

(1940) 09 AHC CK 0037
In the Allahabad High Court
Case No : Miscellaneous Case No. 728 of 1938

SETH KANHAIYA LAL GOENKA,

APPELLANT

Vs

RE.

RESPONDENT

Date of Decision : 18-09-1940

Acts Referred:

Income Tax Act, 1961 — Section 30, 66(3)

Citation : (1941) 9 ITR 25

Final Decision : Dismissed

Judgement

This is an application by an assessee Seth Kanhaiya Lal u/s 66(3) of the Indian Income Tax Act praying that this Court should require the Commissioner to state a case and refer the same to us after formulating certain questions for our decision. The learned Commissioner refused to state a case on the ground that the questions on which reference was sought did not arise out of the appellate order of the Assistant Commissioner.

The facts may now be stated. The assessment year with which we are concerned is 1934-35, and on April 3, 1934 the Additional Income Tax Officer of Meerut issued a notice u/s 22(2) to the assessee asking him to submit a return. The return was submitted in June 1934, but by an application in September 1935 the assessee objected to the jurisdiction of the Income Tax Officer of Meerut. A question about the place of assessment thus arose within the meaning of Section 64(3) of the Act and the Income Tax Officer referred the matter to the Commissioner of Central and United Provinces for determination. The Commissioner by an order dated October 21, 1935 asked the Income Tax Officer to obtain an affidavit from the assessee and an affidavit containing all the statements upon which the assessee objected to being assessed in the United Provinces was given. The contention of Seth Kanhaiya Lal was that the principal place of business and his residence was in Calcutta and he should, therefore, be assessed there. The Commissioner of Income Tax, Central and United Provinces, then entered into correspondence with the Commissioner of Bengal and it was ultimately decided that so far as assessment of 1934-35 and 1935-36 were

concerned, they should be completed in the United Provinces at Meerut and assessments thereafter beginning from 1936-37 should be made in Calcutta. There was some misunderstanding by the Income Tax Officer of Meerut and he seems to have transmitted the records for the years 1934-35 and 1935-36 to Calcutta, but the Income Tax Officer of Calcutta drew the attention of the Meerut Officer to the agreed orders passed by the Commissioners of the two Provinces and requested him to proceed with the assessments for the years 1934-35 and 1935-36.

The Income Tax Officer of Meerut then became apprised of the correct situation and proceeded with the assessment of 1934-35. The assessee continued to object to the jurisdiction of the Meerut Income Tax Officer, but the assessment for 1934-35 was completed on June 23, 1937.

There was an appeal to the Assistant Commissioner and amongst other points which dealt with the amount of the tax a point was taken regarding the jurisdiction of the Income Tax Officer of Meerut. The Assistant Commissioner on this latter point after stating the entire proceedings by which the question of the place of assessment was ultimately determined observed, "In fact no fresh proceedings u/s 64 were needed afterwards and if the appellant has any grievance in this respect, I cannot adjudicate upon it as no appeal is provided by Section 30 of the Income Tax Act against any order u/s 64." It is clear that the Assistant Commissioner was of the opinion that an appeal to him on a question of jurisdiction was incompetent. He then proceeded to dispose of the other questions raised in the appeal and dismissed the same.

There was then, as is usual in cases of this kind, application to the Commissioner u/s 33 of the Act and an application requesting the Commissioner to state a case u/s 66(2) of the Act. The learned Commissioner refused to give any relief u/s 33 of the Act and has referred one question of law for our decision arising out of the appellate order of the Assistant Commissioner as regards the amount of the assessment (connected Miscellaneous Case No. 409 of 1938) but has refused to refer any questions as regards the jurisdiction of the Income Tax Officer, being of the opinion that as no appeal is provided u/s 30 against an order passed under 64, the said questions did not arise out of the appellate order of the Assistant Commissioner, and, as such, they could not form the subject of reference to the Honble the High Court u/s 66(2).

By this application it is contended before us that this decision of the Commissioner is not correct and that we should, therefore, ask him to state a case on the point of jurisdiction also. From the facts which we have given above, it is clear that the assessee before assessment questioned the jurisdiction of the Income Tax Officer of Meerut and that Officer rightly referred the question to his Commissioner, and then the Commissioner obtained from the assessee an affidavit in support of the objections of the assessee and ultimately in consultation and in agreement with the Commissioner of Bengal decided the question of the place of assessment. The question, therefore, was decided in

strict conformity with Section 64(3) of the Act, and we hold the view that the matter has become final and we are not competent u/s 66 to interfere with that decision.

Our powers are circumscribed by Section 66 of the Act and only a question of law arising out of the appellate order of the Assistant Commissioner can be referred to us. The Assistant Commissioner obtains his jurisdiction to decide an appeal against the decision of an Income Tax Officer under the provisions of Section 30 of the Act, and as was pointed out by one of us who delivered the principal judgment in the case of this very assessee against the Commissioner of Income Tax, Seth Kanhaiyalal v. Commissioner of Income Tax, C.P. & U.P. it is not permissible to an assessee to create a question arising out of the appeal by putting it in the grounds of appeal when as a matter of fact the assessee is not competent to raise the plea and the Assistant Commissioner is not competent to raise the plea. It was said :-

"There is, of course, nothing to prevent an assessee from putting any plea he may choose into his memorandum of appeal and in that way it can be said that a decision of any such point will create a question arising out of the appeal; but what is to be seen is whether the question is one that properly arises out of the appeal. In other words, was the assessee competent to raise this plea before the Assistant Commissioner ?"

We think that we have said enough to show the circumstances under which an order u/s 64(3) was passed and we have only got to say that u/s 30 an assessee has been given the right to appeal to the Assistant Commissioner against the Income Tax Officers decision on certain points only and those points do not cover a decision u/s 64. The wisdom of the Legislature in not allowing an appeal u/s 64 is obvious because, as pointed out by the Assistant Commissioner in this very case, it could not be expected that a subordinate officer should have the right to question the decision of his superior officer.

Some arguments were then advanced before us as to the desirability of this Court interfering where there has been a manifestly wrong decision of the Income Tax authorities or a patent usurpation of jurisdiction by them. It is said that it has been held by this Court in In the matter of Dine Nath Hem Raj, that where an Income Tax Officer proceeded to decide the question of the principal place of business, when a dispute on the point had arisen in flagrant disobedience of the provisions of Section 64, he had no jurisdiction whatsoever to make the assessment and "to refuse to answer the questions on the ground that the procedure by which this stage has been reached is irregular would be a denial of justice". It is not necessary for the purpose of deciding this case to state in detail the complicated facts of Dina Nath Hem Rajs Case and to elaborate the reasonings given by the learned Judges therein for deciding certain questions. It appears to us that their Lordships were very much impressed by the fundamental irregularity about the assessment by reason of lack of jurisdiction and then by the exparte decision of the Income Tax Officer when, as a matter of

fact, the assessee had committed no default and by the fact that the only proper inference which any court of law could draw from the circumstances was that the principal place of business was in Calcutta and not in Cawnpore (where the assessment was made). They therefore held that it would be a denial of justice either for their Lordships to refuse to answer the questions raised by the case for the Commissioner to deal finally with the matter otherwise than in accordance with the answers which they then proceeded to give.

The facts of the case were very different from the facts of the present case, but we wish to quote what was observed on a point which is strictly relevant to the present case. They said :-

"Where such a question, as we have indicated, arises as to the principal place of business, and such question has been determined by the Commissioner, or where the question is between places in more Provinces than one, by the Commissioners concerned, or by the Board of Inland Revenue, such decision is final. There is no right of appeal, and no power in the High Court to interfere with it, nor do the provisions of Section 66, which give the assessee a right to require the Commissioner to refer to the High Court any question of law or, in the event of his refusal to apply to the High Court for a statement of the case, apply to a decision made u/s 64."

We are not called upon to say as to what we ourselves would have done on facts which arose in Dina Nath Hem Rajs Case, and we should not be deemed to agree with everything that was said in the case, but we agree that where the place of assessment has been decided under the provisions of Section 64(3) and an Income Tax Officer accepting the final order of the Commissioner or Commissioners or the Central Board of Revenue proceeds to make an assessment, the plea of jurisdiction cannot be raised before the Assistant Commissioner on appeal and the High Court cannot deal with that question u/s 66 of the Act.

It was then contended that the final order of the Commissioners of this Province and Bengal was passed not in strict conformity with section 64(3) and was therefore an illegal and invalid order and could be questioned in this Court and the illegality that was pointed out was that the proviso to Section 64(3) was ignored and the assessee was not given an opportunity of representing his views. The words occurring in the proviso are that the assessee should have had an opportunity of representing his views and not that the assessee should have been formally heard on his objection. This very Act draws a distinction between the two expressions. In Section 31 it is provided that the Assistant Commissioner shall fix a day and place for the hearing of the appeal the may from time to time adjourn the hearing. In Section 32(3) it is provided that in disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit. The Legislature used a different phraseology in Section 64 and we hold the view that the assessee had an opportunity in the present case of representing his views by stating them in the

affidavit which was called for by the Commissioner. It was not necessary that the Commissioner, U.P., after he had consulted the Commissioner, Bengal, should have apprised the assessee of their joint decision and given him an opportunity of showing cause why that decision should not be given effect to.

It was also argued by the learned counsel for the Department that even if such an opportunity of representing his views had not been given to the assessee, the order none the less would have been an order u/s 64(3) and could not be challenged in the way in which it is attempted to be challenged by the assessee in the present application; but it is not necessary for us to decide this point because we have come to the conclusion that the formalities enjoined by the proviso were complied with in the present case.

The conclusion at which we have arrived is that the decision of the learned Commissioner that the questions formulated by the assessee on the point of jurisdiction cannot form the subject of a reference to the High Court is correct. We, therefore, reject this application with costs . The counsel for the Department is entitled to a fee of Rs. 75.

Application rejected.