

PETITIONER:
COMMISSIONER OF INCOME TAX, PATIALA

Vs.

RESPONDENT:
THE AMBALA FLOUR MILLS

DATE OF JUDGMENT:
27/04/1970

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
HEGDE, K.S.
GROVER, A.N.

CITATION:
1972 AIR 83 1971 SCR (1) 388
1970 SCC (2) 96

ACT:

Income-tax Act, 1922, ss. 31 and 34(3) & 66-Assessment by Income-tax Officer in status of 'association of individuals, of which a member Appellate Assistant Commissioner directing assessment' to be made on family of D-Appeals by D before Tribunal whether maintainable-D whether a stranger to proceedings-High Court in reference whether can modify directions given by Appellate Assistant Commissioner-Reference to the High Court of a question not raised before Tribunal not competent.

HEADNOTE:

D. B and J were partners in a firm which carried on the business entitled the Ambala Flour Mills. On April 29, 1948 J filed a suit for the dissolution of the firm. The litigation ended with the judgment of the Panjab High Court delivered on September 25, 1951. According to the judgment the partnership stood dissolved with, effect from the date of the filing of the suit, but since the firm had continued to use J's share in the property of the firm after that date he was held entitled to a corresponding shares in the profits of the firm after that date, or at his option, to interest at six per cent on the value of his share in the property of the firm. During the pendency of the suit B also served his connection with the business which was thereafter carried on by D alone. In the assessment year 1950-51 D filed three returns of income : (i) on 4-10-50 in the status of a firm; (ii) on 14-4-51 in the status of an individual; and (iii) on 1-7-51 in the status of a firm consisting of J and D partners. For the assessment year 1951-52 D filed a return in the status of an unregistered firm. For the assessment year 1952-53 D submitted a return in the status of a Hindu Undivided Family. The income-tax Officer assessed the Ambala Flour Mills in the three years of assessment in the status of an association of persons. In appeals by D the Appellate Assistant Commissioner annulled the orders of assessment and remanded the case to the Income-tax Officer with a direction that the income be assessed as the income of the family of D. In appeals by D the Income-tax Appellate Tribunal confirmed the order of

annulment but ordered that the direction to assess the income in the hands of D be deleted. The Tribunal's order was based on the view that D was a stranger to the assessment proceedings. At the instance of the Commissioner of Income-tax the following questions were referred to the High Court : (i) Whether D was a stranger in respect of the income-tax proceedings against Ambala Flour Mills ? (ii) Whether the Appellate Assistant Commissioner could give a direction in the case of Ambala Flour Mills to the effect that the income should be assessed in the hands of D after annulling the assessment in the case of the Ambala Flour Mills ? (iii) Whether on the facts and in the circumstances of the case the appeals filed by D were maintainable in law? The High Court answered the first question in the negative, the second in the affirmative with the rider that the assessment against D 'could only be in his individual capacity'; and the third question in the affirmative. Appeals were filed in this Court by both the parties. In this appeal the Commissioner of Income-tax questioned the order of the High Court by which they sought to modify the order of the Appellate Assistant Commissioner.

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HELD : (i) The first and third of the questions referred to it were correctly answered by the High Court.

(a) D was competent to maintain the appeals filed by him to the Tribunal because by the order of the Appellate Assistant Commissioner it was directed that he may be personally assessed by the Income-tax Officer in respect of the income of the Ambala Flour Mills. [391 C-D]

(b) In making a direction against 'D' the Appellate Assistant Commissioner did not exercise his powers qua a stranger to the assessment proceeding. D had submitted returns and had also appealed against the orders of the assessment. The income earned by the assessee was assessed to tax as income of an association of persons of which on finding of the Income-tax Officer 'D' was a member. :Since the Appellate Assistant Commissioner set aside the order assessing the income in the status of association of individuals, he had to give directions with regard to the assessment of the income. He was competent to give the directions in view of the provisions of s. 31 read with s. 34(3) of the Income-tax Act, 1922 and the interpretation placed on the latter section by this Court in the cases of Murlidhar Bhagwan Das and Kanpur Coal Syndicate. [392 G-E; 394 D-F]

Commissioner of Income-tax, U.P. v. Kanpur Coal Syndicate, 53 I.T.R. 225 and Income-tax Officer, 'A-Ward, Sitapur v. Murlidhar Bhagwan 'Das, 52 I.T.R. 335, applied.

S. C. Prashar and another v. Vasantsen Dwarkadas and others, 49 LT.R. 1, referred to.

(ii) The High Court exercising advisory, jurisdiction was incompetent to amend the order of the Appellate Assistant Commissioner. On the question referred to the High Court, no inquiry into the power of the Appellate Assistant Commissioner to make the impugned direction was competent. The second question only related to the assessment of the income in the hands of D after annulling the assessment of the Ambala Flour Mills. it was not contended before the Tribunal that the income of the Ambala Flour Mills could not be assessed in the hands of the family of 'D The competence of the Appellate Assistant Commissioner to make the direction could not be and was not referred to the High Court. [395 ,k-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1277 to 1279 and 1280 to 1282 of 1966.

Appeals by special leave from, the judgment and order dated ,October 14, 1966 of the Punjab High Court in Income-tax Reference No. 16 of 1962.

B. Sen, S. K. Aiyar, B. D. Sharma and R. N. Sachthey, for the appellant (in C.As. Nos. 1277 to 1279 of 1966) and the respondent (in C.As. Nos. 1280 to 1282 of 1966).

Bishan Narain and A. N. Goyal, for the respondents (in C.As. Nos. 1277 to 1279 of 1966) and the appellants (in C.As. Nos. 1280 to 1282 of 1966).

The Judgment of the Court was delivered by Shah, J. Balkishan Das, Debi Prasad and Jai Ram Das were partners in a trading venture, conducted in the name of the 12 Sup. C 1/70-11

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Ambala Flour Mills, Ambala. On April 29, 1948, Jai Ram Das commenced an action for dissolution and for account of the partnership business. The Trial Court decreed the suit. In appeal to the District Court, the decree was reversed. On appeal under the Letters Patent from the judgment of a single Judge, the High Court of Punjab by order dated September 26, 1951 restored the decree of the Trial Court and declared that the partnership stood dissolved on April 29, 1948. The High Court observed:

".... notwithstanding the dissolution of 'the firm Debi, Parshad and Balkishan Dass carried on the business of the firm with the property of the firm. On these facts, Jairam Dass plaintiff is entitled at the option of himself to such share of the profits made since he ceased to be a Partner as may be attributable to the use of his share of the property of the firm or interest at the rate of six per cent per annum on the amount of his share in the property of the firm."

During the pendency of the suit Balkishan Dass severed his connection with the business and the business was carried on thereafter by Debi Parshad alone.

In the assessment year 1950-51, Debi Parshad filed three returns of income (i) on 4-10-1950 in the status of a firm, (ii) on 14-4-1951 in the status of an individual and (iii) on 1-7-1951 in the status of firm consisting of Jai Ram Das and Debi Parshad, partners. For the assessment year 1951-52, Debi Parshad filed a return in the status of an unregistered firm. For the assessment year 1952-53 Debi Parshad submitted a return in the status of a Hindu Undivided Family. The Income-tax Officer assessed the Ambala Flour Mills in the three years of assessment in the status of "an association of persons". In appeals by Debi Parshad, the Appellate Assistant Commissioner, "annulled" the , orders of' assessment of the assessee in the status of association of persons be set aside and that the case be remanded to the Income-tax Officer to assess the income as "the income of the family of Debi Parshad". In appeals by Debi Parshad, the Income-tax Appellate Tribunal confirmed the orders of the Appellate Assistant Commissioner annulling the assessment made by the Income-tax Officer and directed that the direction for assessing the income in the hands of Debi Parshad be deleted.

The Tribunal referred the following three questions at the instance of the Commissioner of Income-tax.

1 "Whether L. Debi Parshad was a stranger in

respect of the income-tax proceedings against Ambala Flour Mills ?

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2. Whether the Appellate Assistant Commissioner could give a direction in the case of Ambala Flour Mills to the effect that the income should be assessed in the hands of L. Debi Parshad after annulling the assessment in the case of Ambala Flour Mills

3. Whether on the facts and in the circumstances of the case the appeals, filed by Shri Debi Parshad were maintainable in law

The High Court answered the first question in the negative; the second in the affirmative with the rider that the assessment against Debi Parshad "could only be in individual capacity"; and the third question in the affirmative.

Debi Parshad was competent to maintain the appeals filed by him to the Tribunal because by the order of the A appellate Assistant Commissioner, it was directed that he may be personally assessed by the Income-tax Officer in respect of the Income of the Ambala Flour Mills.

Counsel for Debi Parshad, however, contended that Debi Parshad was a stranger to the assessment proceedings and the, Appellate Assistant Commissioner had no jurisdiction to direct after setting aside the order of assessment that Debi Parshad be assessed personally in respect of the income of the Ambala Flour Mills. The relevant provisions of the Income Tax Act may be noticed.

The relevant provisions of s. 31 of the Income Tax Act, 1922, are these :

"In disposing of an appeal, the Appellate Assistant Commissioner may, in the case of an order of assessment :

(a) confirm, reduce, enhance or annul the assessment;

(b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Appellate Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed of make such fresh assessment.....

(4) "Where as the result of an appeal, any change in, the assessment of a firm or association of' persons or new assessment of a firm or associa-

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tion of persons is ordered to be made, the Appellate Assistant Commissioner may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association'.

All the returns have been filed by Debi Parshad but in different capacities. The Income-tax Officer was of the view that the business was carried on by an association of persons and the income from the business was liable to be brought to tax on that footing. The Appellate Assistant Commissioner was of the view that the income belonged to Debi Parshad and he was liable to be assessed personally in respect of the income. Evidently the Income-tax Officer held that Debi Parsbad was a member of an association of persons. Since the Appellate Assistant Commissioner set aside the' order assessing the income in' the status of "association of individuals", he had to give directions with regard to the assessment of the income, provided the

assessment was not barred by the law of Limitation. Section 34 subsection 3 prescribes for the period in which assessment proceedings shall be completed. The section at the date of assessment by the Income-tax Officer read as follows:-

"No order of assessment or re-assessment, other than an order of assessment under section 23 to which clause (c) of sub-section (1) of section 28 applies or an order of assessment or reassessment in cases falling within clause (a) of sub-section (1) or sub-section (IA) of this Section shall be made after the expiry of four years from the end of the year in which the income, profits or gains were first assessable:

Provided further that nothing contained in this section limiting the time within which any action may be taken. or any order, assessment or re-assessment may be made, shall apply to a re-assessment made under section 27 or to an assessment or re-assessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 31, section 33, section 33A, section 33B, section 66 or section 66A".

The assessment of tax had according to the law at the relevant time. in force, ordinarily, to be completed by the Income-tax Officer within four years from the last date of the year of assessment in which the income, was first assessable. But to this

rule there were several exceptions. If the assessment had to be made on the assessee or any person 'in consequence of or to give effect to any findings or direction contained in an order of the Appellate Assistant Commissioner or of the Appellate Tribunal or of the Commissioner in revision or of an order made in a reference, the assessment could be made even after the expiry of the four years. The exception applied to an assessment made against the assessee or any person in consequence of, or to give effect to any finding or direction contained in the order of any superior tribunal, or 'the High Court or this Court. This Court in S. C. Prashar and another v. Vasantsen Dwarkadas and others(1) held that the second proviso to s. 34(3) of the Incometax Act, 1922, insofar as it authorised the assessment or reassessment of any person other than the assessee after the expiry of the period of limitation specified in s. 34 in consequence of or to give effect to a finding or direction given in an appeal, revision or reference arising out of the proceeding in relation to the assessee violated the provisions of Art. 14 of the Constitution and was invalid to that extent.

In a later case Income-tax Officer, Award, Sitapur v. Murli-dhar Bhagwan Das(1) this Court explained the connotation of the expression "any person" as used in s. 34 sub-s. (3) proviso 2 at p. 346 :

"The expression 'any person' in its widest connotation may take in any person, whether connected or not with the assessee, whose income for any year has escaped assessment, but this construction cannot be accepted, for the said expression is necessarily circumscribed by the scope of the subject matter of the appeal or revision as the case may be.

That is to say, that person must be one who would be liable to be assessed for the whole or a part of the income that went into the assessment of the year under appeal or revision. If so construed, we must turn to section 31 to ascertain who is that person other than the appealing assessee who can be liable to be assessed for the income of the said assessment years. A combined reading, of section 30(1) and section 31(3) of the Act indicates the cases where persons other than the appealing assessee might be affected by orders passed by the Appellate Commissioner. Modification or setting aside 'of assessment made on a firm, joint Hindu family, association of persons, for a particular year may affect the assessment for the said year on a partner or partners of the firm, member or members of the Hindu Undivided family

(1) 49 I.T.R. 1.

(1) 52 I.T.R. 335.

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or the individual, as the case may be. In such cases, though the latter are not eo nomine parties to the appeal, their assessments depend upon the assessment of the former. The said instances are only illustrative. It is not necessary to pursue the matter further. We would, therefore, hold that the expression 'any person' in the setting in which it appears must be confined to a person intimately connected in the aforesaid sense with the assessments of the year under appeal."

In Commissioner of Income-tax, U.P. v. Kanpur Coal Syndicate(1) this Court held that-where the income-tax Officer assessed the income of an association of persons under s. 31(3).(b) the Appellate Assistant Commissioner was competent to set aside the assessment and- to direct the Income-tax Officer to assess the members individually. The Court observed that the Appellate Assistant Commissioner had under the Act plenary powers in disposing of an appeal, the scope of his powers being coterminous with that of the Income-tax Officer: he can do what the Income-tax Officer can do and can also direct the Income-tax Officer to do what he has failed to do.

Debi Parshad had submitted the returns, and Debi Parshad, appealed against the order of assessment. He could, - in the circumstances of the case, not be called a stranger to the assessment. The income earned by the assessee was assessed to tax as income of an association of persons, of which on the finding, of the Income-tax Officer, Debi Parshad was a member. In making a direction against Debi Parshad the Tribunal did not exercise his powers qua a stranger to the assessment proceeding. ,Civil Appeal Nos. 1280-1282 of 1966 must therefore fail.

The Appellate Assistant Commissioner had directed that the income in the three assessment years be assessed in the hands of the family of Debi Parshad, apparently on the view that Debi, Parshad represented the Hindu Undivided family of which he was a member. The Tribunal set aside the direction to assess the income of the Ambala Flour Mills in the hands of Debi Parshad. personally. for in their view Debi Parshad was a stranger to the proceeding for assessment. The High Court held, that the order of the Appellate Assistant

Commissioner directing assessment of "the family of Debi Parshad" was "clearly unwarranted and could relate only to Debi Parshad in his individual capacity".

Appeals Nos. 1277 to 1279 of 1966 were filed against that part of the order of the High Court by which they sought to modify the order of the Appellate Assistant Commissioner.

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(1) 53 I.T.R. 225.

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High Court exercising advisory jurisdiction was incompetent to amend the order of the Appellate Assistant Commissioner. But on the question referred to the High Court, no inquiry into the power of the Appellate Assistant Commissioner to make the impugned direction was competent. The second question only related to the assessment of the income in the hands of Debi Parshad after annulling the assessment of the Ambala Flour Mills. It was not contended before the Tribunal that the income of the Ambala Flour Mills could not be assessed in the hands of the family of Debi Parshad. The competence of the Appellate Assistant Commissioner to make the direction was not and could not be referred to the High Court.

Appeals Nos. 1277 to 1279 of 1966 filed by the Commissioner therefore fail. There will be no order as to costs in all the appeals.

G.C.

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Appeals dismissed.