COMMISSIONER OF INCOME-TAX

v.

MANOHARLAL GUPTA AND CO.

JANUARY 5, 1996

[B.P. JEEVAN REDDY AND S.B. MAJMUDAR, JJ.]

Income-Tax Act, 1922 :

S. 3—Option contemplated under—Assessment year 1961-62—Unregistered firm—Assessed by an ITO—Partner Assessed by another ITO—Partner's assessment order stating that it would be rectified when the store income report of the partner is received from the ITO assessing the firm—Held, option under S.3 not exercised by the ITO—Partner could have applied for rectification—Assessment of firm held valid.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 187 (NT) of 1978.

From the Judgment and Order dated 26.5.76 of the Calcutta High Court in I.T.R. No. 158 of 1973.

K.N. Shukla and S.N. Terdol for the appellant.

Krishna Kumar and Vimal Dave for the Respondent.

The following Order of the Court was delivered :

The Calcutta High Court has answered the following question, referred at the instance of the assessee, in the negative i.e., in favour of the assessee and against the Revenue.

> "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessment of the assessee as an unregistered firm for the assessment year 1961-62 was proper?"

The assessee is a firm. The assessment in question relates to assessment Year 1961-62, governed by Indian Income Tax Act, 1922. Since it did not apply for registration, the Income Tax Officer completed the assessment treating the assessee as an unregistered firm. He computed the total income at Rs. 59, 623 which included the sum of Rs. 50,000 as income from other sources which was agreed to by the assessee (See para 3 of statement of case). The assessee's appeal to Appellate Assistant Commissioner was dismissed and so was the

further appeal to Tribunal. The main and only contention of the assessee before both the appellate authorities was : inasmuch as a partner of the assessee-firm, Sri Manoharlal, has been assessed on January 31, 1966 including his share income from the assessee-firm in his asset, the assessment made on assessee-firm on March 23, 1966 was not permissible. Both the appellate authorities rejected this contention. They pointed out that while the assessment of Manohar Lal partner was made by Income Tax Officer `A' Ward, Howrah, the assessment on the assessee-firm was made by the Income Tax Officer `C' Ward, Howrah. They held that since the assessments on the partner and the firm were made by different Income Tax Officers and further because the Income Tax Officer making the assessment on partner mentioned clearly that he would rectify the assessment when he receives the share income report of the said partner from the Income Tax Officer assessing the firm, it cannot be said that the Income Tax Officer has exercised the *discretion* to tax the partner (as was permitted by the 1992 Act) or that the assessment on the firm was invalid in law on that account. The High Court has answered the question in favour of the assessee merely following their earlier decision in *M/s. Hindustan Mill Stores Supply Company* v. *Commissioner of Income Tax, West Bengal*, Income Tax Reference No. 10 of (1973). Though the High Court has noted elaborately the contentions of the counsel for both sides, it rested its decision exclusively on the aforesaid earlier (unreported) decision of that Court. Unfortunately, a copy of the said unreported decision is not made available to us. We are, therefore, unable to ascertain the precise reasoning on the basis of which the question has been answered by the High Court in the negative. We have, however, heard counsel for both the parties and we presume that in the opinion of the High Court, the assessment on the firm is invalid for the reason that the share income of a partner was included in his individual assessment which means that the Income Tax Officer has exercised the discretion, the option, available to him under the 1922 Act.

In *Commissioner of Income Tax* v. *Atchaiah*, (Civil Appeal No. 2573 of 1977 delivered on December 11, 1995), this Court has dealt with the position of law relevant in this behalf under the 1922 and the present Act. Under the 1922 Act, the Income Tax Officer had an option either to tax the partners of a firm or the firm with respect to the income of the firm but once he exercised his option one way, he could not obviously bring the same amount to tax in the hands of the other. Under the present act, however, no such option is available to him. This appeal is governed by the 1922 Act, which means that the Income Tax Officer did have an option. The only question is whether he had exercised that option? We think not. The assessment on the partner was completed earlier

i.e., on January 31, 1966. That was done by the Income Tax Officer `A' Ward while the assessment on the firm was made by the Income Tax Officer `C' Ward, on March 23, 1966. The order of assessment dated January 31, 1966 on partner reads :

> "Return filed. Notice u/s. 143(2) complied with. It is stated by the assessee that all this business income is taken over by the firm M/s. Manoharlal Gupta & Company and his individual income is from that firm only. Assessee has shown his income at Rs. 982. This is accepted for the time being. It will be rectified when the report from the I.T.O. concerned is received."

The order of assessment on the firm, made by Income Tax Officer `C' Ward (at pages 8 to 10 of the paper book) does not in any manner indicate that the assessing officer was aware, even distantly, that the partners of the firm have been already assessed with respect to their share income from this firm. Indeed the Tribunal has said that it had no information whether or when any other partner was assessed. Coupled with this is the express recital in the assessment order relating to the partner referred to above. In the light of the above circumstances, we are of the opinion that the Tribunal was justified in concluding that the option contemplated by Section 3 of the 1922 Act was not exercised by the Income Tax Officer in this case and hence the assessment made on the firm was not invalid. (The partner, Manoharlal, could have applied for rectification of his assessment order as provided expressly in the order of assessment itself.)

Certain decisions were brought to our notice but it is not necessary to deal with them since they turn on their own facts. The question arising herein is really one of inference to be drawn from the facts found by the Tribunal. We find Tribunal's opinion sound and valid. The High Court has not disturbed the facts found by the Tribunal. The reasoning on the basis of which it has disagreed with the Tribunal is not evident from the order, as mentioned hereinbefore.

For the above reasons, the appeal is allowed. The judgment of the High Court is set aside and the question referred is answered in the affirmative, i.e., in favour of the revenue and against the assessee. No costs.

Appeal allowed.