

CWT Vs Siri Paul Oswal

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 22, 2006

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 21
Income Tax Act, 1961 â€” Section 125, 127, 246

Citation: (2007) 293 ITR 273

Hon'ble Judges: Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench: Division Bench

Judgement

1. The following questions of law have been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench,

Chandigarh, arising out of its order dated October 31, 1995, passed in W. T. A. Nos. 304 to 306 of 1983 in respect of the assessment years

1972-73 to 1974-75:

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee's appeals on the question of

jurisdiction of the assessing officer were maintainable before the Commissioner of Wealth-tax (Appeals) ?

(ii) If the answer to the above question is in the affirmative, whether, on the facts and in the circumstances of the case, the Tribunal was right in

holding that (a) the order dated 21-12-1978, passed by the Commissioner of Income Tax u/s 127(1) read with Section 125(1) of the Income Tax

Act was bad in law and (b) that the Inspecting Assistant Commissioner of Income Tax (Assessment), Patiala, had no jurisdiction over the wealth-

tax cases of the assessee ?

2. The jurisdiction over the assessee under the Income Tax Act, 1961 (hereinafter referred to as, "the Income Tax Act"), was vested in the Income

Tax Officer Central, Circle (1), Ludhiana, who was also the Wealth-tax Officer. The Commissioner of Income Tax, vide order dated 21-12-1978,

u/s 127(1) of the Income Tax Act, directed that power conferred on the Income Tax Officer shall be exercised by the Inspecting Assistant

Commissioner of Income Tax (Assessment) in respect of cases mentioned in the said order. There was, however, no order passed in respect of

jurisdiction of the Wealth-tax Officers, Central Circle (1), Ludhiana, but the Inspecting Assistant Commissioner of Income Tax (Assessment)

passed assessment orders under the Wealth Tax Act also in respect of the assessee. Since only specific cases could be transferred, no jurisdiction

was conferred on the Inspecting Assistant Commissioner of Income Tax (Assessment) and exercise of jurisdiction under the Wealth Tax Act by

the said officer was illegal. However, the assessee did not raise any objection to the assessment before the assessing officer but raised objection

before the appellate authority which was upheld and the Tribunal dismissed the appeal of the revenue.

3. Learned Counsel for the revenue submitted that it was not open to the assessee to raise the plea of jurisdiction for the first time in appeal after

the assessment as it was not a case of inherent lack of jurisdiction but a case where a particular officer exercised the jurisdiction when both the

parties believed that the said officer had the jurisdiction.

4. Learned Counsel for the assessee, on the other hand, submitted that the objection as to the jurisdiction could be raised at any time and the

Tribunal was, thus, justified in setting aside the assessment made and allowing objection as to the jurisdiction being raised at the appellate stage. He

has referred to the following judgments:

(i) Rai Bahadur Seth Teomal Vs. The Commissioner of Income Tax and The Commissioner of Excess Profits Tax, ;

(ii) Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, ;

(iii) Commissioner of Income Tax Vs. Geeta Ram Kali Ram and Suresh Chandra, ;

(iv) Commissioner of Income Tax Vs. Amrit Sports Industries, ;

(v) Commissioner of Income Tax Vs. K.C.P. Limited, ;

(vi) Hindustan Transport Co. Vs. Inspecting Assistant Commissioner of Income Tax and Another, ;

(vii) Jaipur Udhog Ltd. Vs. Commissioner of Income Tax, ;

(viii) Commissioner of Income Tax Vs. Smt. Badhurani Deepinder Kaur and Others, ;

(ix) The Commissioner of Income Tax Vs. Rane Brake Linings Ltd., ; and

(x) Smriti Properties Pvt. Ltd. Vs. Settlement Commission (IT and WT) and Others, .

5. We have considered the rival submissions and perused the record as well as the decisions relied upon.

6. In Rai Bahadur Seth Teomal Vs. The Commissioner of Income Tax and The Commissioner of Excess Profits Tax, , the question before the

Hon"ble Supreme Court was whether the assessee could be allowed to question the jurisdiction of the assessing officer for the first time in appeal

on the ground that the order of transfer of the assessing officer was not valid and such officer did not acquire jurisdiction to make assessment. The

question was answered against the assessee, the following judgment of the Federal court in Wallace Brothers and Co. Ltd. v. CIT (1945) 13 ITR

39 , wherein it was observed as under (page 18):

These provisions clearly indicate that the matter is more one of administrative convenience than of jurisdiction and that in any event it is not one for

adjudication by the court.... This confirms us in the view that the scheme of the Act does not contemplate an objection as to the place of

assessment being raised on an appeal against the assessment after the assessment has been made. As we have already pointed out, the objection

was not raised in the present case even before the Appellate Income Tax Officer but only before the Appellate Tribunal.

7. In *Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others*, , the question was as to the legality of the order of

transfer without complying with the provisions of Section 127 of the Act. The assessee challenged the order in a writ petition before the High Court

but the writ petition was dismissed. The hon"ble Supreme Court held that non-communication of the reasons vitiated the order of transfer.

8. In *Commissioner of Income Tax Vs. Geeta Ram Kali Ram and Suresh Chandra*, the question was about the scope of an appeal u/s 246 of the

Act and it was held that appeal being available on specified grounds, other grounds could not be raised.

9. In *Commissioner of Income Tax Vs. Amrit Sports Industries*, the question was validity of acquisition u/s 269C of the Act. It was held that the

objection as to invocation of jurisdiction for acquisition could be raised at any time.

10. In *Commissioner of Income Tax Vs. K.C.P. Limited*, , the question before the court was whether development rebate reserve transferred to

the general reserve was to be excluded from other reserves for computation of capital base under the provisions of the Companies (Profits) Surtax

Act, 1964.

11. In *Jaipur Udhog Ltd. Vs. Commissioner of Income Tax*, the assessee participated in the hearing of the appeal and subsequently sought to

raise an objection as to the maintainability of the appeal. It was held that such an objection could not be allowed to be raised. The relevant

observations are as under (page 285):

It is well-settled that a person who does not raise an objection with regard to jurisdiction of a Tribunal and permits the Tribunal to adjudicate under

the hope that the decision may be in his favour cannot be permitted to assail the said decision when it goes against him. The said principle would be

applicable with greater force to a case like the present one where a party invites the Tribunal to entertain the appeal and seeks to challenge the

order when it goes against it. The assessee having invited the Appellate Assistant Commissioner to entertain the appeal against the order of the

Income Tax Officer cannot be permitted to assail the order passed by the Appellate Assistant Commissioner on the said appeal on the ground that

the Appellate Assistant Commissioner had no jurisdiction to entertain the appeal.

12. In Commissioner of Income Tax Vs. Smt. Badhurani Deepinder Kaur and Others, the question before the court was about the meaning of the

word "belonging" in Section 2(m) of the Wealth Tax Act, 1957. We are of the opinion that the said judgment has no application for the issue

involved herein.

13. In The Commissioner of Income Tax Vs. Rane Brake Linings Ltd., , it was observed that adding of a sum representing sales tax liability to the

income of the assessee being illegal, could be set aside even without filing of an appeal.

14. In Smriti Properties Pvt. Ltd. Vs. Settlement Commission (IT and WT) and Others, jurisdiction for rectification by a different Bench was held

to be not permissible and it was held that mere participation in the hearing did not debar the assessee from raising such an objection.

15. The above discussion shows that as far as the judgments in Rai Bahadur Seth Teomal Vs. The Commissioner of Income Tax and The

Commissioner of Excess Profits Tax, and Jaipur Udhyog Ltd. Vs. Commissioner of Income Tax, are concerned, instead of advancing the case of

the assessee, go against the plea raised by the assessee. As regards other judgments, the same are distinguishable being in different context.

16. A distinction has to be made between a situation when there is inherent lack of jurisdiction and a situation where jurisdiction is irregularly

assumed and plea of want of jurisdiction can be waived by a party. In the latter situation, the question arises whether party who could waive the

plea of jurisdiction, raised such a plea and whether such a party had been prejudiced on account of erroneous assumption of jurisdiction. The

present case, in our view, falls in the second category. The assessee participated in assessment proceedings by the assessing officer to whom

assessment proceedings under the Income Tax Act were transferred and who exercised jurisdiction to assess wealth-tax also with the participation

of the assessee without any objection by the assessee. If the assessee had raised an objection, the proceedings could have been transferred back

to the concerned Wealth-tax Officer. The assessing officer having proceeded further and assessment having been finalised, plea of lack of

jurisdiction could not be raised for the first time in appeal, without showing error in the order on the merit and without showing any prejudice to the

assessee by exercise of jurisdiction by the assessing officer.

17. In Seth Hiralal Patni Vs. Sri Kali Nath, , the hon"ble Supreme Court observed (page 200):

4. The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in

inherent jurisdiction in the sense that it could not have seizin of the case because the subject matter was wholly foreign to its jurisdiction or that the

defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering

the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it. But in the instant case there was no such

inherent lack of jurisdiction.

The decision of the Privy Council in the case of *Ledgard v. Bull* (1885) 13 I. A. 134 is an authority for the proposition that consent or waiver can

cure defect of jurisdiction but cannot cure inherent lack of jurisdiction. In that case, the suit had been instituted in the court of the subordinate

judge, who was incompetent to try it. By consent of the parties, the case was transferred to the court of the district judge for convenience of trial. It

was laid down by the Privy Council that as the court in which the suit had been originally instituted was entirely lacking in jurisdiction, in the sense

that it was incompetent to try it, whatever happened subsequently was null and void because consent of parties could not operate to confer

jurisdiction on a court which was incompetent to try the suit. That decision has no relevance to a case like the present where there could be no

question of inherent lack of jurisdiction in the sense that the Bombay High Court was incompetent to try a suit of that kind. The objection to its

territorial jurisdiction is one which does not go to the competence of the court and can, therefore, be waived. In the instant case, when the plaintiff

obtained the leave of the Bombay High Court on the original side, under Clause 12 of the Letters Patent, the correctness of the procedure or of the

order granting the leave could be questioned by the defendant or the objection could be waived by him. When he agreed to refer the matter to

arbitration through court, he would be deemed to have waived his objection to the territorial jurisdiction of the court, raised by him in his written

statement. It is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the

competence of a court to try a case. Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a

case of inherent lack of jurisdiction. On the other hand, an objection as to the local jurisdiction of a court can be waived and this principle has been

given a statutory recognition by enactments like Section 21 of the Code of Civil Procedure. Having consented to have the controversy between the

parties resolved by reference to arbitration through court, the defendant deprived himself of the right to question the authority of the court to refer

the matter to arbitration or of the arbitrator to render the award. It is clear, therefore, that the defendant is estopped from challenging the

jurisdiction of the Bombay High Court to entertain the suit and to make the reference to the arbitrator. He is equally estopped from challenging the

authority of the arbitrator to render the award.

18. We are also of the view that the principle of de facto doctrine will be attracted to the present case.

19. In Gokaraju Rangaraju Vs. State of Andhra Pradesh, , the hon"ble Supreme Court observed as under (page 1475):

The doctrine is now well established that "the acts of the officers de facto performed by them within the scope of their assumed official authority, in

the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of officers de

jure" (Pulin Behari v. King Emperor (1912) 15 C LJ 517). As one of us had occasion to point out earlier "the doctrine is founded on good sense,

sound policy and practical expedience. It is aimed at the prevention of public and private mischief and the protection of public and private interest.

It avoids endless confusion and needless chaos. An illegal appointment may be set aside and a proper appointment may be made, but the acts of

those who hold office de facto are not so easily undone and may have lasting repercussions and confusing sequels if attempted to be undone.

Hence the de facto doctrine.

20. It may also be appropriate to refer to the judgment of the hon"ble Supreme Court in State of Punjab v. Gurdev Singh Ashok Kumar (1991)

79 FJR 471 : AIR 1991 SC 2219 wherein it was observed as under (page 475):

7. Apropos to this principle, Prof. Wade states : "the principle must be equally true even where the ""brand"" of invalidity" is plainly visible ; for there

also the order can effectively be resisted in law only by obtaining the decision of the court (see Administrative Law 6th Edition page 352). Prof.

Wade sums up these principles:

The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and

circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he

does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the ""void"" order

remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against

one person but valid against another.

21. The assessee having not raised objection as to the jurisdiction before the assessing officer, was debarred from raising the same before the

appellate authority and the appeal filed by the assessee on the question of jurisdiction was not maintainable.

22. Question No. (i) is, thus, answered in favour of the revenue and against the assessee.

23. In view of the above, question No. (ii) has been rendered academic and need not be gone into.

24. Reference is disposed of accordingly.