Anantha Mallan Vs Commr. of Agrl. Income Tax and Others

Court: High Court Of Kerala

Date of Decision: July 3, 1961

Acts Referred: Constitution of India, 1950 â€" Article 226

Citation: (1961) KLJ 980

Hon'ble Judges: M.A. Ansari, C.J; T.C. Raghavan, J

Bench: Division Bench

Advocate: V. Rama Shenoi in O. P. 1088/59, P. Govindan Nair, G. Balagangadharan Nair and K. Sukumaran in O. P. 1098/59, for the Appellant; K.K. Mathew, Advocate General and A. Madhavan, Govt. Pleader, for the Respondent

Judgement

Ansari, C.J.
The common question raised by these two writ petitions is, whether the Commissioner of Agricultural income tax can decide,

u/s 34 of the Agricultural income tax Act, No. XXII of 1950, hereafter referred to as the Act the objections he himself has raised against the

appellate judgments of the Appellate Assistant Commissioner? The two petitioners seek to vacate different orders; but the issue raised in each is

similar, and, therefore, the petitions been consolidated for purposes of deciding the issue. The facts in O. P. 1088/59, are that the writ petitioner

had been assessed to the tax on income from properties belonging to his family, which the Agricultural income tax Officer, Alleppey, had found for

the assessment year 1957-''58, to be Rs. 4,135/-. The petitioner claiming to be the son, who had been recently called upon due to the father''s

death in December, 1955, to manage the properties, appealed to the Appellate Assistant Commissioner of Agricultural income tax, Trivandrum,

objected to the amount of the tax assessed by the officer, and sought further deductions that were available to a member of a Hindu joint family.

The Appellate Assistant Commissioner, after having inspected the properties, found the taxable income to be Rs. 2,796-8-0; and accordingly

cancelled the assessment, because the income was found below the assessable minimum. The order is dated June 21, 1958, but the writ petitioner

was served with notice of February 20, 1959, intimating the Commissioner''s opinion of the aforesaid appellate order being not based on proper

grounds, the case being fit for revision, and asking the writ petitioner to file his objection. The aforesaid notice was u/s 34 of the Act; and the

Commissioner, after hearing the petitioner''s advocate, set aside the appellate order, restoring assessment by the Agricultural income tax Officer.

The Commissioner''s order is dated June 4,1959, and is attacked on several grounds. Apart from the challenge to the constitutionality of the Act,

which has not been pressed before us, one ground is that the order is illegal without jurisdiction, opposed to principles of natural justice, mala fide

and in abuse of power vested in the Commissioner.

2. The facts in O. P. 1098/59, can also be briefly narrated. The agricultural income taxes have been levied in this case on the net income of Rs.

5,464/- in the assessment year 1954-55 and on Rs. 4,078-8-0 in the assessment year 1955-56. The Inspecting Assistant Commissioner,

Trivandrum, had set aside the assessments, and remanded the cases for fresh disposal and inquiry. After detailed inquiry and scrutiny, the

Agricultural income tax Officer again estimated the incomes to be what he had found earlier, and the cases came on appeal before the Appellate

Assistant Commissioner, who cancelled the assessments and allowed the appeals after having inspected the properties. In these cases as well the

Commissioner of Agricultural income tax thought it necessary to issue notice u/s 34 of the Act; and, by order of June 14, 1959, set aside the

Appellate Assistant Commissioner''s order having restored those of the Agricultural income tax Officer. The ground is that the inspection, having

been made four years after the initial assessments, could not due to influx of time, afford any material for judging what had been the income at the

time of the initial order. The Commissioner has further directed that, as the Agricultural income tax Officer had made assessment for 1958-59 on

the basis of the appellate orders for 1954-55 and 1955-56, which orders have been set aside, that assessment is also set aside, and the cases be

remanded for fresh disposal according to law. In this writ petition, the complaint is that Section 34 of the Act is subject to the other provisions of

the Act, and appeals having been provided against orders by the Appellate Assistant Commissioner, should the Commissioner be aggrieved by the

appellate orders. He ought to have directed the income tax Officer to file appeal before the Appellate Tribunal instead of deciding such grievances

by exercise of his revisory powers under the aforesaid Section 34.

3. It is common ground that neither of the petitioners had raised objections to the Commissioner''s jurisdiction to revise the Orders; and the first

question inviting adjudication in these petitions is, how far such failures would preclude the petitioners being given reliefs under Article 226. We feel

that the answer to the question depends upon whether the objection to the jurisdiction was so obvious that the petitioners ought to have known and

were negligent in trot raising it before the authority; for, should the absence of jurisdiction be not obvious the writ petitioners" failure would not be

due to their negligence, and the failures would not be fatal to their petitions being entertained. In these circumstances, it should be first determined

what are the Commissioners powers under the Act, where he feels the judgment by the Appellate Assistant Commissioner to be satisfactory; and

in case we find the jurisdiction to be circumscribed, whether the limit be clear that the petitioners ought to have objected to the Commissioner

calling them to show cause against the orders being vacated. To facilitate our decisions on the aforesaid questions, we would extract the parts of

the Sections of the Act, which are relevant.

S. 32(2). The Commissioner may, the objects to any order passed by an Assistant Commissioner u/s 31, direct the Agricultural income tax Officer

to appeal to the Appellate Tribunal against such order, and such appeal may be made within sixty days of the date on which the order is

communicated to the Commissioner by the Assistant Commissioner.

S. 34(1). The Commissioner may, of his own motion or on application by an assesses, call for the record of any proceeding under this Act which

has been taken by any authority subordinate to him and may make such enquiry or cause such enquiry to be made and, subject to the provisions of

this Act, may pass such orders thereon as he thinks fit:

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being beard:

Provided further that an order passed declining to interfere shall not be deemed to be ah order prejudicial to the assessee.

(2). Any order passed under sub-section (1) shall be final subject to any reference that may be made to the High Court u/s 60.

S. 60(I).....

(2) Within sixty days of the date on which he is served with a notice of an order u/s 34 enhancing an assessment or otherwise prejudicial to him,

the assessee In respect of whom the order was passed may, by application, accompanied by a fee of fifty rupees, require the Commissioner to

refer to the High Court any question, of law arising out of such order, and the Commissioner shall, within ninety days of the receipt of such

application, draw up a statement of the case and refer it with his opinion thereon, to the high Court:

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(3) If on any application being made under sub-section (1) or sub-section (2) the Appellate Tribunal or the Commissioner refuses to state the case

on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, in the case of an application under sub-

Section (1) or the assessee in the case of an application under sub-section (2) may, within six months from the date on which he is served with

notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision, require the Appellate

Tribunal or the Commissioner, as the case may be, to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal or

the Commissioner, as the case may he, shall state the case and refer it accordingly.

(6) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon

containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of

the Registrar, to the Appellate Tribunal or the Commissioner, as the case may be, for passing such orders as are necessary to dispose of the case

conformably to such judgment.

4. It is clear that the Commissioner has been given the right of appeal, through his subordinate officers, to the Appellate Tribunal, which is similar to

what an ordinary assessee has been given. It is equally clear that the Commissioner has been also vested with revisory jurisdiction as well, which

power can be exercised against the assessee; and, in such cases, a reference can be asked or compelled u/s 60. The learned Advocate General

has argued that the powers u/s 32(2) and u/s 34 of the Act having been vested in the same authority, the choice is conferred on the authority of

which he would exercise; and his choice cannot be interfered with where the exercise is neither mala fide nor perverse, nor arbitrary. He has further

urged that the power u/s 34 to call for the record on his own motion, clearly authorizes decision adversely to the assessee without the assessee''s

invoking the jurisdiction, which has been done in these cases; with the result of there being no error of jurisdiction. With respect we think such

interpretation pays inadequate attention to the well settled rule of natural justice that persons should not adjudicate the issue, on which there be a

real likelihood of their minds being biased. The Donoughmore Committee on Minister''s powers had said that bias from strong and sincere

conviction as to public policy might operate as a more serious disqualification than pecuniary interest, and the Legislature must guard against

''departmental bias''. In our opinion, Section 32(2) had been framed in partial recognition of the rule that minds biased must not decide: for, had the

Legislature not thought the objections of the Commissioner against the orders of the Appellate Assistant Commissioner being properly justiciable

by independent authority, the direction to file the appeal would not have been provided for. In that context, the jurisdiction u/s 34 becomes

exercisable only where the Commissioner be having no already formed objection in favor of the department, which he be desirous of adjudicating.

We are fortified in the view by the power u/s 34 being subject to the other provisions of the Act, which includes Section 32(2) and further by the

observation of Lord Cohen in Rice v. Commissioner of Stamp Duties-(1954 A. C. 216 at 234) that:

An executive officer can no doubt be made a judge in his own case, but if there is an ambiguity in the statute their Lordships must lean against a

construction which would have this effect.

It follows that, because the Commissioner in both the cases had objections to the Appellate Assistant Commissioner''s assessments, he ought to

have followed the procedure indicated in Section 32(2) and not exercised his revisory powers. To decide your own objections to assessment

orders, is violative of the principle of natural justice that persons with biased mind must not adjudicate, which principle is not excluded by the

statutory provisions in the Act. We, therefore allow the writ petitions, and vacate both the orders of assessment. The learned Advocate General

has argued that as the petitioners had not objected to the exercise of the jurisdiction by the Commissioner, these petitions should be dismissed, and

in support he has relied on Kumaraswami Reddiar v. Noordeen (1960 K.L.J. 1145) wherein one of us had held that, if a party armed with an

objection fails to raise it at the appropriate time and allows the proceeding to continue, that would preclude the person from invoking the

jurisdiction under Article 226. The rule, however, is subject to relaxations, and one such relaxation is to be found in Arunachalam v. Southern

Roadways Ltd. (A. I. R. 1958 Mad. 216). Therefore, should the failure be attributed not to negligence would not be fatal. As there has been no

prior decision nor any pronouncement by this Court on this point and as legal advice, which is now available to the writ petitioners, was not

forthcoming before the Commissioner, the omissions to object to the jurisdiction are not difficult to explain. In these circumstances, we feel there

had not been such negligence in these cases, as would justify the writ petitioners becoming disentitled to relief under Article 226. The cases before

us, we feel are similar to Arunachalam''s case (A. I. R. 1958 Mad. 236) and we respectfully agree with the principle laid down therein.

Accordingly both the writ petitions are allowed, and the assessment orders are vacated. Parties will bear their costs. This order will cover both the

writ petitions.