

(1970) 03 DEL CK 0014

In the Delhi High Court

Case No : Civil Writ Appeal No's. 663D and 668D of 1965

Seth R. Dalmia

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 24-03-1970

Acts Referred:

Citation : (1970) ILR Delhi 85

Hon'ble Judges : Prakash Narain, J;H.R. Khanna, J

Bench : Division Bench

Advocate : Sukumar Mitra, K.K. Jain, Bishambar Lal, A.K. Sen, A.N. Kirpal, B.N. Sen and D.K. Kapur, for the Appellant;

Judgement

This Judgment has been overruled by : Union of India (UOI) and Others Vs. Seth R. Dalmia, AIR 1975 SC 1017 : (1975) 4 SCC 16 : (1975) 3 SCR 735 : (1975) 7 UJ 275

Prakash Narain, J.

(1) This judgment will dispose of six writ petitions bearing Nos. 663-D of 1965 to 668-D of 1965

(2) All these petitions have been filed by Shri R. Dalmia challenging the validity and legality of notices served on him u/s 148 of the Income Tax Act, 1961 apart from challenging the validity, legality and Constitutionality of Sections 147 and 148 of the Income Tax Act, 1961. Petitions bearing Nos. 663-664 and 665 of 1965 relate to notices served by respondent No. 3, the Income Tax Officer, on the petitioner in his individual capacity respectively for the Assessment Years 1950-51, 1951-52 and 1949- 50 the corresponding accounting years ending on 30th September, 1949, 30th September, 1950 and 30th September, 1948. Petitions bearing Nos. 666, 667 and 668 of 1965 are in respect of the assessment years 1949-50, 1951-52 and 1950-51 respectively and pertain to notices served on the petitioner as a member of an alleged association of persons comprising of R. Dalmia, J. Dalmia and S. P. Jain.

(3) Briefly stated, the facts leading up to these petitions are that on returns of income being filed for the various assessment years, in accordance with the provisions of Indian Income Tax Act, 1922, the income tax Officer, Special Investigation Circle, Patna made assessments on the petitioner as an individual for the assessment years 1949-50, 1950-51 and 1951-52. Thereafter it appears, a Commission was appointed to go into the affairs of various companies with which the petitioner was allegedly associated. This Commission, commonly known as the Vivian Bose Commission, submitted a report. On facts allegedly disclosed in and by the report of the said Commission respondent No. 3 on being designated as the Income Tax Officer to deal with the assessment and re-assessment of the income of the petitioner, sought to proceed under the provisions of Section 147 of the Income Tax Act, 1961. He, Therefore, issued two sets of notices to the petitioner u/s 148 of the Income Tax Act, 1961, the first in respect of his income as an individual and the second set in respect of the petitioner's alleged income as a member of an association of persons. By these notices respondent No. 3 informed the petitioner that in his respective capacity as an individual or as a member of an association of persons income of the petitioner had escaped assessment for the relevant year to which each individual notice pertained and that the Income Tax Officer had reasons to believe that it was so. The petitioner was, Therefore, notified to deliver to respondent No. 3 within 30 days of the date of service of the notice a return in the prescribed form of his income respectively as an individual or as a member of an association of persons for the relevant assessment year. The petitioner was further informed that the notice u/s 148 of the Income Tax Act, 1961 was being served on him "after obtaining the necessary satisfaction of the Central Board of Direct Taxes New Delhi". The notices for the assessment years 1950-51, 1951-52 and 1949-50 (Writ petitions Nos. 663-D, 664-D and 665-D of 1965) were all dated 7th September, 1965 and were served on the petitioner as an individual on 8th September, 1965. The notices challenged in the other three petitions, which were served on the petitioner as a member of an association of persons were also dated 7th September, 1965 but were served on 11th September, 1965. Aggrieved by the service of these notices the petitioner filed the present petitions.

(4) Various points have been raised by the petitioner, which are common to all the six petitions, by way of challenge to the legality of the notices served on him. One of the objections is that the notices served by respondent No. 3 were invalid as there was no valid sanction of the Central Board of Direct Taxes as was pre-requisite by virtue of the provisions of Section 151 of Income Tax Act, 1961. It is not necessary to discuss all the points raised by the petitioner by way of the challenge to the validity of the notices served on him as, in our opinion, a writ must issue quashing the notices which are the subject-matter of the challenge in all the six petitions on account of there being no valid sanction of the Central Board of Direct Taxes, New Delhi in the circumstances of these cases as required by sub-section (1) of Section 151 of the Income Tax Act, 1961.

(5) The challenge in respect of the non-compliance of the provisions of Section

181 of the Income Tax Act, 1961 is that the Board as such has not given prior sanction to the issue of notices u/s 148 or at least no member of the Board duly authorised has given the requisite sanction. The respondents' case in this behalf is that the Income Tax Officer put up the case to the Central Board of Direct Taxes by a comprehensive note prepared by him and Shri S.A.L Narayana Row a member of the Central Board of Direct Taxes was satisfied on the reasons recorded by the Income Tax Officer that for each of the assessment years and in each of the capacities a fit case had been made out for the issue of a notice u/s 148 and this satisfaction having been recorded, notices were issued by the Income Tax Officer in due compliance with the requirements of law.

(6) In order to appreciate the contentions on behalf of the petitioner Section 151(1) may be read first. It is in the following terms:-

"151(1)No notice shall be issued u/s 148 after the expiry of eight years from the end of the relevant assessment year, unless the Board is satisfied on the reasons recorded by the Income Tax Officer that it is a fit case for the issue of such notice."

(7) On a reading of this section, prima facie, it appears that it is the Board as a whole which has to be satisfied and has to grant the necessary sanction. All the same, by virtue of the provisions of rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964 framed by the Central Government in exercise of the powers conferred by Section 4(1) of the Central Board of Revenue Act, 1963, the Chairman may, by an order made with the previous approval of the Central Government, distribute the business of the Board among himself and other members and specify the cases or class of cases which shall be considered jointly by the Board. Acting under this provision, the respondents assert, office order No. C/1 of 1964 dated 1st January, 1964 was issued with the previous approval of the Central Government which laid down the distribution of work between the Chairman and the member of the Board. Inter alia, the work allotted to the Chairman was in respect of "all assessment work of income tax" and the work allotted to the member (Shri S. A. L. Narayana Row) was "income tax-judicial work, statistics etc." It has been urged on behalf of the respondents that subsequently the work with regard to cases for issue of sanction of re-opening of assessments was dealt with by Shri S. A. L. Narayana Row only by way of an internal arrangement as both the Chairman and the member could deal with it by the allocation made under the order regarding distribution of work dated 1st January, 1964. Support for this contention is sought by the respondents from a copy of the office noting filed along with an affidavit dated 4th July, 1969 sworn by Shri J. P. Singh, formerly Chairman, Central Board of Direct Taxes, New Delhi. It is urged that grant of Sanction u/s 151 is in the nature of judicial work, though it pertains also to assessment and re-assessments, and so the member of the Board always had this power and the internal arrangement made that the member would deal with such cases of sanction instead of the Chairman did not require any previous approval of the"

Central Government as envisaged by rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964. The petitioner's contention on the other hand is that on a reading of the order regarding distribution of work dated 1st January, 1964 it was the Chairman and Chairman alone who could grant the necessary sanction to issue notices u/s 148 and the member giving such a sanction has acted without jurisdiction as the work of giving sanction was never allocated to him after due compliance with the requirements of rule 4, in as much as no previous approval of the Central Government was obtained to change the distribution of business between the Chairman and the Member.

(8) It will be pertinent here to reproduce two paragraphs of the affidavit of 4th July, 1969 sworn by Shri J. P. Singh. The same read as under :-

"5. That on 18-6-1964, I personally discussed the proposal regarding transfer of work from myself to the Member, Central Board of Direct Taxes with Shri V. T. Dahejia, the then Secretary to the Government of India, Ministry of Finance (Department of Revenue & Expenditure). 6. That Shri V. T. Dahejia, the then Secretary to the Government of India, Ministry of Finance (Department of Revenue & Expenditure) approved the said proposal to which effect a note was made by me on 18-6-1964."

(9) On a reading of the affidavit it would appear that the work which had till then been done by the Chairman was to be transferred to the Member and approval of the Secretary to the Government of India was obtained for this transfer or allocation of work. The office note attached to the affidavit, however, is not in line with the averments in the affidavit. A reading, of the office note reveals that on 28th March, 1964 a note was put up that cases involving transfer of assessments were statutory orders and should be passed by a member of the Board instead of officers in the Board as was being done till then. This note was marked by the Chairman to the member Shri S. A. L. Narayana Row, who agreed that the order of transfer was to be passed by a member of the Board and he suggested that the work may be done by him. The file on being put up again to the Chairman went back to the member with a note by way of an enquiry by the Chairman whether the member would also consider his taking up cases of issue of sanction for re-opening of assessments. On 31st March, 1964 Shri Row recorded that he would take up such cases. On the same day the Chairman recorded the note "Thanks". Thereafter, it appears from the noting, a draft regarding the necessary orders to be issued was put up wherein Shri B. B. Ghosh, an officer in the Board, recorded that to effect such transfer of business from the Chairman to the member prior approval of the Central Government would be necessary in view of the provisions of rule 4 of the Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964. Thereafter there are several notes which are not relevant except to mention that drafts and revised drafts were put up. On 18th June, 1964 there is finally a note by the Chairman reading as under:-

"DISCUSSED with Secy. (R&E). It is just a minor internal arrangement. No formal

order is necessary."

(10) It is urged on behalf of the respondents that it is obvious on a reading of these nothings that the Secretary to the Government of India must have been of the view that by virtue of the allocation order earlier made in 1964 a member had the authority to issue sanctions u/s 151 of the Act and no fresh order need be passed with the previous approval of the Central Government and that is why no formal order changing the allocation of work was issued or required to be issued.

(11) To our mind the contention of the respondents is without force. The Central Board of Direct Taxes does not while granting sanction for re-assessment do any judicial work. Its primary function is to control the various authorities constituted by the Income Tax Act, 1961 and give directions for the proper implementation of the provisions of the Act. By way of an illustration one may notice the provisions of sections 120, 121, 122 and 126 of the Income Tax Act, 1961. The Directors of Inspection are to perform such functions of any other Income Tax authority as may be assigned to them by the Board, the Commissioners are L4HCD/70 -7 to perform their functions in respect of such areas or of such persons or classes of persons or such incomes or classes of income or of such cases or classes of cases as; may be directed by the Board; the appellate jurisdiction of the Appellate Assistant Commissioners of Income tax is to be exercised in respect of such areas or such persons or classes of persons or such incomes or classes of incomes as may be directed by the Board and notwithstanding the other provisions in Chapter Xiii of the Act of 1961 the Board may, by notification in the official gazette, empower Commissioners, Appellate Assistant Commissioners, Inspecting Assistant Commissioners and Income Tax Officers to perform such functions in respect of such area or of such classes of persons or of such classes of income as may be specified in the notification and on a notification being so issued the persons notified alone would be entitled to exercise the various jurisdictions of the authorities under sections 120, 122, 123 and 124 of the Act. Thus directions may be issued by the Board in respect of the authorities carrying out the assessment or the re-assessment work of incometax as well as the authorities doing judicial work in respect of Income Tax assessment. Apart from these functions the Board has certain statutory functions, as for instance, granting of sanction u/s 151(1) of the Act. This statutory duty has to be performed in accordance with the provisions of the statute or the statutory rules. That the performance of the duty imposed by section 151 is an administrative function can no longer be disputed and we are not impressed by the contention of Mr. A. Sen that it would be a judicial function to grant a sanction envisaged by section 151. The Supreme Court in *S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore*, construed a similar provision of the Income Tax Act of 1922. They held that the proceedings for assessment or re-assessment u/s 34(1)(a) start with the issue of a notice and it is only after the service of the notice that the assessed whose income is sought to be assessed or reassessed, becomes a party to those proceedings. The earlier

stage of the proceedings for recording the reasons of the Income Tax Officer and for obtaining the sanction of the Commissioner are administrative in character and are not quasi-judicial. On a true construction of the allocation of business as per office order of 1964 it would appear that it allocated the work of issuing directions regarding the assessment (which would include re-assessment) work to the Chairman only. It follows, Therefore, that the allocation of business made by the office order No. C/I of 1964 did not authorise the member. Shri S. A. L. Narayana Row, to grant sanctions for issue of notices u/s 148 and this work was really within the competence of the Chairman himself. As admittedly no formal order was ever passed thereafter changing the allocation with the previous approval of the Central Government, the sanction as granted by Shri S. A.L. Narayana Row is without jurisdiction and authority. Since no notice u/s 148 of the Act of 1961 can be issued without the compliance of the provisions of section 151 of the Act and in the present cases we are of the view that there is no valid sanction granted prior to the issue of the impugned notices, it has to be held that the Income Tax Officer cannot proceed u/s 14 of the Act on the strength of the notices issued by him. Accordingly, we quash the notices issued to the petitioner in each of the six cases and issue a writ of prohibition against the respondents restraining them from taking any action or proceeding against the petitioner in any manner or to make any assessment or to take any proceeding in pursuance of the respective notices in each of the writ petitions.

(12) In the circumstances, we will make no order as to costs.