In Re : Bata India Limited

Court: Calcutta High Court

Date of Decision: Nov. 24, 1995

Acts Referred: Constitution of India, 1950 â€" Article 227
Income Tax Act, 1961 â€" Section 254(2)

Hon'ble Judges: Samir Kumar Mookherjee, J; Bijitendra Mohan Mitra, J

Bench: Division Bench

Advocate: R.N. Bajoria, Mr. Animesh Kanti Ghosal, Mr. J.P. Khaitan and Mr. C.M. Ghorawat, for the Appellant;Nanda Lal Pal and Mr. R.N. Mitra, for the Respondent

Final Decision: Allowed

Judgement

S.K. Mookherjee, J.
The present application under Article 227 of the Constitution of India is directed against an Order, dated September

7, 1992, passed by the Income Tax Appellate Tribunal "E" Bench, Calcutta, in Misc. Applications Nos. 50 to 52 (Calcutta of 1992), arising out

of Income Tax Appeals Nos. 1886 to 1888 (Calcutta of 1988) before the Deputy Commissioner of Income Tax Assessment Bench-XIII. In the

impugned Order the Tribunal, while rejecting Misc. Applications made by the assessee/petitioner under sections 254(2) of the Income Tax Act,

inter alia, held that no mistake had crept in its Order dated 30th January, 1992. In arriving at the said conclusion, the Tribunal was called upon to

deal with a prayer, amongst other, made on behalf of the assessee, for deletion of alleged admission by the petitioner"s Counsel, who argued the

appeals, to the effect that EDP machines were installed in the premises of the assessee Company. From the Order dated 30th January, 1992, the

alleged admission appears to have been recorded in paragraph 8 thereof in the following manner :-

Admittedly in the instant case the EDP machines were installed in the office premises at Shakespeare Sarani, and were not installed in the factory

premises"".

It appears from the Order under challenge in the revisional proceedings, dated September 7, 1992, that the Tribunal, though took note of

production of the certificate of Chief Inspector of Factories from the side of the assessee, seeking to establish that the premises where the said

EDP machines were installed had been treated as factory premises, preferred to agree with the Departmental Representative Mr. J.

Mukhopadhyay, appearing before the Tribunal in connection with the Misc. Applications, that there was such an admission made by the

assessee"s Counsel, over-looking that at the hearing of the appeals the Department was represented by one Sri R. Biswas and not Sri

Mukhopadhyay, and as such the statement made by Mr. Mukhopadhyay could not be said to be within his direct knowledge as to attribute the

required firmness for being acceptable to the Tribunal without consideration of the entire records, placed before it. Even probability of such an

admission having been made had not been found upon simultaneous consideration of such records. The Tribunal"s failure also to take into

consideration the uncontroverted statement to the affidavit made by Sri D.K. Sen, the Counsel for the assessee/petitioner, who allegedly made

such admission, has resulted in material procedural irregularity particularly when its consequence would be to shut out the assessee and deprive it

of any relief in its pending Reference Cases. It cannot be denied that the procedure followed by the Tribunal has resulted in grave miscarriage of

justice so far as the petitioner/assessee is concerned.

2. No doubt, by its decision the Apex Court has laid down that the question as to whether an admission was made or not was to be decided by

invoking the jurisdiction of the Court before which such an admission is stated to have been made and the conclusion reached by such Court would

be final except in certain circumstances such as where the Vakil or the Advocate affirms an affidavit averring that no such concession was made.

Even the Apex Court has gone to the extent of laying down that it will not be open to the members of the Bar to take stands counter to the findings

of a Judge in his judgment. On the question of making or not making concession (Vide 34 Cal LJ 302 Sarat Chandra Maite and others v.

Bibhabati Debi and others; State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, It has nowhere been laid down, however, that in

affirming the fact of making of a concession the Court need not act with care and caution and need not follow a procedure which can be said to be

all proof in the context of a particular situation as that would be inconsistent with the primary obligation of a Court of law. It has to be remembered

that a concession takes away a very valuable right from the party making the alleged concession and conclusion of Court must not be reached by

mere show of compliance with the Rules of procedure or a prefunctory observance thereof, when such Rules are meant to advance the cause of

justice not to short-circuit the same (Vide Smt. Dipo Vs. Wassan Singh and Others, It is also well settled that for doing justice to the cause, all

procedures remain open to Court except those which are specifically forbidden. In the instant case, in the Order under challenge before us, the

Tribunal as we have indicated, affirmed the fact of admission having been made by the assesses''s Counsel by believing the statement of the

Department''s Representative, Mr. J. Mukhopadhyay, who was not present when the said concession was made. The Tribunal also failed to

consider the affidavit by the petitioner''s Counsel, over-looking that a Counsel, who is also an Officer of it, would not swear an affidavit without

being fully and bona fide convinced about the correctness of the facts. We do not for a moment intend to lay down that finality of the Tribunal''s

view can be disturbed on the basis of an affidavit of a Counsel; but what we propose to say is that such finality, because of its far reaching effect,

must be reached by following a reasonably conscientious procedure seriously and not in a perfunctory, light or closed, manner. We have already

indicated our reasons for not accepting the tribunal''s findings in the Order impugned before us and when the prejudice resulting therefrom is

attributable to Tribunal''s mistake, error or omission, it is its bounden duty to set it tight. For an authority in the above proposition reference may be

made to the case of Kanai Lal v. Bhathu Shaw, C.A. 158 1963, decided by the Supreme Court on 3.5.1965 and Goaldas Sadani v. Sri Chand

Jhawar reported in 75 CWN 361.

3. Before parting with the case finally with appropriate orders on the basis of reasonings, as given by us hereinabove, we would like to deal with

two other technical objections raised, on behalf of the Department. The first one is that the assessee having taken recourse to the provisions of

Section 254(2) was not entitled to any relief as it could not be said to be an error apparent on the face of the records. It is well settled that more

quotation of wrong section should not deprive a party or a litigant of a deserving relief. Reference in this connection may be made to the case of P.

Balakotaiah Vs. The Union of India (UOI) and Others, ; J.K. Steel Ltd. Vs. Union of India (UOI), ; Commissioner, Sales Tax, U.P., Lucknow

Vs. Anoop Wines, Khuldabad, Allahabad, We have already indicated the prejudicial manner in which the fact of making of the admission had

been concluded by the Tribunal. We, therefore, do not think that this technical objection, as raised, on behalf of the Department, can be sold to

have any substance.

4. The other objection, as raised, by the respondent relates to the jurisdiction of this Court to grant relief under Article 227 of the Constitution of

India. The barriers to grant of such relief have been well settled by decisions of the Apex Court but it is equally well settled that for preventing

grave and serious mis-carriage of justice including one resulting from following a patently erroneous procedure of contravention of basic principles

of justice and fair play, the supervisory and superintending jurisdiction conferred on Courts by the said Article remains always available. (Vide

Trimbak Gangadhar Telang and Another Vs. Ramchandra Ganesh Bhide and Others, also followed in Chandavarkar Sita Ratna Rao Vs. Ashalata

S. Guram, There cannot possibly be an instance of more glaring injustice of flagrant violation of procedure as in the present case where existence

of admission may expose the assessee to large amount by way of taxation.

5. For the reasons aforesaid, we allow the revisional application, set aside the impugned order, remand the Misc. Applications to the Tribunal for

reconsideration in the light of the observations made by us hereinabove. We keep it on record that the Tribunal would record its findings with

regard to the alleged admission keeping all other points open according to law for being agitated before the appropriate Forum.

There will be no order as to costs.

B.M. Mitra, J.

6. I agree.