MRS. KUSUMBEN D. MAHADEVIA

v.

THE COMMISSIONER OF INCOME-TAX, BOMBAY.

1960

March 30.

(S. K. DAS, J. L. KAPUR and M. HIDAYATULLAH, JJ.)

Income-tax—Reference—High Court's jurisdiction—If can decide a question not decided by the Tribunal—Indian Income-tax Act, 1922 (XI of 1922), s. 66—The States (Taxation Concessions) Order, 1949, para. 4.

The appellant was a shareholder of a company known as Mafatlal Gagalbhai and Co., Ltd. The Company with its registered office at Bombay was at all material times resident in British India. It was also doing business in the former Baroda State and used to keep its profits derived in that State with Mafatlal Gagalbhai Investment Corporation, Navsari. In the year 1949 Mafatlal Gagalbhai and Co. Ltd. declared dividends out of profits which had accrued partly in British India and partly in the Indian State. The appellant was assessed to income-tax on the dividends earned by her. She did not bring those dividends into British India and claimed the benefit of para. 4 of the Merged States (Taxation Concessions) Order. The Tribunal held that the income did not accrue to the appellant in the Baroda State but it did not decide the question whether she was entitled to the benefits of the Taxation Concessions Order. The High Court on a reference to it held that para. 4 of the Taxation Concessions Order did not apply to the assessee but it did not decide the other question as to where the income had accrued to the assessee. On appeal by special leave the appellant contended, inter alia, that since the Tribunal had not gone into the question of the applicability to the assessee of the Concessions Order and had not expressed any opinion thereon, the High Court could not raise the question on its own and decide it:

Held, that the High Court exceeded its jurisdiction in going outside the point of law decided by the Tribunal and deciding a different point of law.

Section 66 of the Income-tax Act which confers jurisdiction upon the High Court only permits a reference of a question of law arising out of the order of the Tribunal. It does not confer jurisdiction on the High Court to decide a different question of law not arising out of such order.

New Jehangir Vakil Mills Ltd. v. *Commissioner of Income-tax*, [1959] 37 I.T.R. 11, *Scindia Steam Navigation Co. Ltd.* v. *Commissioner of Income-tax*, [1954] 26 I.T.R. 686, *Commissioner of Income-tax* v. *Breach Candy Swimming Bath Trust*, [1955] 27 I.T.R. 279 and *Ismailia Grain Merchants Association* v. *Commissioner of Income-tax*, [1957] 31 I.T.R. 433, distinguished.

Mash Trading Co. v. *Commissioner of Income-tax*, [1956] 30 I.T.R. 388, considered.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 507 of 1957.

Appeal by special leave from the order and judgment dated September 28, 1955, and February 20, 1956, of the Bombay High Court in Income-tax Reference No. 28 of 1955.

R. J. Kolah and *I. N. Shroff*, for the appellant.

C. K. Daphtary, Solicitor-General of India, R. Ganapathy Iyer and *D. Gupta*, for the respondent.

1960. March 30. The Judgment of the Court was delivered by

Hidayatullah J.

HIDAYATULLAH, J.—This is an appeal with the special leave of this Court, and is directed against an order dated September 28, 1955, and a judgment dated February 20, 1956, of the High Court of Bombay. By the order, the High Court reframed a question referred to it by the Appellate Tribunal at Bombay, which it answered by its judgment.

Mrs. Kusumben D. Mahadevia (hereinafter referred to as the assessee) who has filed this appeal, was, at all material times, residing in Bombay. She was a shareholder, holding 760 shares of Mafatlal Gagalbhai & Co., Ltd., Bombay. For the assessment year 1950-51 (the previous year being the calendar year 1949), she was assessed to income-tax on a total income of Rs. 1,50,765 which included a grossed-up dividend income of Rs. 1,47,026. In the latter income was included a sum of Rs. 47,120 being the dividends declared by Mafatlal Gagalbhai & Co., Ltd., Bombay. Mafatlal Gagalbhai & Co., Ltd., is a private limited Company with its registered office at Bombay. It was, at all material times, 'resident and ordinarily resident' in British India. It was also doing business in the former Baroda State, and used to keep its profits derived in that State with Mafatlal Gagalbhai Investment Corporation, Navsari. In the year 1949 Mafatlal Gagalbhai & Co., Ltd., declared dividends out of these accumulated profits by three resolutions, which are reproduced:

25-3-1949. "That a further dividend of Rs. 17 per ordinary share free of income-tax for the year 1947 be and is hereby declared absorbing Rs. 4,29,250

and the same be payable in Navsari out of the profits of the year 1947 lying at Navsari."

24-9-1949. "That a further dividend of Rs. 24 per ordinary share free of income-tax for the year 1948 be and is hereby declared absorbing Rs. 6,06,000 and the same be payable in Navsari out of the profits of the year 1948 lying at Navsari with Messrs. M.G. Investment Corporation Ltd. on or after 30th April, 1949."

24-9-1949. "Resolved that an Ad-interim dividend of Rs. 21 per ordinary share free of income-tax absorbing Rs. 5,30,250 be and is hereby declared for the year 1949 out of the income of the Company for the year 1949 remaining unbrought with Messrs. M. G. Investment Corporation Ltd., Navsari, and that the same be payable in Navsari on or after 30th April, 1949."

The assessee did not bring these dividends into British India. She claimed the benefit of para. 4 of the Merged States (Taxation Concessions) Order, 1949 (hereinafter referred to briefly as the Concessions Order); but the Tribunal held that the income did not accrue to her in the Baroda State. The Tribunal pointed out that the dividends were declared by Mafatlal Gagalbhai & Co., Ltd., out of its profits which had accrued partly in, what was then called, British India and partly in the Indian State. The dividend was thus declared out of 'composite profits'. It further pointed out that the assessee had paid for and acquired the shares of a Company in British India and was thus holding an asset in British India, and that the income was from that asset. The Tribunal, however, at the instance of the assessee drew up a statement of the case under s. 66(1) of the Indian Income-tax Act, and referred the following question to the High Court:

"Whether the net dividend income of Rs. 47,120 accrued to the assessee in the former Baroda State, or whether it is income accrued or deemed to have accrued to the assessee in British India?"

When the reference was heard, the High Court was of the opinion that the Tribunal ought to have decided and referred also the question whether the Concessions

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Order applied to the assessee. The High Court recognised the grievance of the assessee that no such point was raised before the Tribunal. The High Court, however, by its order dated September 28, 1955, decided that there was no need to send the case back for a supplemental statement, since all the facts necessary to decide the two questions were before the High Court. The High Court then reframed the question, as it said, to comprehend the two points of law in the following words:

> "Whether the assessee is entitled to any concession under the Merged States (Taxation Concessions) Order, 1949, with regard to the net dividend income of Rs. 47,120?"

The reference then came up for final disposal on February 20, 1956, and the High Court answered the question in the negative, holding that para. 4 of the Concessions Order did not apply to the assessee. The High Court did not decide where the income had accrued to the assessee. Leave to appeal to this Court was refused by the High Court, but the assessee applied to this Court for special leave against both the order and the judgment and obtained it, and the present appeal has been filed.

At the very outset, the assessee has questioned the jurisdiction of the High Court to frame and deal with a question of law not arising out of the order of the Tribunal. The assessee points out that the Tribunal had decided that the income had accrued in British India. The assessee had challenged this part of the decision, and if the Commissioner felt it necessary, he should have obtained the decision of the Tribunal and asked for a reference on the other point also. Since the Tribunal had not gone into the question of the applicability to the assessee of the Concessions Order and had not expressed any opinion thereon, the assessee contends that the High Court could not raise the question on its own, and decide it. The assessee strongly relies upon a decision of this Court in *New Jehangir Vakil Mills Ltd.* v. *Commissioner of Income-tax* (1). In that case, the Bombay High Court had

(1) [1959] 37 I.T.R. 11.

directed the Tribunal to submit a supplementary statement of the case on points not arising from the order of the Tribunal, and this Court held that the High Court had no jurisdiction to do so. The learned counsel for the Commissioner, on the other hand, contends that the question was the assessability of the assessee, who claimed the benefit of the Concessions Order. The main question was thus the applicability of the Concessions Order, and the question of the accrual of the income, whether in British India or in Baroda, was merely ancillary. The latter question was, according to the respondent, included in the first question, and the High Court was right when it framed a comprehensive question and answered it in the sequence it did. The respondent points out that the High Court having held that the Concessions Order did not apply, was not required to decide the other limb of the question, as it became unnecessary to do so.

In our opinion, the objection of the assessee is well-founded. The Tribunal did not address itself to the question whether the Concessions Order applied to the assessee. It decided the question of assessability on the short ground that the income had not arisen in Baroda but in British India. That aspect of the matter has not been touched by the Bombay High Court. The latter has, on the other hand, considered whether the Concessions Order applies to the assessee, a matter not touched by the Tribunal. Thus, though the result is the same so far as the assessment is concerned, the grounds of decision are entirely different.

The High Court felt that the question framed by it comprehended both the aspects and, perhaps it did. But the two matters were neither co-extensive, nor was the one included in the other. The question of accrual of income has to be decided under the Income-tax Act, and has but little to do with the Concessions Order. That question can be adequately decided on the facts of this case without advertence to the Concessions Order. It cannot, therefore, be said to be either co-extensive with or included in the decision of the question actually considered by the High Court to wit, whether the Concessions Order applied or not. If this

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be so, it is manifest that the Tribunal decided something which stands completely outside the decision of the Bombay High Court. The High Court also decided a matter which was not considered by the Tribunal even as a step in the decision of the point actually decided. The two decisions are thus strangers to each other, though they lead to the same result.

Section 66 of the Income-tax Act which confers jurisdiction upon the High Court only permits a reference of a question of law arising out of the order of the Tribunal. It does not confer jurisdiction on the High Court to decide a different question of law not arising out of such order. It is possible that the same question of law may involve different approaches for its solution, and the High Court may amplify the question to take in all the approaches. But the question must still be one which was before the Tribunal and was decided by it. It must not be an entirely different question which the Tribunal never considered.

The respondent attempted to justify the action taken by contending that the decision of the question of the accrual of the income with reference to the place of accrual implied the applicability of the Concessions Order. We do not agree. If this were so, there would be no necessity to frame the question again. Indeed, the High Court itself felt that there were two limbs of the question of assessability, and reframed the question to cover both the limbs. Where the High Court went wrong was in not deciding both the limbs but one of them and that too, the one not decided by the Tribunal. The resulting position can be summed up by saying that the High Court decided something which the Tribunal did not, and the Tribunal decided something which the High Court did not. This is clearly against the provisions of s. 66. The respondent referred to *Scindia Steam Navigation Co. Ltd.* v. *Commissioner of Income-tax* (1), *Commissioner of Income-tax* v. *Breach Candy Swimming Bath Trust* (2) and *Ismailia Grain Merchants Association* v. *Commissioner of Income-tax* (3). They

(1) [1954] 26 I.T.R. 686. (2) [1955] 27 I.T.R. 279.
(3) [1957] 31 I.T.R. 433.

were all decisions of the same Court, and arose in different circumstances. In two of them, the question was wide enough to take in a line of reasoning not adopted by the Tribunal, and in the third, the question was widened by deleting a reference to a section, when another section was also material. They were not cases where the issues of law as decided by the Tribunal and the High Court were entirely different, which is the case here. The Punjab High Court has taken a contrary view in *Mash Trading Co.* v. *Commissioner of Income-tax* (1).

For the reasons given above, we are of opinion that the High Court exceeded its jurisdiction in going outside the point of law decided by the Tribunal and deciding a different point of law. The order of the High Court will, therefore, be set aside, and the case will be remitted to the High Court to decide the question framed by the Tribunal. In view of the fact that both the assessee and the Commissioner pointed out the anomaly to the High Court and the question was reframed in spite of this, the costs of this appeal shall be costs in the reference to be heard by the High Court, and will abide the result.

Appeal allowed.
Case remitted.

M/S. BURN & CO. LTD. & OTHERS

v.

THEIR EMPLOYEES.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

Industrial Dispute—Incentive bonus—Scheme—Exclusion of clerical and subordinate staff—Propriety—Power of Industrial Tribunal.

There can be no doubt from the point of view of Economics that the clerical and subordinate staff of an industry like its manual workers contribute to its production and there can, therefore, be no reason for excluding them wholly from the benefits of a scheme of incentive bonus. The fact that the clerical staff are paid dearness allowance at a higher scale can be no reason for their exclusion.

(1) [1956] 30 I.T.R. 388.