(1954) 01 MAD CK 0009

In the Madras High Court

Case No : Writ Petition No''s. 679, 680, 769 and 773 of 1952

Ravula Subbarao and Others — APPELLANT

Vs

Commr. I.T., Madras and Others — RESPONDENT

Date of Decision : 21-01-1954

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax (Appellate Tribunal) Rules, 1946 — Rule 24
Income Tax Act, 1922 — Section 33(4), 5A(8), 66

Citation : AIR 1955 Mad 39 : (1955) ILR (Mad) 87 : (1955) 27 ITR 164

Hon'ble Judges : Satyanarayana Rao, J;Rjagopalan, J

Bench : Division Bench

Advocate : K. Bhimasankaram, for the Appellant; C.S. Rama Rao Sahib, for the Respondent

Final Decision : Dismissed

Judgement

Satyanarayana Rao, J.—These are applications to issue writs of certiorari to quash the proceedings of the Income Tax Appellate Tribunal.

By virtue of the rule-making power vested in the Appellate - Tribunal u/s 5-A, Sub-clause (8), Rule 24 of the Income Tax Appellate Tribunal

Rules, 1946 was made; and it provides:

Where on the day fixed for hearing or any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is

called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or may hear it ex parte.

The point raised in these petitions is that this rule is ''ultra vires'' and is opposed to Section 33, Sub-section (4), Income Tax Act. The rule-making

power u/s 5-A, Sub-clause (8) is of course subject to the provisions of the Act, and the scope of the power is to regulate the procedure of the

Appellate Tribunal and the procedure of Benches of the Tribunal in all matters arising out of the discharge of its functions, including the places at

which the Benches shall hold their sittings. It is essentially a power to regulate the Tribunal''s own procedure, but is subject to the provisions of the

Act.

2. The point for decision therefore is whether the rule is in conflict with Section 33, Sub-section (4) of the Act. The sub-section runs as follows:

The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and

shall communicate any such order to the assessee and to the Commissioner.

The argument is that under this sub-section, even if the party did not avail himself of the opportunity given to him of being heard and was not

present on the day fixed for hearing, it was the duty of the Appellate Tribunal to dispose of the appeal on merits, and that it could not dismiss it for

default. On this construction, it was contended that the rule providing for dismissal for default was in conflict with Sub-section (4) of Section 33

and was therefore ultra vires.

We are unable to place such a narrow construction on Sub-section (4) of Section 33. It requires the Appellate Tribunal to give both parties an

opportunity of being heard. If that opportunity is availed of, and the Tribunal hears the appeal, it is no doubt true the Tribunal has to dispose of the

appeal on merits. But if the opportunity is not availed of by the appellant the Appellate Tribunal may follow one of two courses: notwithstanding the

non-appearance of the party it may dispose of the appeal on merits, or it may dismiss the appeal for default. A very, wide power is given to the

Appellate Tribunal, for the language employed is that ""it may pass such orders thereon as it thinks fit"", that is, such orders according to the

circumstances of the case, whether the opportunity was availed of by the party concerned or was not availed of. Sub-section (4) of Section 33

does not make it obligatory on the part of the Appellate Tribunal to dispose of the appeal on merits, when the opportunity which was given to the

party concerned was not availed of, and the appeal was not argued on behalf of such party. In this view of the matter, we are unable to see any

conflict between Rule 24 of the rules and Sub-section (4) of Section 33 of the Act.

Our attention was drawn in the course of the arguments to the powers of the

Appellate Assistant Commissioner in hearing an appeal, provided u/s

31 of the Act. These powers bear no analogy, in our opinion, to the powers of the Appellate Tribunal hearing an appeal, as the powers of the

Appellate Tribunal are not satisfied (sic stated) in the same detail as in Section 31 but the mode of disposing of the appeal is left to it, giving it a

wide discretion to dispose of it as it thinks fit.

3. In these cases what happened was, the applicant Wanted to apply for an adjournment, as the point raised in the appeals was before the

Supreme Court in an appeal preferred by the same assessee against the decisions of this court in -- Revula Subba Rao and Another Vs. The

Commissioner of Income Tax, Madras, . On the day fixed for hearing of these appeals, the assessee did not appear and he did not instruct any

advocate to argue the appeals on his behalf. The Appellate Tribunal therefore dismissed these appeals for default. There is nothing to show that the

order of the Tribunal was without jurisdiction so as to Justify interference by this court by issuing a writ of certiorari to quash the proceedings. It

may be observed that u/s 66 of the Act, it was open to the assessee to have asked for a reference raising the same question which was urged

before us. We do not agree with the contention of the learned advocate that the question now agitated before us is not a question of law and that it

did not arise out of the orders of the Appellate Tribunal. The very jurisdiction of the Appellate Tribunal to dismiss the appeal for default without

disposing of it on merits is the question raised before us, and we fail to see how that question is not one which did not arise out of the orders of the

Appellate Tribunal. He could have therefore asked for a reference to this court; but he did not avail himself of that remedy.

We do not wish to rest our decision on this aspect of the case, as we disagree with the contentions of the learned Advocate regarding the

construction of Sub-section (4) of Section 33 of the Act and Rule 24 of the Income Tax Appellate Tribunal Rules, 1946. The same view was

taken by the Allahabad High Court in -- Bhagwan Radha Kishen Vs. Commissioner of Income Tax, . It is no doubt true that under the Act and

under the Appellate Tribunal Rules, 1946, no provision is made for restoring appeals which were dismissed for default. The Allahabad High Court,

however, thinks that it is the inherent right of a Tribunal to set aside an order of dismissal for default, but we think it is unnecessary to express, any

opinion on that question in this case. If it is a lacuna, it is a matter for the appropriate authority to remedy it.

4. In the result, the petitions are dismissed with costs, Rs. 250 in W. P. No. 679 of 1952.

