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BHARAT NATIONAL BANK, LTD. v. BHAGWAN SINGH.

It is not necessary for the purposes of this case to discuss the propriety of the length to which the above judgment has gone. It is sufficient to remark that even on the authorities cited to us on behalf of the appellants themselves they cannot succeed. I would, therefore, dismiss this appeal with costs.

DIN MOHAMMAD J.

ADDISON J.—I agree.

ADDISON J.

Appeal dismissed.

P. S.

CIVIL REFERENCE.

Before Addison and Din Mohammad JJ.

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Jan. 19.

SOM CHAND-MALUK CHAND—Assessee,

versus

THE COMMISSIONER OF INCOME-TAX—Respondent.

Civil Reference No. 24 of 1937.

Indian Income Tax Act (XI of 1922), SS. 23 (4), 66 (2) (3) — Assessment under S. 23 (4) — Question formulated by High Court under S. 66 (3) not raised by assessee in his application to Commissioner under S. 66 (2) — Jurisdiction of High Court to interfere with assessment — Inherent powers — of High Court.

The Income-tax Officer made the assessment to the best of his judgment, under s. 23 (4) of the Act and the assessee having exhausted his other remedies to get the assessment cancelled and the Commissioner having refused to state the case under s. 66 (2) ultimately applied to the High Court under s. 66 (3) and the High Court formulated the question " whether..... the assessment was not made arbitrarily..... ". The Commissioner challenged the jurisdiction of the High Court to entertain the question on the ground that it was never raised before the Income-tax authorities; the assessee contended that the High Court was competent to interfere in the exercise of its inherent powers.

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Held, that the jurisdiction of the High Court under s. 66 (3) is confined only to those matters which are contained in the application made to the Commissioner under s. 66 (2) of the Act.

It is a special jurisdiction circumscribed within the limits specified in the statute; and the power of revising, reviewing or interfering in any other manner with an assessment made under s. 23 (4) not having been conferred upon the High Court expressly or impliedly by the Income-tax Act, such power cannot be exercised by it by virtue of its general inherent jurisdiction, if any.

Jot Ram Sher Singh v. *Commissioner of Income-tax, Central and United Provinces* (1), and *Commissioner of Income-tax, Bombay* v. *The Bombay Trust Corporation, Ltd.* (2), relied upon.

Muhammad Hayat-Haji Muhammad Sardar v. *The Commissioner of Income-tax* (3), *Abdul Bari Chowdhury* v. *Commissioner of Income-tax, Burma* (4), and *Commissioner of Income-tax, United and Central Provinces* v. *Badridas Ramrai Shop, Akola* (5), referred to.

Case referred under section 66 (3) of the Indian Income-tax Act, by Mr. K. C. Basak, Commissioner of Income-tax, Punjab, with his letter No. S. 10/F. P. 35, dated 22nd October, 1937, for orders of the High Court.

KIRPA RAM BAJAJ, for Assessee.

JAGAN NATH AGGARWAL and S. M. SIKRI, for Respondent.

The Order of the Court was delivered by—

DIN MOHAMMAD J.—This is a case stated under sub-section (3) of section 66 of the Income-tax Act. The question formulated by this Court was couched in the following terms :—

" Whether in the circumstances of this case the assessment of the petitioner was not made arbitrarily,

(1) (1934) 7 I. T. C. 173. (3) I. L. R. (1931) 12 Lah. 129 (F. B.).
(2) (1936) 4 I. T. R. 323 (P. C.). (4) I. L. R. (1931) 9 Rang. 281 (F. B.).
(5) I. L. R. [1937] Nag. 191 (P. C.).

recklessly or capriciously, without the Income-tax Officer exercising his 'judgment' in the matter, and is it not liable to be set aside?"

The Commissioner has questioned the jurisdiction of this Court in entertaining a question which was not raised in the application submitted by the assessee to the Commissioner under sub-section (2) of section 66. It may be necessary to state the facts shortly in order to appreciate the force of this objection.

The assessee did not make a return under sub-section (2) of section 22, nor did he comply with the terms of the notice issued under sub-section (4) of the same section. Thereupon the Income-tax Officer made the assessment to the best of his judgment under sub-section (4) of section 23. The assessee applied under section 27 for the cancellation of this assessment, but his application was disallowed. He then presented an appeal under section 30, but the appeal, too, was dismissed. He subsequently moved the Commissioner under sub-section (2) of section 66, but the Commissioner refused to interfere with the assessment, on which the assessee put in an application in this Court with the result that the question referred to above was formulated and the Commissioner was required to state the case thereon.

The question whether the assessment was arbitrary, reckless or capricious was never raised at any stage of the proceedings before the Income-tax authorities and it is on this ground that the Commissioner has questiond the jurisdiction of this Court and has relied in this connection on the wording of sub-section (3) of section 66. The material portion of this sub-section reads as follows:—

"(3) If on any application being made under sub-section (2), the Commissioner refuses to state the case

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on the ground that no question of law arises, the assessee may apply * * * * to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to state the case and to refer it * * * * * *."

The Commissioner contends that the jurisdiction of the High Court is confined only to those matters which are contained in the application made to the Commissioner under sub-section (2) of section 66 and it is only in relation to such matters that the refusal of the Commissioner to state the case can be investigated by the High Court. Consequently if a point is not raised before the Commissioner, his refusal to state the case cannot be declared to be unjustified or, in other words, his decision cannot be pronounced to be incorrect. We consider that there is much force in this contention and we have arrived at this conclusion not only on the wording of sub-section (3) of section 66, but on consideration of the whole scheme of the Act. It is clear that no appeal is allowed from an assessment made under sub-section (4) of section 23. The only course open to an assessee, who is assessed under that sub-section, is to approach the Income-tax Officer in the first instance under section 27 and to ask for the cancellation of the assessment made against him. In case of refusal of the Income-tax Officer to accede to his request, he can move the Assistant Commissioner under sub-section (1) of section 30. All that he can contest before these authorities is the matter arising under section 27 and no other matter can be raised either before the Income-tax Officer or before the Assistant Commissioner. Similarly, all that can be mooted before the Commissioner is the matter arising out of the appellate order of the Assistant Commissioner and no

more. If the assessee were permitted to raise questions touching the merits of the assessment before the High Court for the first time under sub-section (3) of section 66, it would amount to allowing him to appeal against an assessment, an appeal against which is expressly forbidden. We accordingly hold that no mandamus could issue to the Commissioner on the point at issue.

Counsel for the assessee concedes the legal position as explained above, but he contends that there is an inherent power vested in this Court to interfere in cases of gross injustice or capricious assessments. In support of his contention he relies on *Muhammad Hayat-Haji Muhammad Sardar* v. *The Commissioner of Income-tax* (1), *Abdul Bari Chowdhury* v. *Commissioner of Income-tax, Burma* (2) and *Commissioner of Income-tax, United and Central Provinces* v. *Badridas Ramrai Shop, Akola* (3). But, in our opinion, none of these judgments lends any support to him. Read carefully, these judgments rather go against his contention.

In *Muhammad Hayat-Haji Muhammad Sardar* v. *The Commissioner of Income tax* (1), a case decided by five Judges of this Court—the main judgment was delivered by Sir Shadi Lal C. J. While discussing a similar question raised before him, he observed at page 144 of the report :—

" It is true that a finding of fact recorded by him (Income-tax Officer) cannot be impeached even when it is not based upon any material, nor is it open to the High Court to say with respect to a particular case that the assessment has been made contrary to the rules of justice and good conscience."

(1) I.L.R. (1931) 12 Lah. 129 (F.B.). (2) I.L.R. (1931) 9 Rang. 281 (F.B.).
(3) I. L. R. [1937] Nag. 191 (P. C.).

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No doubt he added : " the High Court is, however, entitled to make a pronouncement upon the meaning of section 23, sub-section (4), and to lay down that the Income-tax Officer cannot be said to make an assessment to the best of his judgment, if he is not guided by the dictates of justice and fair play. An assessment resting upon the whim and caprice of the Income-tax Officer cannot be elevated to the dignity of an assessment made to the best of his judgment."

But it is obvious that these remarks were merely intended to impress upon the minds of the Income-tax Officers that while making assessments to the best of their judgment they should not be whimsical or capricious and not that the learned Judge had jurisdiction in the matter; nor did he interfere with the assessment. The conclusion at which he arrived is really contained in the earlier passage quoted above.

In *Abdul Bari Chowdhury* v. *Commissioner of Income-tax, Burma* (1), Page C. J. had observed at page 294 of the report :—

" If the word (arbitrary) is taken to mean that the Income-tax Officer, regardless of information in his possession, deliberately, recklessly or fraudulently has made an assessment under section 23 (4) which he knows that he was not justified in making, in such circumstances and assuming that the assessee has failed to obtain redress as provided in the Act, I should not be prepared to hold, as at present advised, apart altogether from the provisions of the Income-Tax Act, that this Court does not possess jurisdiction in virtue of its inherent prerogative powers to order the Income-tax Officer to do his duty."

(1) I. L. R. (1931) 9 Rang. 281 (F.B.).

The conclusion at which he arrived, however, is stated at page 302 of the report in the following words :—

" Under section 66 (2) the assessee as therein provided may require the Commissioner of Income-tax *inter alia* to refer to the High Court any question of law arising out of an order of the Assistant Commissioner under section 31, and if the Commissioner refuses to state a case on the ground that no question of law arises under section 66 (3) on the assessee's application, the High Court may require the Commissioner to state the case and to refer it. Inasmuch as the question whether an assessment made by the Income-tax Officer under section 23 (4) is valid or not is not a question of law that arises or can arise out of an order of the Assistant Commissioner passed under section 31, it follows that such a question cannot be made the ground for an order by the High Court under section 66 (3) requiring the Commissioner to state a case."

His conclusions were concurred in by the other four colleagues of his who heard the case with him. Three of them merely said that they agreed, while Dunkley J. appended a separate note to the main judgment, throwing further light on these conclusions.

In *Commissioner of Income-tax, United and Central Provinces* v. *Badridas Ramrai Shop, Akola* (1) their Lordships of the Privy Council observed ' their Lordships find themselves in agreement with the views expressed by the High Court at Rangoon in the case of *Abdul Bari Chowdhury* v. *Commissioner of Income-tax, Burma* (2)." It is on this passage that counsel for the assessee has laid much stress and has argued

(1) I.L.R. [1937] Nag. 191 (P.C.). (2) I.L.R. (1931) 9 Rang. 281 (F.B.).

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that inasmuch as their Lordships of the Privy Council had agreed with the views expressed by the High Court at Rangoon, they impliedly accepted the views of Page C. J. as stated above in respect of the inherent jurisdiction vested in the High Court to interfere in such matters. We are not, however, disposed to interpret this passage in the manner suggested by the assessee's counsel. All that this passage conveys is that their Lordships were in agreement with the conclusions at which the High Court had arrived and these conclusions made no reference to the inherent jurisdiction of the High Court. The interpretation that we place upon the passage quoted from the judgment of their Lordships of the Privy Council finds support from the fact that their Lordships stated in an earlier part of the judgment that if the assessee was given no relief under section 27, the assessment stood as it was. Reference in this connection may be made to *Jot Ram Sher Singh* v. *Commissioner of Income-tax, Central and United Provinces* (1). In that case it was held that the High Court had no power under section 66 (3) to require the Commissioner of Income-tax to state the case on the question whether the assessment, being purely arbitrary and based on no materials whatever, was justified in point of law.

The jurisdiction exercised by the High Court under the Income Tax Act is a special jurisdiction as remarked by their Lordships of the Privy Council in *Commissioner of Income-tax, Bombay* v. *The Bombay Trust Corporation, Ltd.* (2) and is consequently circumscribed within the limits specified in the Statute. The power of revising, reviewing or interfering in any other manner with an assessment made under section

(1) (1934) 7 I. T. C. 173. (2) (1936) 4 I. T. R. 323, 339 (P. C.).

23 (4) being nowhere conferred upon the High Court expressly or impliedly by the Income-Tax Act, no such power can be exercised merely by virtue of the general inherent jurisdiction of the High Court, if any.

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In view of our decision on the preliminary objection raised by the Commissioner, the question need not be answered, but even if it were permissible to us to consider the merits of the case we would have had no hesitation in holding that the order was neither arbitrary nor reckless nor capricious, and would thus have answered the question formulated by this Court in the affirmative.

The assessee will pay the costs of this reference to the Commissioner of Income Tax.

A. N. K.

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

WALI DAD (PLAINTIFF) Appellant,

versus

MST. IMAM KHATUN AND OTHERS (DEFENDANTS) Respondents.

1938

Jan. 27.

Civil Regular Second Appeal No. 636 of 1937.

Custom — Alienation — Will — Mair Minhas Rajputs *of Tahsil Chakwal, District Jhelum — Ancestral as well as self acquired property — Will in favour of daughter's daughter in absence of sons — Testation and gift* inter vivos, *powers of — whether co-extensive.*

Held, that, by custom, a sonless *Mair Minhas Rajput* of Tahsil Chakwal, District Jhelum has power, in the presence of his brothers, to bequeath his ancestral as well as self-acquired property to his daughter's daughter.

Held also, that the power of testation is co-extensive with the power of gift *inter vivos* and no distinction is drawn