(1972) 04 KL CK 0007

High Court Of Kerala

Case No: Income Tax R. No. 90 of 1971

M.K. Muhammed Kunhi		APPELLANT
	Vs	
Commissioner of Income Tax, Kerala		RESPONDENT

Date of Decision: April 7, 1972

Acts Referred:

- Income Tax Act, 1922 - Section 12(2), 34

Citation: (1973) 92 ITR 341

Hon'ble Judges: T.C. Raghavan, J; N.D.P. Namboodiripad, J

Bench: Division Bench

Advocate: K.P. Radhakrishna Menon and K.K. Raveendranathan, for the Appellant; P.A. Francis and P.K. Ravindranatha Menon, for the Respondent

Judgement

T.C. Raghavan, C.J.
The two questions referred to us in these cases are:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal is correct in not following the finding of the Madras Bench of the Tribunal in its earlier order dated 27-6-1966 in I.T. A. Nos. 383 & 384 of 1964-65 that the assessee was not estopped from contending that the investments were made by his father; and

(2) Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the investments represent the income of the assessee from undisclosed sources for the assessment years 1954-55 and 1955-56.

The father of the assessee died leaving an estate to be assessed under the Estate Duty Act. Some investments in the name of the assessee were claimed in those proceedings as investments made by the assessee with his funds and not investments made by the father with the father''s funds. And this was accepted by the Revenue in those proceedings. Thereafter, the Income Tax Officer started

proceedings under S. 34 of the Indian Income Tax Act and assessed the assessee for Rs. 52,378/- and Rs. 14,490/- respectively for the two assessment years 1954-55 and 1955-56 as investments made out of undisclosed sources of income. The matter ultimately reached the Income Tax Appellate Tribunal; and before the Tribunal, the Revenue raised a plea of estoppel that, since the assessee took the stand that the investments were made by him with his funds in the proceedings under the Estate Duty Act, he was precluded from contending otherwise in these proceedings. The Tribunal overruled this plea and held:

There is no rule of estoppel in Income Tax proceedings. It is open to an assessee to come forward with a different explanation in the present proceedings and this explanation has to be examined on merits. It is quite possible that the explanation offered by the assessee in the earlier proceedings might be false and the present explanation may be true. If that turns out to be the case, then the present explanation, which happens to be true, has to be accepted.

The Tribunal then remanded the proceedings to the Appellate Assistant Commissioner and directed him to examine the assessee''s explanation on merits. The Tribunal also directed the Appellate Assistant Commissioner to call upon the assessee to file an affidavit giving his definite explanation for the investments. And he stated that the investments must have been made by his father directly.

Against the remand order the Revenue did not seek a reference: and the Appellate Assistant Commissioner investigated the matter in detail, looked] into the definite explanation given, and the evidence produced by, the assessee and came to the conclusion that "it is a hard fact to face that the investments ultimately retained of Rs. 52,317/- and Rs. 14,490/- would in fact be covered by the funds provided by the appellant''s father. This is a fact admitted by the Income Tax Officer himself in his remand report of 11-3-1969 and the earlier report dated 14-8-1967. In these circumstances, the investments cannot be treated as undisclosed income of the appellant in 1954-55 and 1955-56 assessment years".

2. The Revenue appealed; and in the appeals, the Revenue reiterated its plea of estoppel against the assessee. The Revenue contended that, after making allowances for household expenses for 16 years, the assessee''s father would not have had the wherewithal to make the investments out of his income. And the Tribunal observed:

We have carefully looked into this aspect and we feel that there is some force in the departmental contention. However, in the view that we have taken already on the legal aspect, it is not necessary to pursue this line of argument further. In the result, we set aside the order of the Appellate Assistant Commissioner and restore the order of the Income Tax Officer for the two relevant years.

The "view" referred to by the Tribunal "on the legal aspect" is that the assessee was estopped from contending that the funds with which the investments were made

belonged to his father, in view of his earlier stand that the funds did not belong to the father.

And at the instance of the assessee, the aforesaid two questions have been referred to us by the Tribunal.

3. Four or five decisions have been cited before us. One of them is Kantilal Chimanlal Shah Vs. Commissioner of Income Tax, Bombay North, Kutch and Saurashtra, Baroda, , where it has been laid down that the doctrine of estoppel does not apply in cases of successive assessments, that an assessment is complete in itself and that the taxing department is not bound by any contention it took up in one assessment when the question arises with regard to a different assessment. Another decision brought to our notice is Commissioner of Income Tax, Bombay City I Vs. Army and Navy Stores Ltd., , where the Bombay High Court has held that, if an assessee has obtained a benefit by making a certain representation to the taxing authorities, he cannot be permitted to deny the truth of the representation at a later stage. Yet another decision cited is again of the Bombay High Court, in In Re: Trikamlal Maneklal, . The question there was whether a particular deduction claimed was allowable under S. 12(2) of the Indian Income Tax Act; and on this question, the Tribunal held that the deduction, was allowable and then remanded the case to the Appellate Assistant Commissioner for verifying the entries in the balance sheet. There was no reference against that remand order; and ultimately, against the order passed after the remand, another appeal was taken before the Tribunal and it was then contended that the deduction claimed was not allowable. This contention was negatived by the Tribunal; and at the instance of the Revenue, the matter was referred to the High Court. And the High Court upheld the decision of the Tribunal. Still another decision cited is the decision of the Allahabad High Court in Laxmi Co., Kanpur Vs. The Commissioner of Income Tax, U.P., , where it has been held that, where by an order of remand the Appellate Tribunal does not dispose of the appeal finally and the appeal remains pending before it, any observation made by the Tribunal in the order of remand will not bind it at the time when the Tribunal gives its final decision. And the last decision brought to our notice is the decision of the Supreme Court in Commissioner of Income Tax, Madras Vs. V. Mr. P. Firm, Muar, . Subba Rao J. speaking for the Court has observed in this case that the doctrine of "approbate and reprobate" is only a species of estoppel; that it applies only to the conduct of parties; that it cannot operate against the provisions of a statute; that, if a particular income is not taxable under the Income Tax Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine; that equity is out of place in tax law; that a particular income is either eligible to tax under the taxing statute or it is not; and that the Income Tax Officer has no power to impose tax on the said income if it is not taxable under the law.

4. We may now state the legal position thus. If the Tribunal does not dispose of the appeal and keeps seisin of it when it remands the same (in other words, if the

remand is only in the nature of calling for a finding), then it may be permissible for the Tribunal to reconsider a view expressed by it in the remand order when the appeal is heard after the remand order is complied with (when the finding is received). On the other hand, if the Tribunal disposes of the appeal and remands the case to the authorities below, then, when another appeal comes before the Tribunal against the order passed after the remand, the Tribunal has no power to reconsider the finding or opinion expressed by it before the remand (in other words, questions which have become final and concluded by the remand order cannot be reopened). Estoppel relates to the conduct of parties and cannot operate against the provisions of a statute or the law. If the Tribunal expresses an opinion on a proposition of law and also remands the case and if that proposition happens to be wrong, at later stage, the Tribunal is not precluded from applying the correct law. Similarly, if the assessee made a representation or a concession on a point of law, the Revenue accepted the same and the Tribunal also approved of it, even then, if that position was wrong in law, nothing precludes the Tribunal from applying the correct law in another appeal against the order passed after the remand. On the other hand, if the representation was one of fact the truth of which was accepted by the Revenue and on that basis suffered some prejudice too, the assessee will not, at a subsequent stage of the same assessment, be allowed to go back on his earlier representation: he is estopped from doing that. We may however make it clear that this application of estoppel does not apply to cases of successive assessments: it applies only to the same assessment: in other words, the assessee will be bound by his earlier representation of fact and will not be allowed to go back on it at a subsequent stage of the same assessment. Similarly, even on a wrong decision on a point of law if the Tribunal passed an order of remand and that order has become final since no reference was obtained to question its correctness, then the decision is binding between the parties in the said assessment and neither of them will be allowed to question it or reopen it in another appeal before the Tribunal.

Applying these principles, it is clear that the Tribunal should not have relied upon the principle of estoppel or held that the assessee was barred by estoppel or pinned the assessee down to his earlier statement. On the earlier occasion, estoppel was pleaded by the Revenue and that plea was repealed by the Tribunal. The Tribunal directed the Appellate Assistant Commissioner to hear the explanation of the assessee and come to a conclusion on the evidence bearing on the point. The Appellate Assistant Commissioner investigated the matter, considered the explanation and evidence and held that the father of the assessee had the wherewithal to make the impugned investments. It was the Revenue that took up the matter in appeal; and it was the Revenue that again relied upon estoppel as a bar against the assessee. The Appellate Tribunal, on the second occasion, accepted the plea of estoppel and did not consider the explanation offered by the assessee on merits: it did not consider the evidence produced by the assessee and the circumstances mentioned by the Appellate Assistant Commissioner. It merely held

that the assessee was precluded from contending otherwise than what he contended in the proceedings under the Estate Duty Act. In other words, the decision of the Appellate Tribunal was that the funds with which the relevant investments were made belonged to the assessee, not because they actually belonged to him, but because he said so in the Estate Duty proceedings. This decision is, in effect, reviewing the Tribunal''s earlier order that estoppel was no bar or reversing the said decision as if in an appeal. This the Tribunal has no jurisdiction to do, since the remand in this case was not a mere calling for a finding, since the Tribunal lost seisin of the case when it remanded the case and since the appeal was no more pending before the Tribunal after the remand and the subsequent appeal was a different appeal. If the Revenue wanted to rely on estoppel, the Revenue should have obtained a reference on the earlier occasion and should have also obtained an answer from this Court in its favour if it could. Having failed to do, that, estoppel could not have been raised before the Tribunal on the second occasion. It is also worth while to remember that the earlier statement by the assessee was in another assessment and not at an earlier stage of the same assessment.

In the light of the aforesaid discussion, we answer both the questions referred to us in the negative, against the Revenue and in favour of the assessee. However, we do not pass any order regarding costs.

A copy of this judgment will be sent to the Tribunal.