S. Senniappa Mudaliar Vs The Government of Madras

Court: Madras High Court

Date of Decision: Sept. 14, 1964

Acts Referred: Civil Procedure Code Amendment Act, 1877 â€" Section 588, 591, 691
Civil Procedure Code, 1908 (CPC) â€" Order 41 Rule 23, Order 43 Rule 1, 104, 105, 105(1)
Tamil Nadu Agricultural Income Tax Act, 1955 â€" Section 17(1), 23, 29, 30, 31

Citation: (1965) ILR (Mad) 397

Hon'ble Judges: Ramamurti, J; Ramakrishnan, J

Bench: Division Bench

Advocate: S. Amudachari, for the Appellant; T. Selvaraj and G. Ramanujam for A. Alagiriswami, Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ramakrishnan, J.
This revision case filed against the judgment of the Agricultural income tax Appellate Tribunal, Madras, is by the

Assessee. The Assessee owns 7.11 acres of wet lands in Marudur village and 16.71 acres of wet lands obtained on lease in Nangavaram and

Analai villages. He returned a net loss for the assessment year 1960-61. The Agricultural income tax Officer, Tiruchirappalli, rejected the accounts

and estimated the income on a best judgment basis. Against his decision, the Assessee appealed to the Assistant Commissioner of Agricultural

income tax, Madurai, before whom three points were raised. The first was that the Agricultural income tax Officer was not correct in rejecting the

Assessee''s return and proceeding to make an assessment on a best of judgment basis. The second ground was that, in the year of account, the

Assessee had sold the sugarcane from his lands to a company which had a factory for crushing sugarcane and had received only a single payment

of Rs. 18,000 and odd from the company and claimed that he had incurred an expenditure of Rs. 1,460 per acre. He claimed that he should have

been assessed only on this receipt after deducting the expenditure. This claim was rejected by the Agricultural income tax Officer and Rs. 800 was

determined as the net income. The Appellant contended that this decision was not correct. The third ground was that the Agricultural income tax

Officer had wrongly included in the assessment income which really belonged to one Rajalingam on account of plantain cultivation in the lands in

Marudur village and this portion of the income should be excluded. In the appeal, Appellate Assistant Commissioner confirmed the decision of the

Agricultural income tax Officer on the first and second points. In regard to the third point, he was of the opinion that the matter required further

investigation to decide the quantum of the income that really belonged to Rajalingam. He set aside the order of the Agricultural income tax Officer

under ground No. 3 and the Agricultural income tax Officer was directed to revise the income of the Appellant on the basis of the observation

contained under ground No. 3.

2. No appeal was taken by the Assessee against this order of the Appellate Assistant Commissioner, though he could do so u/s 32(1) of the

Madras Agricultural income tax Act, which makes every order of the Appellate Assistant Commissioner u/s 31 appealable. After remand, the

Agricultural income tax Officer calculated the income from the plantains cultivation in Marudur village attributable to Rajalingam at Rs. 2,032 and

deducted it from the net income recorded in the order of assessment already passed, and issued a fresh order of assessment. Against this revised

order of assessment an appeal was filed to the Assistant Commissioner of Agricultural income tax by the Assessee. The view of the Assistant

Commissioner was that, since the Assessee had not appealed against the earlier order of remand, the appeal could not be heard again. He

observed that what the Appellant really sought in the case was a review of the previous order in regard to the first and second points the decision

on which had become conclusive. The appeal was therefore summarily rejected. The Assessee then appealed to the Appellate Tribunal. The view

of the Appellate Tribunal was that the omission of the Assessee to appeal against the order of remand made the decision on grounds 1 and 2 given

by the Appellate Assistant Commissioner at the earlier stage final and they could not be agitated even in the appeal before the Tribunal. The appeal

was therefore dismissed. The Assessee has come to us in revision against the above order.

3. The view expressed by the Tribunal that the omission of the Assessee to appeal against the order of remand passed by the Appellate Assistant

Commissioner, precluded him from attacking the correctness of that decision in the appeal to the Tribunal is not based upon any authority. The

Tribunal has not referred either to any provision in the Agricultural income tax Act or any other analogous tax Legislation in support. The nearest

analogy to the principle which the Tribunal has adopted can be found in the CPC in Section 105(2), which says that where any party aggrieved by

an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness. In the

case of a decision involving the passing of a preliminary and final decree, Section 97, CPC precludes a party who has not appealed from the

preliminary decree from disputing its correctness in any appeal which may be preferred from the final decree. Section 105(2) of the CPC refers to

an order of remand made after the commencement of the CPC from which an appeal lies. Such orders fall u/s 104 of the CPC read with Order

XLIII, Rule 1, Code of Civil Procedure. Even Order XLIII, Rule 1, Code of Civil Procedure, according to its terms, does not apply to all orders

of remand. Thus, Order XLIII, Rule 1(u), of the Code of Civil Procedure, provides that an appeal shall lie from an order under Order XLI, Rule

23, remanding a case, where an appeal would lie from the decree of the Appellate Court. In Secretary of State v. Allu Jagannadham ILR (1941)

Mad. 850 (F.B.) a Full Bench of this Court observed that in remanding the suit in that case, the lower appellate Court had set aside the trial

Court"s decree and, therefore, there was no decree from which the Appellant could appeal. In such circumstances, the Appellant, in view of the

Full Bench, was not aggrieved by the order of remand, that therefore there was no ground for an appeal, that the Appellant in the circumstances,

was not precluded from raising the question of jurisdiction when the matter came up in appeal from the decision passed after the order of remand

and that in the subsequent appeal the Appellant had a right to question all the decisions made by the appellate Court in the first instance, except the

decision to order a remand.

4. It has to be pointed out that Section 105(2) of the CPC and similar provisions of the CPC are restrictive of the general right of appeal granted

to an aggrieved party u/s 96 of the CPC against an adjudication amounting to a decree. The history of the successive amendments of the CPC

shows that the restrictive provisions like the one contained in Section 105(2), was only the result of later amendments. Thus, in the 1877 Code,

Section 591, which was analogous to Section 105(1) of the Code of Civil Procedure, did not contain a restrictive provision like that in Section

105(2). The position was the same in 1883 after the amendment, of the Code in that year. The specific restriction in Section 105(2) was a new

addition made in the amendment of the Code in 1908. After adverting to this history behind Section 105(2) of the Code of Civil Procedure, the

Supreme Court in Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another, observed:

As regards the orders of remand it had been held that u/s 691 of the Code a party aggrieved by an order of remand could object to its validity in

an appeal against the final decree, though he might have appealed against the order u/s 588 and had not done so. The second sub-section of

Section 105 precludes an Appellant from taking, on an appeal from the final decree, any objection that might have been urged by way of appeal

from an order of remand.

The Supreme Court thereafter pointed out:

It is clear therefore that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an

appeal was not taken could be challenged in an appeal from the final decree or order. A special provision was made as regards orders of remand

and that was to the effect that if an appeal lay and still the appeal was not taken the correctness of the order of remand could not later be

challenged in an appeal from the final decision. If however an appeal did not lie from the order of remand the correctness thereof could be

challenged by an appeal from the final decision as in the cases of other interlocutory orders. The second sub-section did not apply to the Privy

Council and can have no application to appeals to the Supreme Court, one reason being that no appeal lay to the Privy Council or lies to the

Supreme Court against an order of remand.

5. The rule in Section 105(2) of the CPC thus laying down the restriction against raising contentions in a subsequent appeal when the original order

of remand had not been appealed from does not lay down any rule of general application to other proceedings not governed by the Code of Civil

Procedure, as for example proceedings before the hierarchy of quasi-judicial Tribunals under a tax enactment as we have in this case. Such a

question arose in the Bombay High Court in Chatrappa Tippanna and Others Vs. Dastgirsaheb Mahamadsaheb and Another, a case which arose

under the Bombay Agricultural Debtors Relief Act, 1947. At page 331 of the report, the Judges of the Bombay High Court observed that under

the Bombay Agricultural Debtor''s Relief Act there is no such provision as is contained in Sub-section (2) of Section 105 of the CPC and the

learned Judges observed that the mere failure of the parties to appeal from a decision under Sub-section (1) of Section 17 of the Act did not

preclude them from challenging the correctness of that decision when the matter comes before the District Court in an appeal against the final

award. In our opinion this view has to be followed in cases under the tax enactments like the one we have in the instant case to which the

procedure in the CPC does not apply.

The broad principles to be considered in such matters have been done in Maharajah Moheshur Singh v. The Bengal Government (1859) 7 M.I.A.

283, 302 observations of which have become classical. They are:

We are of opinion that this objection cannot be sustained. We are not aware of any law or regulation prevailing in India which renders it imperative

upon the suitor to appeal from every interlocutory order by which he may conceive himself aggrieved, under the penalty, if he does not so do, of

forfeiting for ever the benefit of the consideration of the appellate Court. No authority or precedent has been cited in support of such a proposition,

and we cannot conceive that anything would be more detrimental to the expeditions administration of justice than the establishment of a rule which

would impose upon the suitor the necessity of so appealing; whereby on the one hand he might be harassed with endless expense and delay, and

on the other inflict upon his opponent similar calamities. We believe there have been very many cases before this Tribunal in which their Lordships

have deemed it to be their duty to correct erroneous interlocutory orders, though not brought under their consideration until the whole cause had

been decided, and brought hither by appeal for adjudication.

A similar point arose in Shoonath v. Ramnath (1865) 10 M.I.A. 413 and there also the Privy Council followed the case in Maharajah Moheshur

Singh v. The Bengal Government (1859) 7 M.I.A. 283, and observed at page 423:

The appeal is, in effect, to set aside an Award which the Appellant contends is not binding upon him. And in order to do this he was not bound to

appeal against every interlocutory order which was a step in the procedure that led up to the Award.

6. It, therefore, becomes important to find out whether the order of remand by the Appellate Assistant-Commissioner, dated 26th November

1962, was really interlocutory in nature. No doubt, it was an order u/s 31(5)(a)(ii) of the Agricultural income tax Act which gives power to the

Appellate Assistant Commissioner to set aside the income tax officer''s order and remand the case for fresh decision. Such an order is appealable

u/s 32(1). But as the Supreme Court has pointed out in Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another, the test of appeal

ability will not be decisive of the matter. What will be relevant is the substance of the order. The order in effect set aside the entire assessment on

the Assessee, and the income tax officer had to make a fresh assessment in the light of the findings of the Appellate Assistant Commissioner under

two grounds, but the third ground was left open for the income tax officer to decide. It is obvious that a finding on only a portion of the data on

which an assessment order is based, cannot be conclusive in the matter of making the final assessment, which has to be based on the entire data

relating to income, expenditure and permissible deductions. A finding which affects only a portion of the data on which the order of assessment is

based, has to be viewed as interlocutory in character and the principles laid down in Maharajah Moheshur Singh v. The Bengal Government

(1859) 7 M.I.A. 283, will apply. The word interlocutory is defined in The Shorter Oxford English Dictionary, in regard to legal matter as

pronounced during the course of an action; not finally decisive. In this connection, the observations of Bench of this Court in State of Madras v.

Indian Coffee Board ILR (1960) Mad. 245 are relevant. It was a case which arose under this Madras General Sales Tax Act. It was observed

that the order of assessment was not to be treated as a severable one with respect to each item of the total turnover, viz., the part objected to by

the Assessee or by the State. This principle that an assessment order cannot be split up into different portions appears to us to be one of general

application. In a case under the Indian income tax Act, in J.K. Cotton Spinning and Weaving Mills Co. Limited v. Commissioner of income tax 5

the powers of the income tax officer after the earlier assessment had been set aside by the Appellate Assistant Commissioner and the case

remanded, have been stated to be as follows:

When an income tax Officer makes a fresh assessment in compliance with the Appellate Assistant Commissioner''s directions, he is of course

bound by the directions, but subject to them, he has the same powers as he had originally when making an assessment u/s 23. The reassessment is

nothing but a second assessment in substitution of the assessment made previously and set aside by the Appellate Assistant Commissioner on

appeal.

7. The learned Government Pleader referred to the decision reported in Commissioner of Income Tax, Madras Vs. Mtt. Ar. S. Ar. Arunachalam

Chettiar, . That decision dealt with an entirely different point. At the earlier stage when the Assessee appealed to the Appellate Tribunal, the

Tribunal allowed two items of expenses and partly allowed the appeal with certain directions to be carried out by the income tax officer. When the

matter came before the income tax officer, the latter made a recompilation and included a certain sum as unassessed foreign income of earlier years

remitted to India. This was contrary to the directions given by the Appellate Tribunal. The Assessee then appealed to the Appellate Assistant

Commissioner against the inclusion. The Appellate Assistant Commissioner declined to admit the appeal on the ground that the Assessee had no

right of appeal u/s 30, because there had been no assessment u/s 23 and no notices of demand served on him u/s 29. The Assessee, however,

feeling still aggrieved filed a miscellaneous application before the Appellate Tribunal which observed that the income tax officer by including the

additional sum above referred to, did not give effect to the Appellate Tribunal"s order, and thereupon cancelled the inclusion. Then the Appellate

Tribunal was asked to state a case for reference to the High Court u/s 66(1). This was done when the matter came up before the High Court. The

High Court finally decided that the reference was incompetent. The Supreme Court while affirming this decision in the appeal made to it, observed

that the decision of the Appellate Tribunal in the miscellaneous application which cancelled the finding of the income tax officer could not be

regarded as an order passed by the Appellate Tribunal u/s 33(4) so as to attract the operation of Section 66 and, therefore, the High Court was

justified in declining to entertain the reference. It is clear that the question under consideration in the above case was whether the order of the

Appellate Tribunal in the miscellaneous application was an order falling within the scope of Section 33(4) of the income tax Act. The facts on the

instant case are entirely different. Here, as we have pointed out in more than one place in this judgment, the Appellate Assistant Commissioner

confirmed, in appeal, the findings of the income tax officer in regard to certain items that contributed to make up the assessment. But it was not

conclusive regarding the entire assessment because one more item had to be considered and adjudicated upon. An order in such circumstances

though appealable under the statute, was interlocutory in character, forming only a stage in the process of making the final assessment. The general

principles laid down in the Privy Council decision in Maharaj Moheshur Singh v. The Bengal Government (1859) 7 M.I.A. 283, will apply.

Therefore, we are of the opinion that the correctness of the decision of the income tax officer and the Appellate Assistant Commissioner under

points 1 and 2 could be canvassed, when the matter came before the Appellate Tribunal which cannot be considered to be bound in any way by

the decision of the Appellate Assistant Commissioner at the earlier stage. We, therefore, allow the revision case and set aside the order of the

Tribunal refusing to consider the points raised by the Appellant in the appeal. We remand the case to the Tribunal for disposal in the light of the

above observations.