Commissioner of Income Tax Vs Sardari Lal and Co.

Court: Delhi High Court

Date of Decision: Sept. 7, 2001

Citation: (2001) 170 CTR 431 : (2001) 251 ITR 864 : (2002) 120 TAXMAN 595

Hon'ble Judges: Arijit Pasayat, C.J; D.K. Jain, J; Arun Kumar, J

Bench: Full Bench

Advocate: Sanjeev Khanna and Ajay Jha, for the Revenue P. N. Mona and Manu Monga, for the assessee, for the Appellant;

Judgement

Arijit Pasayat, C.J.

Feeling that a fresh look may be necessary to be taken on the question of the first appellate authority''s power to take into account a new source of

income under the Income Tax Act, 1961 (hereinafter referred to as ""the Act""), the matter was referred to a larger Bench to consider the

correctness of the view expressed by this court in Commissioner of Income Tax Delhi-IV Vs. Union Tyres, Delhi, and that is how the matter is

placed before us.

It is to be noted that the question has been considered by the Apex Court and various High Courts at different times. In fact in Jute of Corporation

of India Ltd. Vs. Commissioner of Income Tax and another, , it was observed that the Act does not contain any express provision debarring an

assessed from raising an additional ground in appeal and there is no provision in the Act placing restriction on the power of the appellate authority

in entertaining an additional ground in appeal. In the absence of any statutory provision, the general principle relating to the amplitude of the

appellate authority''s power being coterminous with that of the initial authority should normally be applicable. But this question, for the purposes of

the Act, has been an intricate and vexed one. There is no uniformity in judicial opinion on this question.

The factual position in Commissioner of Income Tax Delhi-IV Vs. Union Tyres, Delhi, was as follows :

The dispute relates to the assessment year 1967-68 for which the accounting period ended on 31-3-1967. The assessed is an individual and deals

in tyres. In his return for the relevant assessment year, the assessed declared a loss of Rs. 4,552 which was revised to Rs. 3,500. The said loss

was computed by applying the rate of gross profit at 0.9 per cent. on the total sales of Rs. 11.75 lakhs. During the course of assessment

proceedings, the assessed did not produce any books of account. The Income Tax Officer (hereinafter referred to as the "ITO") estimated the

sales at Rs. 11.85 lakhs and by applying a gross profit rate of 3.5 per cent., he made an addition of Rs. 30,756 to the declared loss. Against the

said addition, the assessed preferred an appeal to the Appellate Assistant Commissioner (hereinafter referred to as the "AAC"). The Appellate

Assistant Commissioner felt that the Income Tax Officer had not properly examined the case. He observed thus :

"It is not known how the appellant, who was a mere student prior to the start of the business, managed to secure finances for purchase of goods

the sale of which resulted in such a huge turnover. The source of investment in the purchase of goods has not been enquired into. It is also not

known whether the appellant was registered under the Shops and Establishment Act as also under the Sales Tax Act. It has also not been verified

whether purchases and sales are on cash or credit basis. If the purchases were on cash basis, the source of money invested in the purchases should

have been looked into by the Income Tax Officer. If the purchase and sales are on credit basis, it is not understood why the books of account

were not maintained and, if maintained, why were they not produced. The antecedents of the appellant have also not been enquired into."

Accordingly, he directed the Income Tax Officer to submit a report indicating following eleven aspects

(1) Full and complete antecedents of the appellant.

(2) Whether the books of account were maintained ? For this purpose, the Income Tax Officer will obtain an affidavit of the appellant.

(3) Source of investment made in the purchase of goods.

(4) Whether the sales and purchases are on cash or credit basis. wholly or partly. The Income Tax Officer will obtain a list of sales and purchases

made on credit basis exceeding Rs. 1,000 in each case ?

(5) Whether the appellant is a registered dealer under the Sales Tax Act ?

(6) Whether the appellant has obtained registration under the Shops and Establishment Act ?

(7) Whether any sales-tax assessment has been made ?

(8) The business connections of the appellant with any business/businesses carried on by the appellant"s close relatives.

(9) Gross Profit rate declared by other similar business assessees in the locality.

(10) A bank reconciliation statement to be obtained.

(11) Name of the employees whole-time/part-time.

Aggrieved by the said directions and alleging that the Appellate Assistant Commissioner had travelled beyond the legitimate scope of his

jurisdiction in disposing of the appeal preferred before him, the assessed filed an appeal to the Income Tax Appellate Tribunal (hereinafter referred

to as "the Tribunal"). The Tribunal held that the Appellate Assistant Commissioner was not justified in calling for the remand report in respect of

several items, but the remand report in respect of rest of the items was sustained. The Tribunal observed that calling for the remand report in

respect of some of the points would have the effect of directing the Income Tax Officer to make assessment on an entirely new footing. The

revenue "s application u/s 256(1) of the Act was dismissed. On being moved for reference u/s 256(2) of the Act, the following question was called

for :

"Whether on the facts and in the circumstances, the Tribunal was right in holding that the Appellate Assistant Commissioner could not in law call

for a remand report in respect of items Nos. 1, 3, 8, 10 and (sic) mentioned in the order of the Appellate Assistant Commissioner dated 4-5-1973

?"

This court was of the view that the question for consideration was whether the directions of the Appellate Assistant Commissioner to the Income

Tax Officer to conduct enquiry and furnish information on the aforesaid points is within the scope of his powers u/s 251(1)(a) of the Act.

After noticing several judgments, it was held as follows :

Thus, the principle emerging from the aforenoted pronouncements of the Supreme Court is, that the first appellate authority is invested with very

wide powers u/s 251(1)(a) of the Act and once an assessment order is brought before the authority, his competence is not restricted to examining

only those aspects of the assessment about which the assessed makes a grievance and ranges over the whole assessment to correct the assessing

officer not only with regard to a matter raised by the assessed in appeal but also with regard to any other matter which has been considered by the

assessing officer and determined in the course of assessment. However, there is a solitary but significant limitation to the power of revision, viz.,

that it is not open to the Appellate Assistant Commissioner to introduce in the assessment a new source of income and the assessment has to be

confined to those items of income which were the subject-matter of original assessment.

Applying the above well-settled principles of law to the facts of the instant case, we are of the view that the Tribunal was justified in holding that in

calling for a remand report on the aforenoted four points the Appellate Assistant Commissioner had exceeded his jurisdiction. While computing the

total business income of the assessed, the assessing officer had estimated the sales at an enhanced figure and had applied a higher rate of gross

profit. Thus, the only matter dealt with by the assessing officer in the assessment order was the estimation of profits and gains of the business of the

assessed. None of the aforenoted four points had any bearing on the question of estimation of either the sales or the gross profit rate. From the

observations, extracted above, it is evident that the Appellate Assistant Commissioner had his doubts about the capacity of the assessed to raise

finances for the purchase of goods and show a huge turnover in the very first year of his business. In other words, the enquiry ordered by the

Appellate Assistant Commissioner was to satisfy himself about the source of investment by the assessed. It is axiomatic that failure to prove the

sources of investment will result in addition in the hands of the assessed under a different provision of law and will not have much relevance in the

estimation of sales and gross profit rate adopted by the assessing officer. In our opinion, any addition on account of unexplained investment would

constitute a new source of income, which was not the subject-matter of assessment before the assessing officer and, Therefore, it was not open to

the first appellate authority to direct the assessing officer to conduct enquiry on the said four points.

3. At the time of hearing of the matter before us, learned counsel for the revenue submitted that any matter arising out of the proceedings, the order

against which appeal has been filed is the subject-matter of the appellate proceedings before the first appellate authority. The jurisdiction of the first

appellate authority in the case of an appeal against the assessment order passed by the assessing officer ranges and extends over the whole

assessment as the assessment itself is the subject-matter of an appeal and the purpose and the object of the assessment and the appellate

proceedings is to correctly compute and ascertain the taxable income of the assessed. Therefore, the first appellate authority"s power and

jurisdiction is wide and cannot be curtailed. The first appellate authority has the right to grant deduction, which the assessed is entitled to but fails to

claim before the assessing officer and at the same time the first appellate authority has the power to enhance income, which the assessing officer

has failed and neglected to consider certain aspects. In other words, it is submitted that the first appellate authority has the power to adjudicate and

decide everything necessary to ascertain the true and correct income of the assessed. The proceedings before the first appellate authority cannot

be restricted to only those matters considered and decided by the assessing authority. Failure on the part of the assessing officer to examine certain

aspects can be rectified at the appellate stage, and Therefore, it would be wrong to circumscribe and restrict power.

On the contrary, learned counsel for the assessed submitted that if such a view is taken, the provisions for reopening an assessment available u/s

147/148 of the Act and/or setting aside of the order on the ground that it is prejudicial to the interests of the revenue as available to the

Commissioner u/s 263 of the Act would be meaningless and purposeless.

A similar question has been examined by the Apex Court as noted above, on several occasions. We do not think it necessary and appropriate to

proliferate this judgment by making reference to all the decisions. A few of the important ones need to be noticed. One of the earliest decisions on

the point was in The Commissioner of Income Tax Vs. Shapoorji Pallonji Mistry, The matter related to the corresponding provisions of the Indian

Income Tax Act, 1922 (hereinafter referred to as ""the old Act""). It was held, inter alia, that in an appeal filed by the assessed, the Appellate

Assistant Commissioner has no power to enhance the assessment by discovering a new source of income not considered by the Income Tax

Officer in the order appealed against. A similar view was expressed in Commissioner of Income Tax, Calcutta Vs. Rai Bahadur Hardutroy Motilal

Chamaria, That also related to a case u/s 31(3) of the old Act. It was held that the power of enhancement u/s 31(3) of the old Act was restricted

to the subject-matter of the assessment or the source of income, which had been considered expressly or by clear implication by the assessing

officer from the point of view of taxability and that the Appellate Assistant Commissioner had no power to assess the source of income, which had

not been taken into consideration by the assessing officer. It is to be noted that strong reliance was placed by learned counsel for the revenue on

the decision of the Apex Court in Commissioner of Income Tax, M.P., Bhopal Vs. M/s. Nirbheram Deluram, It was submitted that a different

view was expressed about the scope and ambit of the power of the first appellate authority vis-a-vis the sources considered by the assessing

officer and even if the action of the first appellate authority related to a new source of income not considered by the assessing officer, it was not

impermissible. It is to be noted that in Union Tyres'' case (supra), this decision was also considered by this court in the background of what had

been stated in Daluram''s case (supra) and it was observed that there was really no difference from the view expressed earlier in Shapoorji''s case

(supra) and Chamaria''s case (supra).

Learned counsel for the revenue also submitted that this conclusion of the Division Bench needs a fresh look. We have considered this submission

in the background of what had been stated by the Apex Court in Jute Corporation''s case (supra) and Daluram''s case (supra). In Jute

Corporation''s case (supra), the Apex Court while considering the question whether the Appellate Assistant Commissioner has the jurisdiction to

allow the assessed to raise an additional ground in assailing the order of assessment before it, referred to Shapoorji''s case (supra), and drew a

distinction between the power to enhance tax on discovery of a new source of income and granting a deduction on the admitted facts supported by

the decision of the Apex Court. Relying on certain observations made by the Apex Court in Commissioner of Income Tax, U.P.,Lucknow Vs.

Kanpur Coal Syndicate, , the Apex Court held that powers of the first appellate authority are coterminous with those of the assessing officer and

the first appellate authority is vested with all the wide powers, which the subordinate authority may have in the matter. In Daluram''s case (supra),

the decisions of Kanpur Coal''s case (supra) and Jute Corporation''s case (supra) were also considered and it was observed by the Apex Court

that the appellate powers conferred on the first appellate authority u/s 251 of the Act were not confined to the matter, which had been considered

by the Income Tax Officer, as the first appellate authority is vested with all the wide powers of the assessing officer may have while making the

assessment, but the issue whether these wide powers also include the power to discover a new source of income was not commented upon.

Consequently, the view expressed in Shapoorji''s case (supra) and Chamaria''s case (supra) still holds the field. It may be noted that the issue was

considered in The Commissioner of Income Tax Vs. Mcmillan and Co., . Referring to a decision of the Bombay High Court in Narrondas

Manordass, Bombay Vs. Commissioner of Income Tax, Central, Bombay, , it was held that the language used in section 31 of the old Act is wide

enough to enable the first appellate authority to correct the Income Tax Officer not only with regard to a matter which has been raised by the

assessed but also with regard to a matter which has been considered by the assessing officer and determined in the course of the assessment. It is

also relevant to note that in the Jute Corporation''s case (supra), the Apex Court, inter alia, observed as follows :

The Appellate Assistant Commissioner, on an appeal preferred by the assessed, had jurisdiction to invoke, for the first time, the provisions of rule

33 of the Indian Income Tax Rules, 1922 (hereinafter referred to as ''the Rules''), for the purpose of computing the income of a non-resident even

if the Income Tax Officer had not done so in the assessment proceedings. But, in Shapoorji Pallonji Mistry''s case (supra), this court, while

considering the extent of the power of the Appellate Assistant Commissioner, referred to a number of cases decided by various High Courts

including the Bombay High Court judgment in Narrondas'' case (supra) and also the decision of this court in McMillan and Co.''s case (supra) and

held that, in an appeal filed by the assessed, the Appellate Assistant Commissioner has no power to enhance the assessment by discovering new

sources of income not considered by the Income Tax Officer in the order appealed against. It was urged on behalf of the revenue that the words

''enhance the assessment'' occurring in section 31 were not confined to the assessment reached through a particular process but the amount which

ought to have been computed if the true total income had been found. The court observed that there was no doubt that this view was also possible,

but having regard to the provisions of sections 34 and 33B, which made provision for assessment of escaped income from new sources, the

interpretation suggested on behalf of the revenue would be against the view which had held the field for nearly 37 years."" (Emphasis, here italicised

in print, supplied).

4. Looking from the aforesaid angles, the inevitable conclusion is that whenever the question of taxability of income from a new source of income is

concerned, which had not been considered by the assessing officer, the jurisdiction to deal with the same in appropriate cases may be dealt with

u/s 147/148 of the Act and section 263 of the Act, if requisite conditions are fulfilled .It is inconceivable that in the presence of such specific

provisions, a similar power is available to the first appellate authority. That being the position, the decision in Union Tyres'' case (supra) of this

court expresses the correct view and does not need reconsideration. This reference is accordingly disposed of.