
(1964) 04 MP CK 0007

In the Madhya Pradesh High Court

Case No : M. C. C- No. 195 of 1963 (J)

Singhai Manjilal and Sons

APPELLANT

Vs

Commissioner, Income Tax

RESPONDENT

Date of Decision : 07-04-1964

Acts Referred:

Income Tax Act, 1922 — Section 66(3)

Citation : (1965) JLI 814

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dixit, C.J.—This is an application u/s 66(3) of the Indian income tax Act, 1922, (hereinafter referred to as the Act) for an order requiring the income tax Appellate Tribunal to treat an application filed by the petitioner u/s 66 (1) as made within the time allowed by that section.

2. The application, which the Tribunal held as out of time, was file in these circumstances. The Department filed before the Tribunal an appeal against an order of the Appellate Assistant Commissioner holding that at amount of Rs. 20, 000 received by the petitioner assessee as a premium to giving a lease of Shri Krishana Talkies was not texable in the hands of the assessee. In that appeal, the assessee repeated the contention raised by it be fore the Appellate Assistant Commissioner, namely, that the proceeding taken by the income tax Officer u/s 34 of the Act were invalid. (sic) 27th November 1962 the Tribunal passed an order holding that the amount of Rs. 20,000- received by the assessee was taxable and thus allowed the Department's appeal. The order of the Tribunal upholding the Department's contention concluded by the following observations -

As we have decided the above appeal by the Department against the assessee, it will now be necessary to consider the second contention raised by the assessee before the Appellate Commissioner that the proceedings u/s 34 as taken by the

income tax Officer are invalid. As an assurance was given by us to the assessee at the time of hearing of the appeal that an opportunity would be given to the assessee to hear it on the question of the validity of initiation of proceedings under Sec. 34 in case point raised in the above appeal by the Department was decided against it, the case will be posted for hearing on that point only.

The appeal of the Department on the point raised by it succeeds and is allowed.

The appeal was then heard by the Tribunal on the content on raised by the assessee in regard to the invalidity of the proceedings u/s 34 of the Act, and on 15th February 1963 the Tribunal passed an order rejecting the contention of the assessee. The operative portion of the order passed by the Tribunal on 15th February 1963 was in these words-

The point dealt with in this appeal is, therefore, decided against the assessee and the net result is that the appeal of the Department succeeds and is, therefore, allowed.

3. The assessee was then served on 17th December 1962 with the notice of the order passed on 27th November 1962. On 14th March 1963, the petitioner assessee filed an application u/s 66 (1) of the Act. In that application it was stated by the petitioner that the appeal out of which the application arose was decided by the Tribunal on 27th November 1962 and that a copy of that order was served on the assessee on 17th February 1963. This latter was admittedly made in error as the notice of the order passed on 27th November 1962 was served on the assessee on 17th December 1962, and not on 17th February 1963. The questions, which the assessee required the Tribunal to refer to this Court for decision were all with regard to the inclusion by the Tribunal of the amount of Rs. 20, 000/ in the taxable income of the assessee. This application was accompanied by the prescribed fee of Rs. 100/. In this application u/s 66 (1) of the Act made on 14th March 1963, there was no reference whatsoever to the Tribunal's order passed on 15th February 1963 or to any question of law arising out of that order of the Tribunal which the assessee desired to be referred to this Court. On 15th July 1963, the Tribunal received an application by the assessee saying that the appeal arising out of income tax proceedings for the assessment year in question was decided by the Tribunal on 15th February 1963; that a notice of the order dated 15th February 1963 was served on the assessee on 29th April 1963; that the assessee had already filed a reference application on 14th March 1963 requesting the Tribunal to refer to this Court certain questions of law; that further the question of law, namely, whether on the facts and circumstances of the case the Tribunal was right in holding that the income tax Officer had rightly invoked the provisions of section 34 (1) of the Act, also arose out of the Tribunal's order dated 15th February 1963; and that the Tribunal should, therefore, state the case of the assessee u/s 256(1) of the income tax Act, 1961, and refer to this Court the question of the legality of the proceedings u/s 34 of the Act of 1922. This application for "additional reference" was not accompanied by any fee of Rs 100.

4. The Tribunal took the view that the assessee's application u/s 66 (1) of the Act filed on 14th March 1963 for referring certain questions of law to this Court said to be arising out of the Tribunal's order dated 27th November 1962 was barred by time inasmuch as it was made more than sixty days from 17th December 1962, the date on which the assessee was served with the notice of the order. It further held that the assessee's prayer for condonation of delay made by a telegram received by the Tribunal on 15th February 1963 followed by a letter of the assessee dated 14th February 1963 could not be granted as Sec. 66 (1) conferred no power on the Tribunal to condone delay in the filing of an application under that provision and that the delay could not be condoned u/s 256(1) of the Act of 1961 as the reference was governed by the old Act and not the new Act as made clear by clause 4 of the income tax (Removal of Difficulties) Order, 1962. The Tribunal held that even if it be assumed that the Tribunal's order dated 27th November 1962 was not a final order disposing of the Department's appeal and that the application made by the assessee on 14th March 1963, read with its subsequent application dated 11th July 1963 for additional reference, which was received by the Tribunal on 15th July 1963, was an application requesting the Tribunal to refer to this Court certain questions of law arising out of its order dated the 15th February 1963, still that application was out of time inasmuch as it was received by the Tribunal on 15th July 1963 more than sixty days after 29th April 1963, the date on which the assessee was served with the Tribunal's order dated 15th February 1963.

5. It was argued by Shri Dharmadhikari, learned counsel for the petitioner, that the final order which the Tribunal passed disposing of the Department's appeal and deciding the assessee's contention in regard to the validity of the proceedings u/s 34 was passed on 15th February 1963; that it was open to the assessee to make an application u/s 66 (1) at any time after the pronouncement of the Tribunal's final order dated 15th February 1963 and even before it had been actually served on 29th April 1963 with the notice of the Tribunal's order dated 15th February 1963; that, therefore, the application for reference made by the assessee on 14th March 1963 should have been treated by the Tribunal as an application asking the Tribunal to refer to this Court for decision the questions of law stated in that application and in the supplementary application dated 11th July 1963 received by the Tribunal on 15th July 1963 arising out of the Tribunal's final order dated 15th February 1963 as well as out of its earlier order dated 27th November 1962; and that the application dated 14th March 1963 u/s 66 (1) was thus made within time for a reference of the questions of law arising out of the Tribunal's final order. It was said that the final order was one not merely rejecting the assessee's contention but also allowing the Department's contention and the Department's appeal in regard to the inclusion of Rs. 20,000. Learned counsel relied on certain observations made by a Division Bench (at page 277) in *Avi J. Cama Vs. Banwarilal* ILR 1953 Nag. 267 to support the proposition that the assessee could apply for a reference u/s 66 (1) at anytime after the pronouncement of the Tribunal's order dated 15th February 1963 and

even before the assessu was actually served with the notice of that order.

6 In our judgment, this application must be dismissed. The petitioner's application dated 14th March 1963 u/s 66 (1), as an application for a reference of certain question of law arising out of the Tribunal's order dated the 27th November 1962 was clear not within time, and that application cannot on any principle or statutory p(sic)ision be viewed as an application for a reference of certain questions of law arising out of the Tribunal's order dated the 15th February 1963. Section 66 (1) contemplates an application for reference of a question of law arising out of an order made by the Tribunal u/s 33 (4). That provision says that "The Appellate Tribunal may after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.....". Neither section 66(1) nor section 33 (4) contains anything to suggest that the order passed by the Tribunal in an appeal, against which an application for reference of a question of law to the High Court is made, must be an order finally disposing of the appeal. In *Trikamlal Maneklal*. In *Re: Trikam Lal Maneklal*, , the Bombay High Court said that there was nothing express or implicit in section 33 (4) and 66 (1) of the Act which required that the order passed by the Appellate Tribunal against which an application for reference of a question of law to the High Court was made must be an order finally disposing of the assessment of the assessee and ruled that a reference could be made out of an order remanding the case to the lower Court provided that the order was one which finally disposed of the appeal and after which the Tribunal did not remain seized of the matter. The Allahabad High Court has, however, held in *Commissioner of Income Tax Vs. Shamsheer Jang Bahadur*, that when the Appellate Tribunal expresses its opinion on certain points argued before it and calls for further material to decide the rest of the appeal and passes the final order after hearing arguments on those points, the first order can in no sense be deemed to be an order u/s 33 (4) disposing of the appeal and the appeal in that case would be still pending and it could not be said to be finally disposed of till the passing of the final order. For the purposes of this petition, it is not necessary for us to decide whether when the Tribunal passes an interim order and a final order in an appeal, the interim order can be regarded as an order u/s 33 (4) for the purpose of a reference application u/s 66 (1), and, if so, in what circumstances. Even if it is assumed that an interim order of the type passed by the Tribunal in the present case on 27th November 1962 is an order entitling the assessee in the present case to ask for a reference of certain questions of law arising out of that order, there, can be no doubt that the order, which the Tribunal passed on 15th February 1963, was an order accepting the Department's contention and overruling the assessee's objection and was thus a final order disposing of the Department's appeal. The petitioner had a right u/s 66 (1) of making an application for reference of certain questions of law arising out of the order dated 15th February 1963.

7. Now, in the present case, the application for reference which the petitioner made on 14th March 1963, was an application for reference of certain questions

of law arising out of the Tribunal's order dated 27th November 1962. The Tribunal had no doubt pronounced its final order on 15th February 1963 and it may be assumed in favour of the petitioner that on 14th March 1963 it could have made an application u/s 66 (1) for a reference of certain questions of law arising out of the Tribunal's second order dated 15th February 1963 even before the petitioner was actually served with the notice of that order. But the application for reference dated 14th March 1963 was ex facie not an application for reference of certain questions of law arising out of the Tribunal's final order dated the 15th February 1963. u/s 66 (1), an application for reference has to be made in the "prescribed form. The form has been prescribed by rule 22-A of the income tax Rules. According to the prescribed form, the party applying for reference u/s 66 (1) has to give the number of the appeal giving rise to the reference, the date on which that appeal was decided and the date on which the notice of the order of the Tribunal was served on the party. Paragraphs 4 and 5 of the prescribed form require that the questions of law arising out of the order of the Tribunal must be stated, and the questions of law which the party applying for reference desires to be referred to the High Court must also be stated. The rules framed under the income tax Act, 1922, have the effect as if enacted in the Act itself. This has been made very clear by section 59 (5) of the Act which says that the rules made under the Act "shall be published in the official Gazette, and shall thereupon have effect as if enacted in this Act." If according to section 66 (1) an application for reference has to be in the prescribed form and rule 22 A prescribes the essentials of a reference application, then these requirements must be fully observed and strictly complied with before any reference application can be entertained. In AIR 1930 151 (Privy Council) , the Privy Council has held that the preliminary requirements of section 66 must be fully observed and complied with before the High Court could entertain any question u/s 66. The stringency of these requirements has also to be observed by the Tribunal.

8. In the application for reference made by the petitioner on 14th March 1963, it was no doubt stated that the reference arose out of the appeal filed by the Department. But it was stated in paragraph 1 of that application that the appeal was decided by the Tribunal on 27th November 1962. In paragraphs 4 and 5 of the application, the petitioner stated-

4. That the following questions of law arise out of the order of the Appellate Tribunal:

(1) Whether on the facts and circumstances of the case the Tribunal was right in holding that Rs. 20,000 is the income receipts in the hands of the assessee being a reimbursement of the profits which the assessee would have made if the assessee had chosen to build a cinema theatre and exploit the same for the purpose of earning the income. When the Department had not taxed the same on that ground nor even considered it at the lower stage.

(2) Whether on the facts and circumstances of the case the Tribunal was right in

holding that Rs. 20,000 was an income receipt being an reimbursement to the assessee for the profits which assessee would have made if the assessee had exploited the same for the purpose of earning income therefrom.

(3) Whether on the facts and circumstances of the case the Tribunal was right in looking to the transactions detached from the parties understood and treated the transactions as such at the time when they entered into the same.

5. That the applications, therefore, require under sub-section 256 of the aforesaid Act, that a statement of the case be drawn up and the question of law numbered above out of the question of law referred to in paragraph 4 above be referred to the High Court.

This application was thus on the face of it an application for a reference of certain questions of law arising out of the Tribunal's order dated 27th November 1962. Shri Dharmadhikari, learned counsel for the petitioner, asked us to read this application as one for a reference of certain questions of law arising out of the Tribunal's final order dated the 15th February 1963 simply for the reason that it was made on 14th March 1963 after the Tribunal had pronounced its final order on 15th February 1963 and because the petitioner had sent a supplementary application to the Tribunal on 11th July 1963 praying that the additional question of law arising out of the Tribunal's final order dated 15th February 1963 should also be referred to this Court. We are unable to see how this can be done in the face of the requirements laid down by rule 22-A for a reference application and when in the application dated 14th March 1963 there is no mention whatsoever of the Tribunal's order dated the 15th February 1963 or of any question of law arising out of that order. The application dated 14th March 1963 was plainly an application for a reference of certain questions of law arising out of the Tribunal's order dated 27th November 1962 and the fact that the petitioner sent a supplementary application to the Tribunal on 11th July 1963 did not make it an application for reference of certain questions of law arising out of the Tribunal's order dated 15th February 1963. So to read that application would be to ignore altogether the requirements of rule 22-A. In our opinion, it is impossible to read the application dated 14th March as an application for reference of certain questions of law arising out of the Tribunal's order dated 15th February 1963.

9. The position that, therefore, emerges is that the petitioner's application dated 14th March 1963 as an application for reference of certain question of law arising out of the Tribunal's order dated 27th November 1962 was clearly out of time inasmuch as it was made more than sixty days after 17th December 1962, the date on which the assessee was served with the notice of that order. On that application, the petitioner could not ask for a reference of the questions of law arising out of the Tribunal's order dated 15th February 1963. The supplementary application, which the assessee sent on 11th July 1963 and which was received by the Tribunal on 15th July 1963, did not alter the character of the application dated 14th March 1963 and could not also be regarded as an independent application for reference of the questions of law arising out of the Tribunal's

order dated 15th February 1953.

The supplementary application dated 11th July 1963 was not in the prescribed form and it was not accompanied by a fee of Rs 100. It was also received by the Tribunal on 15th July 1963 more than sixty days after 29th April 1963, the date on which the assessee was served with the Tribunal's order dated 15th February 1963. It must be added that before the Tribunal the petitioner all along treated the application dated 14th March 1963 as an application for a reference of questions of law arising out of the Tribunal's order dated 27th November 1962, and, accepting the position that the application was barred by limitation, prayed for the condonation of delay in the filing of that application.

10 For the foregoing reasons, the Tribunal was right in its conclusion of dismissing the petitioner's application dated 14th March 1963 on the ground that it was barred by limitation. This petition, therefore, fails, and is dismissed with costs. Counsel's fee is fixed at Rs. 150.