on the 27th December, 1958, by invoking the provisions of section 4A of the Act and including the income from the land standing in the name of the petitioners wife, sons and daughters in the assessment of the petitioner.

The petitioner again filed an appeal against the aforesaid assessment order to the Additional Commissioner. By his order dated the 28th May, 1959, he again allowed the appeal of the petitioner holding that the petitioner had to be assessed only on the land on the land which stood in his name and the income from the land held by his wife or sons or daughters should be excluded. The case was once again remanded to the assessing officer for making a proper assessment in the light of the decision given by the Additional Commissioner.

Against the said order of the Additional Commissioner the State Government filed three revision petitions before the revising authority under the Act, i.e., the Board of Revenue at Lucknow. While these three revisions were pending (they remained pending till 26th March, 1962), the assessing officer by an order dated 14th December, 1959, assessed the petitioner according to the directions given by the learned Additional Commissioner by excluding the income from the area of land which stood in the name and was in the possession and cultivation of the petitioners wife, sons and daughters. No stay order was obtained from the Board of Revenue nor was any appeal filed against the said assessment order dated the 14th December, 1959, which was made pursuant to the said order of remand.

Ultimately, however, the Board of Revenue accepted the said three revision petitions filed by the State Government against the order of the Additional Commissioner by its order dated the 26th March, 1962. The operative portion of the order of the Board of Revenue was as follows :

"For the reasons given above we accept these revisions and hereby set aside the order of the learned Additional Commissioner directing that the land held by the wife and children of the assessee be excluded from the assessment of the opposite party. The order of the learned assessing authority is hereby restored and the case will be sent to the assessing authority for reassessment."

Against the said order of the Board of Revenue these three writ petitions have been filed.

Two main contentions have been raised in these writ petitions. Firstly, that the assessing authority having already passed an assessment order on the 14th December, 1959, in pursuance of the order of remand made by the Additional Commissioner, the revisions filed by the State Government against the order of the Additional Commissioner had become infructuous and the Board of Revenue had no jurisdiction to interfere with the order of the learned Additional Commissioner and, secondly, that section 4A of the Act could not have been

invoked as this section was only inserted by section 5 of the U. P. Act XIV of 1953, this section having come into force only in the year 1953 and the impugned transactions were made in 1949, they could not be hit by the provisions of this section.

These two contentions in my judgment are without force. When an appeal or revision is pending against an order of remand before the appellate or revising authority and the trial court in pursuance of that remand order passes a decree or makes an assessment order it must necessarily be subject to the ultimate result of the appeal or revision filed against the order of remand. The trial court must in the absence of a stay order from the court superior to the court remanding the case to him. But any order which is passed by him will be subject to the ultimate decision of the superior court. I am supported in the view I have taken by the authority of this court in the case of *Uman Kunwari v. Jarbandhan*, where it was laid down that there was no bar to the filing of an appeal from the order of remand or to the hearing of such an appeal even though the court of first instance in compliance with an order of remand might have already passed a decree. In repelling the contention that "even if the present appeal from the order of remand be entertained, the decision in the appeal will be of no avail to the appellant as the decree passed by the court of first instance in compliance with the order of remand would still remain a valid decree", it was there observed :

"After the court of first instance had once decided the case, it ceased to have any jurisdiction to hear it again except on review of judgment. Its jurisdiction to hear it a second time was derived solely from the order of remand. If that order was erroneous and is set aside, everything done in pursuance of the order must fall to the order must fall to the ground and be of no effect."

The Supreme Court in the case of *Shiromani Gurdwara Parbhandhik Committee v. Raja Shiv Rattan Dev Singh*, following the principle recognised by the Judicial Committee in *Shama Purshad v. Hurro Purshad*, held that the decree of the trial court after remand must always be taken to be subject to the result of the appeal before their Lordships.

I would, therefore, hold that the order of the Board of Revenue setting aside the order of the Additional Commissioner remanding the case to the assessing authority would automatically have the effect of setting aside the assessment order passed by the assessing authority dated December 14, 1959, which was passed in pursuance of the order of remand by the learned Additional Commissioner.

The next question which falls for consideration is as to whether section 4A of the Act is retrospective in its operation so as to cover transfers made prior to the insertion of this section by Act XVI of 1953 ? No decision under the Sales Tax Act has been brought to my notice. Section 4A reads :

"In computing the total agricultural income of any individual for the purpose of

assessment there shall be included -

(a) so much of the total agricultural income of a wife or minor child of such individual as arises directly or indirectly -

(i) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart;

(ii) from assets transferred directly or indirectly to the minor child not being a married daughter, by such individual otherwise than for adequate consideration;

(b) so much of the total agricultural income of any person as arises from assets transferred otherwise than for adequate consideration by such individual for the benefit of his wife or a minor child or both."

On a plain reading of the section there is little or no scope for the contention that the income for the assessment year after the insertion of section 4A in 1953, from the assets transferred before 1953 by the assessee, would not stand to be included in the assessment of the transferor who otherwise satisfies the conditions of this section. This section, *prima facie*, has no concern with date of the transfer of the assets but only with the income of the transferred assets in the relevant year of assessment. The section casts its net wide enough to embrace in its sweep income from assets which may have been transferred before the enactment of Act XIV of 1953. In cases arising under the Income Tax Act where the provisions of section 26 (3) of the Indian Income Tax Act, 1922, came to be inserted by section 2 of the Indian Income Tax (Amendment) Act, IV of 1937 (and those provisions are in *pari materia* with section 4A of the Act), it was held that the said section would apply to income which arises from assets transferred before the enactment of the section on January 14, 1937 : see the decisions in the cases of *Pandit Gaya Prasad Tewari v. Commissioner of Income Tax*, *H. P. Banerjee v. Commissioner of Income Tax*, *Sardarni Narain Kaur, I re*, and *Sheikh Mohammed Naqi v. Commissioner of Income Tax*.

For the reasons given above, these petitions are without merit and are accordingly dismissed with costs.

Petitions dismissed.