

(2011) 01 AHC CK 0326

Allahabad High Court

Case No: Income Tax Appeals No"s. 193 of 2000 and 21 of 2001

Commissioner of Income Tax

APPELLANT

Vs

British India Corporation Ltd.

RESPONDENT

Date of Decision: Jan. 7, 2011

Acts Referred:

- Income Tax Act, 1961 - Section 120, 121, 122, 123, 124

Citation: (2011) 245 CTR 424 : (2011) 337 ITR 64

Hon'ble Judges: Yatindra Singh, J; Prakash Krishna, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Prakash Krishna, J.

These two appeals have been preferred by the Commissioner of income tax against the two orders passed by the income tax Appellate Tribunal.

2. income tax Appeal No. 193 of 2000 is against the order passed by the income tax Appellate Tribunal, Bench-B Allahabad in I. T. A No. 1689 (Alld)/83 dated December 23, 1999. The appeal before the Tribunal was filed by the assessee, respondent herein. The Tribunal allowed the appeal of the assessee.

3. The income tax Appellate Tribunal, Lucknow Bench, Lucknow followed the aforesaid order of the Allahabad Tribunal in I. T. A. No. 1783(Alld) of 1983, in the appeal filed by the Department by its judgement and order dated October 19, 2000. The Tribunal has dismissed the appeal which was preferred before it by the Department. Hence, the appeal No. 21 of 2001.

4. Both the appeals relate to the assessment year 1974-75 and arise out of the same order which was passed by the Commissioner of income tax (Appeals).

5. Shorn of unnecessary details, the relevant facts of the purposes of disposal of these two appeals may be noticed in brief :

6. The respondent, the assessee was carrying on the business of manufacturing woollen textiles and leather goods. It had two woollen units popularly known as Cawnpore Woollen Mills (Lal Iml) and another unit popularly known as Dhariwal situate in Guradaspur, Punjab. The assessee filed its return of income for the assessment year 1974-75 which was processed by the Assessing Officer, namely, income tax Officer, Central Circle-I, Kanpur who completed the assessment u/s 143(3)/144B of the income tax Act on September 7, 1977 after making certain additions and disallowances to the returned income. The assessee being aggrieved by the assessment order carried the matter in appeal before the Commissioner of income tax (Appeals) II, Kanpur. During the course of the hearing of the appeal, an additional ground, viz., that the assessing authority had no jurisdiction to pass the assessment order inasmuch as the assessment file stood transferred from income tax Officer, Central Circle-I, Kanpur to the Inspecting Assistant Commissioner Range-D, Kanpur by the order dated July 1, 1977, and thus the assessment order by the income tax Officer is void ab initio, was raised. It is not out of place to mention here that the assessment order was challenged in appeal on the merits as well. The appellate authority considered the appeal on the merits as also on the question of jurisdiction of the assessing authority, i.e., income tax Officer, Central Circle-I. The appeal was allowed by him in part on the merits. However, the question of jurisdiction though was permitted to be raised by means of additional grounds, was rejected on the premises that the question of territorial jurisdiction of the income tax Officer is a matter on which the final decision rests with the administrative side and not with the appellate authorities under the Act. Reliance was placed on [Rai Bahadur Seth Teomal Vs. The Commissioner of Income Tax and The Commissioner of Excess Profits Tax](#), and Wallace Brothers and Co. Ltd. v. CIT (1945) 13 ITR 39 (FC).

7. The Department as well as the assessee both preferred separate appeals before the Tribunal. The appeal filed by the assessee came up for consideration earlier, and it was allowed by the order dated December 23, 1999, giving rise to the I. T. A. No. 193 of 2000. The appeal was allowed on the short ground that the income tax Officer, Central Circle-I had no jurisdiction in view of the transfer order dated July 1, 1977 transferring the case to the Inspecting Assistant Commissioner. It may be placed on record that the Tribunal did not examine the other issues relating to the merits of the appeal. Subsequent thereto when the appeal of the Department came up for consideration it was dismissed by the order dated October 19, 2000 by following its above order (against which Appeal No. 21 of 2000 has been filed). Appeal No. 193 of 2000 has been admitted on the following two substantial questions of law :

1. Whether on the facts and in the circumstances of the case, the income tax Appellate Tribunal was correct in law in holding that the assessment order made by the Assessing Officer in the case was void ab initio for want of jurisdiction ?

2. Whether on the facts and in the circumstances of the case and in view of the provisions of section 124(5)(a) of the income tax Act 1961 as they stood on the date of the assessment, i.e., September 7, 1977, the income tax Appellate Tribunal was correct in law in holding that the order of the Assessing Officer after the transfer of the case from him whether the authority could not be treated to be a valid order because the Assessing Officer ceased to have jurisdiction over the case ?

8. In the connected income tax Appeal No. 21 of 2001, the appeal has been admitted on the following substantial questions of law :

1. Whether on the facts and in the circumstances of the case, the income tax Appellate Tribunal was correct in law in coming to the conclusion that the order of the Assessing Officer was invalid for want of jurisdiction ?

2. Whether on the facts and in the circumstances of the case, the income tax Appellate Tribunal was correct in law in setting aside the order of the Commissioner of income tax (Appeals) and in holding that it was not required to adjudicate the grounds of appeal in the Department's appeal on the merits ?

3. Whether on the facts and in the circumstances of the case and in view of the provisions of section 124(5) (a) of the income tax Act, 1961 as they stood on the date of the assessment, i.e., September 7, 1977, the income tax Appellate Tribunal was correct in law in setting aside the order of the Commissioner of income tax (Appeals) and in holding that the order passed by the Assessing Officer was invalid for want of jurisdiction ?

9. Heard Shri Shambhu Chopra, learned standing counsel for the Department in support of the appeals. None was present on behalf of the respondent even in the revised list.

10. Having heard the learned counsel for the appellant, we are of the opinion that in substance the only question involved in these two appeals is whether the income tax Officer, CC-I was competent to frame the assessment order in view of the transfer order dated July 1, 1977 and the question of jurisdiction could be raised and entertained by the appellate authority or the Tribunal for the first time in appeal when the same was not agitated before the Assessing Officer.

11. The Tribunal has noticed in its order dated December 23, 1999 that the following facts are not disputed :

(a) The jurisdiction originally vested in the income tax Officer CC-I, Kanpur.

(b) For the assessment year 1974-75 the assessee filed return before him.

(c) Draft order was sent by the income tax Officer to the Inspecting Assistant Commissioner, Central Range on March 17, 1977.

(d) The Inspecting Assistant Commissioner, Central Range, issued directions to the income tax Officer, CC-I, Kanpur on August 31, 1977.

(e) The Commissioner of income tax, exercising power u/s 125(1)(a) of the income tax Act, 1961, transferred the jurisdiction over the case of the assessee to the Inspecting Assistant Commissioner, B-Range, Kanpur.

(f) Order of transfer was effective from July 1, 1977, the assessment order was made by the income tax Officer, CC-I Kanpur on September 7, 1977.

12. The Tribunal on the above facts proceeded to decide the question of jurisdiction of the income tax Officer, CC-1, Kanpur.

13. The question of jurisdiction was decided by the Commissioner of income tax (Appeals) against the assessee on two grounds. Firstly, no such objection was raised by the assessee before the Assessing Officer and, secondly, no such objection in view of the scheme of the income tax Act can be entertained by an appellate authority or court. It took the view that the order assigning the file to an Assessing Officer is administrative in nature and while hearing an appeal, it is not open to an appellate authority to examine the question of jurisdiction of the assessing authority. Reliance was placed by him on certain decisions already referred to above.

14. The Tribunal took a different view of the matter on the ground that there is nothing on record to show as to when the transfer order was communicated to the assessee. According to it, there is nothing on record to show that it was communicated on that very date, i.e., July 1, 1977 or just thereafter. If the order of transfer was not communicated to the assessee on July 1, 1977, then there was no occasion for it to raise the objections about jurisdiction before the income tax Officer during assessment proceedings. According to it, the assessee rightly raised the plea of jurisdiction in the appeal against the assessment order, at the first available opportunity.

15. We have given careful consideration to the entire matter. Before proceeding further it is apt to examine the scheme of the income tax Act (the Act) in relation to the jurisdiction of the income tax authorities, in particular. The heading of Chapter XIII of the income tax is "income tax authorities". The said Chapter has been divided into four parts : A, B, C and D.

16. Part B bears the title "jurisdiction". Sections 120 to 130A, fall in this Part. The material section for the purposes of the present case is section 124. The heading of which is "Jurisdiction of Assessing Officers". Sub section (4) of section 124 provides that subject to the provisions of sub-section (3), where an assessee calls in question the jurisdiction of an Assessing officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2) before the assessment is made. Sub-section (2) of section 124 states

that where a question arises with regard to the "Jurisdiction of Assessing Officer", the question shall be determined by the Director General or the Chief Commissioner or the Commissioner. Sub-section (3) provides that no person shall be entitled to call in question the jurisdiction of an Assessing Officer unless the said objection is raised by him before the expiry of one month from the date on which he made a return under sub-section (1) of section 139, and where no return was filed, after the expiry of the time allowed for making the return, whichever is earlier.

17. It is evident :

- (i) the question whether an income tax Officer has jurisdiction to assess any person if so raised shall be determined by the Commissioner or by the Board, as the case may be.
- (ii) the person should raise the objection latest by within a period of one month before the Assessing Officer from the date specified in sub-section (3).

18. It is reasonable to deduce that the question of jurisdiction of the assessing authority cannot be disputed after the completion of the assessment proceedings. Alternatively, if such a question arises, the said question can be addressed by the Commissioner or the Board, as the case may be, in view of sub-section (4) of section 124 and this by necessary corollary excludes the jurisdiction of the first appellate authority or the court.

19. In Hindustan Transport Co. Vs. Inspecting Assistant Commissioner of Income Tax and Another, this court in depth examined the nature of the power of transfer conferred under the Act on the Commissioner. On a depth analysis of section 124 of the Act, it has been held as follows (page 330) :

A survey of the above provisions of the Act highlights the following situations. After creating the various income tax authorities, the Act does not prescribe their respective jurisdiction or functions. Any case can be dealt with by any income tax authority with the possible exception of the Board. Accordingly, the various income tax authorities are of co-ordinate jurisdiction. What function or functions, which authority or officer, shall perform is left to be decided either by the Board or by the Commissioner. On what principles the Board and the Commissioner will allocate the functions is not indicated in the Act. The principle is, however, apparent from the nature of the enactment. The Act has been enacted with a view to collect revenue. income tax is the main source of revenue for the State. It is through revenue that the machinery of the State is run. It is desirable that the tax should be collected as early as possible. Collection of tax is preceded by assessment thereof. It is consequently desirable that the assessment proceedings should be completed expeditiously but expeditious disposal of an assessment does not mean that the assessee may be put to unwarranted harassment or prejudice. Therefore, the Board and the Commissioner shall take into account the convenience of the assessee also. It is with this purpose in view that it has been provided in sub-section (1) of section

127 that, whenever possible, an opportunity of hearing may be given to the assessee while transferring a case from one place to another. Since the assessee does not suffer any inconvenience or prejudice if a case is transferred locally, no such opportunity has been prescribed. From these provisions it is obvious that the Board and the Commissioner will exercise the power of allocation of functions to various authorities or officers in the exigency of tax collection with due regard to the convenience of the assessee. In other words, the allocation is a measure of administrative convenience. In such a situation, the concept of jurisdiction cannot be imported and certainly, not in the sense of invalidating the resultant action on account of the defect in the exercise of functions.

20. It has been concluded therein that the Act does not treat the allocation of functions to various authorities or officers as one of substance. It treats the matter as one of procedure and a defect of procedure does not invalidate the assessment order. The power has been given to various authorities for recovery of revenue keeping in view the due convenience of the assessee also. In other words, it has been held that the question of jurisdiction as is popularly understood in civil matters relating to courts is not imported while considering the question of jurisdiction of income tax authorities. Here the jurisdiction has been understood in the administrative sense of assigning/allotting or distributing the work to various authorities. In a nutshell, it is administrative in nature.

21. We cannot lose sight of the fact that in the Act it has been specifically provided that the question of jurisdiction of the assessing authority can be gone into either by the Commissioner or by the Board, as the case may be. An appeal to an appellate authority under the Act lies on the grounds as enumerated in section 246 of the Act. None of its clauses shows that an appeal on the question of jurisdiction of the assessing authority is maintainable.

22. The Tribunal has failed to appreciate the above legal aspects as contained in section 124 of the Act although these aspects were highlighted by the first appellate authority in its order.

23. It has not come on record, not disclosed by the assessee at least, even before the first appellate authority in the additional memo of appeal as to when he got the knowledge of the transfer order dated July 1, 1977. The observation of the Tribunal that it is admitted that the order of transfer order is effective from July 1, 1977 is therefore, uncalled for. It has misdirected itself. The Tribunal has proceeded on a wrong footing that in the absence of date of communication of the order to the assessee, the assessee could raise the plea of jurisdiction in appeal as it is the first opportunity. The burden was upon the assessee to state specifically when the order of the transfer was received by it, which it failed to discharge. The order of the Tribunal is, therefore, also bad as it proceeds on assumptions and presumptions. The date of actual communication of the transfer order was within the special knowledge of the assessee and it was its duty to disclose the same.

24. There is another aspect as yet. In such matters, it is an acknowledged legal position that unless a prejudice is caused to a party by wrong or irregular exercise of jurisdiction by a court, no interference in appeal or revision is legally permissible. There is not even a whisper even in the additional grounds of appeal raised before the first appellate authority, that any prejudice has been caused to the assessee by the assessment order having been passed by the income tax Officer, CC-I.

25. In [Mantoo Sarkar Vs. Oriental Insurance Co. Ltd. and Others](#), the apex court in relation to the question of jurisdiction of the Tribunal under the Motor Vehicles Act has made the following observations, vide paragraph 20, which is reproduced below (page 249) :

A distinction, however, must be made between a jurisdiction with regard to the subject-matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the latter it would not be. It is not a case where the Tribunal had no jurisdiction in relation to the subject-matter of claim. As a matter of fact the civil court had no jurisdiction to entertain the suit. If the Tribunal had the jurisdiction to entertain a claim petition under the Motor Vehicles Act, in our opinion, the court should not have, in the absence of any finding of sufferance of any prejudice on the part of the first respondent, entertained the appeal.

26. In this case, the apex court has reiterated its well known earlier judgment in the case of [Kiran Singh and Others Vs. Chaman Paswan and Others](#), wherein a distinction has been drawn between a jurisdiction with regard to the subject-matter of the suit and that of territorial and pecuniary jurisdiction. It has been held that a decree or judgment passed by a court having no territorial or pecuniary jurisdiction is not a nullity but at the most it is an irregularity and such a judgment and decree cannot be set aside by higher court while exercising appellate or revisional jurisdiction unless a prejudice which has been caused to the appellant is established. Prejudice can be a ground for relief only when it is due to the action of another party and not when it results from one's own act. Courts cannot recognise that as prejudice which flows from the action of the very party who complains about it. [Kiran Singh and Others Vs. Chaman Paswan and Others](#),

27. The case on hand stands still on a weak footing inasmuch as the income tax Officer, CC-I had the jurisdiction when the assessment proceedings commenced and a draft assessment order was submitted to the Inspecting Assistant Commissioner. Subsequent change in the jurisdiction if any unless brought to the notice of the authority concerned, will not in any manner vitiate the assessment order in the absence of any objection with regard to lack of jurisdiction by the assessee. It is a case where both the Assessing Officer and the assessee proceeded as if there is no transfer order transferring jurisdiction.

28. There is one more flaw in the order of the Tribunal. The Tribunal at the most should have remitted the matter back to the Inspecting Assistant Commissioner for completing the assessment. It was not justified in annulling the assessment order.

29. In view of above discussions, we answer all the aforesaid questions in negative, i.e, against the assessee and in favour of the Department and hold that the assessment order made by the Assessing Officer is valid in the eyes of law and this could not have been set aside by the Tribunal notwithstanding the transfer order dated July 1, 1977.

30. The appeals are allowed. The matter is restored back to the Tribunal to decide the two appeals afresh on the merits on remaining points in the light of the observations made above. No order as to costs.