
(1964) 03 CAL CK 0010
In the Calcutta High Court
Case No : Matter No. 413 of 1963

SHAIK MD. SHARRI BARRY	Vs	APPELLANT
Income Tax OFFICER AND OTHERS.		RESPONDENT

Date of Decision : 07-03-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 41(1)

Citation : (1965) 58 ITR 717

Judgement

One Muhammad Ibrahim Barry, now deceased, was a man of property. During his lifetime, he dedicated two premises belonging to him, namely, premises No. 11, Lindsay Street, and No. 8, Kanai Seal Street, Calcutta, as wakf property, under a deed of wakf dated February 5, 1927. By another deed, dated June 22, 1930, the said Supreme Court Barry appointed the petitioner as mutawali to the wakf estate. In addition to the properties dedicated as wakf, the said Muhammad Ibrahim Barry had other properties which were his personal properties. Muhammad Ibrahim Barry died in January, 1937.

For the assessment years 1958-59 to 1960-61, the Income Tax Officer, "D" Ward, District III(2), Calcutta, added the income from the personal properties left by the Muhammad Ibrahim Barry to the income of the wakf properties and made an assessment on the total income. That assessment was set aside on appeal and the Appellate Assistant Commissioner, by an order dated December 29, 1962, directed that the income from the wakf properties should be separately assessed.

Pursuant to the order of the Appellate Assistant Commissioner, the Income Tax Officer started separate assessment of the income from the wakf properties as also from the personal priorities of Muhammad Ibrahim Barry, deceased. The income from the wakf estate was assessed for the assessment year 1958-59, treating the assessee as "wakf estate of late Ibrahim Barry through Mutawalli Shaik Md. Sharri Barry," in the status of association of persons. The tax was computed at the maximum rate under the proviso to section 41(1) of the Income Tax Act, 1922, on the theory that the shares of the beneficiaries under the wakf

were not determinate. A copy of the assessment order for 1958-59 has been marked as exhibit "A" in this rule, by consent. In this rule, the petitioner has not challenged the assessment of tax for the year 1958-59. Mr. I. P. Mukherjee, learned advocate for the petitioner, stated that aggrieved by the application of the proviso to section 41(1) of the Income Tax Act, 1922, on the income of the wakf property for the year 1958-59, the petitioner preferred an appeal to the Appellate Assistant Commissioner, which appeal he stated was pending. For the assessment years 1959-60 to 1961-62, computation of tax on the income assessed was also made at the maximum rate, without assigning any reasons whatsoever. The petitioner felt aggrieved by the computation of tax at the maximum rate for those years and moved this court, under article 226 of the Constitution, praying for a writ of certiorari for the quashing of the orders of assessment and for a writ of mandamus directing the respondents not to take further action under the orders and obtained this rule.

Mr. I.P. Mukherjee, learned, advocate for the petitioner, contended that the order of assessment, applying the maximum rate of tax, for the year 1958-59, did not operate as res judical for the subsequent years and if the Income Tax Officer wanted to apply the maximum rate of tax for the years 1959-60 to 1961-62, he should have stated the reasons for doing so in the several assessment orders. In support of this contention that the assessment order, applying the maximum rate for the year 1958-59, did not operate as res judical for the subsequent years, Mr. Mukherjee drew my attention to the observation of the Supreme Court in *Instalment Supply (Private) Ltd. v. Union of India*, in which Sinha speaking for the court, observed as follow :

"It is well-settled that in matters of taxation there is no question of res judical because each years assessment is final only for that year and does not govern later years because it determines only the tax for a particular period (see the decision of House of Lords in *Society of Medical Officer of Health v. Hope*, approving and following the decision of the Privy Council in *Broken Hill Proprietary Co. Ltd. v. Broken Hill Municipal Council*."

He also relied on another judgment of the Supreme Court taking the same view, namely, *New Jehangir Vakil Mills Co. Ltd. v. Commissioner of Income Tax*. That the order of assessment for the year 1958-59 did not operate as res judical for the subsequent years admits of little doubt. But the question remains whether the Income Tax Officer was bound to repeat the same reasons for applying the maximum rate of tax for the subsequence years also.

In support of his contention that the Income Tax Officer was bound to give his reasons, Mr. Mukherjee drew my attention, firstly, to what Page speaking for the Special Bench, observed in the case of *Commissioner of Income Tax v. Thaver Brothers*. Page observed that an Income Tax Officer was not bound to come to the same conclusion as that which his predecessor Income Tax Officer had reached in a previous year unless he was otherwise satisfied; he should approach the subject with an open mind and view the matter from the right angle. The

Rangoon High Court decision, in my reading, contains nothing which supports the contention of Mr. Mukherjee about the recording of reasons.

Mr. Mukherjee next invited my attention to a Madras High Court decision in *Gunda Subbayya v. Commissioner of Income Tax*, in which Leach C.J., speaking for the Special Bench, observe :

"From every point of view it is desirable that the Income Tax Officer should indicate in his order the material on which he has made his assessment, but I realise that he cannot become compelled to do so."

The above decision also does not support the contention of Mr. Mukherjee about the recording of reasons but rather goes against it.

Mr. Mukherjee, lastly, drew my attention to a judgment of the Court of the Judicial Commissioner at Sind in *Commissioner of Income Tax v. Khemchand Ramdas*, in which Davis J. C., speaking for the court, observe :

"Further, as an order u/s 23(3) is appealable, that order should contain with sufficient precision the material on which the assessment is based so that the appellate authority can form a just opinion of the fairness of the assessment."

It is noteworthy that even the Sind Judicial Commissioners Court did not go to the length of holding that the assessment order must be a speaking order. It merely indicated what an assessment order "should" contain. The question for my consideration is not how better the order might have been but whether, as it stands, the order is liable to be quashed.

The law on the point has been restated in *Halsburys Laws of England* (3rd edition), vol. II, article 118, in the following language :

"Whether upon the face of the proceedings themselves it appears that the determination of the inferior tribunal is work in law, certiorari to quash will be granted. The Tribunal is not (unless required by statute) obliged to set out in its adjudication the reasons which led it to its decision, but if it does state them the superior court will consider the question whether they are right in law, and if they are wrong in law, will quash the decision."

Also in a recent judgment of the Supreme Court in *Syed Yakub v. Radhakrishnan* (paragraph 9) the law on the point has been stated as follow :

"It may be conceded that it would have been better if the Appellate Tribunal had indicated that it rejected the case of respondent No. 1 in regard to his alleged workshop at Chidambaram but we do not think that the failure of the Appellate Tribunal to give a reason in this behalf, or to refer specifically to the evidence adduced by the respondent No. 1, would by itself constitute such an error in its decision as to justify issue of a writ of certiorari under article 226."

The law being as stated above, I overrule the contention of Mr. Mukherjee that the failure to indicate the reasons for applying the maximum rate of tax amounts

to such an infirmity in the assessment order as would justify me in quashing the order by a writ.

Mr. Mukherjee lastly contended that the petitioner was assessed in the status of association of persons. Now, that by itself would not attract the proviso to section 41(1) of the Income Tax Act, 1922, or the maximum rate prescribed by the Finance Act, 1959, unless the proviso was found expressly to apply in the facts and circumstances of the case. Since that was not done Mr. Mukherjee contended, there was an error apparent on the face of the record which would justify me in quashing the assessment order. I am unable to uphold this argument also. The maximum rate of tax may have been correctly applied on the assessment. There is nothing to show from the record that the application of the maximum rate must have been wrongly done. If the assessment had been challenged in appeal, the onus would have been on the taxing authority to justify the computation of tax at the maximum rate, in the facts and circumstances of the case.

If the taxing authority failed there, the assessment of tax might have been set aside. Regard being had to the scope of this rule, I cannot hold that the failure to indicate the reasons for assessment at the maximum rate constitutes such an infirmity in the order that it must be quashed.

I, therefore, discharge this rule but make no order as to costs.