

A COMMISSIONER OF INCOME TAX, U.P.

v.

M/S. MOHD. SHAKOOR MOHD. BASHIR

December 12, 1972

[K. S. HEGDE AND P. JAGANMOHAN REDDY, JJ.]

- B *Indian Income Tax Act, 1922, Section 34(3)—Second Proviso—Persons originally carrying on tobacco and other business assessed in the status of association of persons—On devolution, tobacco business subsequently gifted to appellants—Appellate Assistant Commissioner holding that assessee not liable to be taxed in respect of tobacco business—No finding that appellants were continuing tobacco business in their own name or in respect of any income earned in it—Direction to Income Tax Officer to assess income bearing in mind second proviso to S. 34(3)—Notices under S. 34(1)(a) whether barred by time—Meaning of expressions 'finding' and 'direction' in second proviso to S. 34(3).*

- C A and Z were carrying on business at various places, including tobacco business at Mauranipur and they were assessed in the status of Association of persons. In 1938 A died leaving his widow as his only heir. She transferred her interest in favour of Z, who then became the sole owner of the entire business. Z gifted the tobacco business to his two sons, the respondents, in 1942. Z died in 1948. During the assessment years 1945-46 to 1956-57, the respondents submitted their returns of income in respect of the tobacco business. Following his earlier decision the Income Tax Officer rejected that return and proceeded to assess all the heirs of Z as an Association of persons in respect of all assets including tobacco business. In appeal the Appellate Assistant Commissioner came to the conclusion that the assessee, namely, the Association of persons consisting of all the heirs of Z, was not liable to be taxed in respect of the tobacco business, and that that business had been gifted to the respondents in 1948 itself. But he did not find that during the relevant assessment years the respondents were continuing that business in their own name; nor did he give a finding in respect of any income earned in that business by the respondents in those years. He therefore set aside the order of the Income Tax Officer but directed him to assess the income from various sources in the hands of the respective persons to whom they arose, bearing in mind the provisions of the second proviso to S. 34(3) of the Act. Thereafter the Income Tax Officer issued notices to the respondents under S. 34(1)(a) of the Act.

- D E F G Four questions were referred by the Tribunal to the High Court under S. 66(1) of the Act. The High Court held that the notices issued under S. 34(1)(a) were barred by time. On the second question under reference, which was the only question argued before this Court, the High Court held that the Appellate Asstt. Commissioner in dealing with appeals of the Association of Persons consisting of all the heirs of Z could not give a direction under S. 34(3) to take action against the assessee. On appeals by special leave to this Court, on the questions whether the Appellate Asstt. Commissioner (i) had given any finding as contemplated by the proviso to S. 34(3); and (ii) had given any direction as contemplated under the second proviso to S. 34(3), dismissing the appeals.

- H HELD: (i) The expression 'finding' in the second proviso to S. 34(3) means a finding necessary for giving relief in respect of the assessment for the year in question. A finding therefore could only be that which

was necessary for the disposal of the appeal in respect of an assessment of a particular year. The only 'finding' that can fall within the scope of the second proviso to S. 34(3) is a 'finding' which is absolutely necessary for the disposal of an appeal and not other incidental findings. [90E]

The finding of the Appellate Asstt. Commissioner that the Association of persons, consisting of all the heirs of Z is not liable in respect of the tobacco business, is an essential finding; a finding absolutely necessary for the disposal of the case. The further finding that business had been gifted to the respondents in 1942 is only an incidental finding and not a finding necessary for the disposal of the appeal. Further from that conclusion it does not follow that the respondents continued to be the owners of the tobacco business during the relevant assessment years. Hence the High Court was right in holding that the Appellate Asstt. Commissioner did not find nor was it necessary for him to find that the respondents were owners of the tobacco business during the relevant assessment years. [90FH]

Income Tax Officer, A-Ward Sitapur v. Murlidhar Bhagwan Das
52 I.T.R. 335 applied.

(ii) The 'directions' that the Appellate Assistant Commissioner can give are those falling either under S. 31(3)(b), (c) or (e) or S. 34(4). It is conceded by the Appellant that the direction given by the Appellate Asstt. Commissioner does not fall within any one of those provisions. Hence it must be concluded that the direction given by the Appellate Asstt. Commissioner is not one that falls within the scope of the second proviso of S. 34(3). [91-B]

(iii) The conclusion of the Tribunal as to the scope of the Appellate Asstt. Commissioner's finding is not a finding of fact but one relating to law, and the High Court had power to interfere. [91-C]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 337 to 345 of 1970.

Appeals by special leave from the judgment and order dated August 7, 1968 of the Allahabad High Court in I.T. Reference No. 712 of 1963.

N. D. Karkhanis, S. P. Nayar and R. N. Sachthey, for the appellant.

S. C. Manchanda, Uma Datta and P. C. Sharma, for the Respondent.

The Judgment of the Court was delivered by

HEGDE, J. These are appeals by special leave. Though as many as four questions were referred by the Tribunal to the High Court under Section 66(1) of the Indian Income Tax Act 1922 (to be hereinafter referred to as 'The Act'), the only question that was argued before us was question No. 2, namely :

"Whether the Appellate Assistant Commissioner in dealing with appeals of the Association of persons con-

A sisting of all the heirs of Zahur Bux could give a direction under Section 34(3) to take action against the assessee ?”

B The High Court answered that question in the negative and in favour of the assessee.

C The material facts lie within a narrow compass. Two persons by name Allah Bux and Zahur Bux were carrying on business at various places, including tobacco business at Mauranipur and they were assessed in the status of Association of persons. In 1938 Allah Bux died leaving his widow Begum Zaidi as his only heir. The said Begum transferred her interest in favour of Zahur Bux. Thereafter Zahur Bux became the sole owner of the business. Zahur Bux gifted his business at Mauranipur to his two sons Mohd. Shakoor and Mohd. Bashir in 1942. Zahur Bux died in 1948. During the assessment years 1945-46

D 1956-57, Mohd. Shakoor and Mohd. Basir submitted their returns of income in respect of the Mauranipur business. Following his earlier decision the Income Tax Officer rejected that return and proceeded to assess all the heirs of Zahur Bux as an Association of persons. He also took into consideration not merely the Mauranipur business but all the assets left by Zahur Bux. In appeal the Appellate Assistant Commissioner came to

E the conclusion that the assessee, namely, the Association of persons consisting of all the heirs of Zahur Bux, was not liable to be taxed in respect of the Mauranipur business. He came to the conclusion that that business had been gifted to Mohd. Shakoor and Mohd. Bashir in 1948 itself. But he did not find that during the relevant assessment years Mohd. Shakoor and Mohd.

F Bashir were continuing that business in their own name; nor did he give a finding in respect of any income earned in this business by Mohd. Shakoor and Mohd. Bashir in those years. On the basis of his finding that the assessee—the Association of persons consisting of all heirs of Zahur Bux—is not liable to be taxed in

G respect of the Mauranipur business, he set aside the order of the Income Tax Officer but directed him to “assess the income from various sources in the hands of the respective persons to whom they arose, bearing in mind the provisions of second proviso to sub-section (3) of Section 34 of the Indian Income-Tax Act.” Thereafter the Income-tax Officer issued notices to the respondents under Section 34(1)(a) of the Act. The question for

H decision is whether those notices are barred by time. It is urged on behalf of the Revenue that in view of the second proviso to Section 34(3) of the Act, the notices are not barred. The High Court has rejected that contention.

The first question that calls for decision is :—

“Whether the Appellate Assistant Commissioner had given any finding as contemplated by the proviso to Section 34(3);”

and the second question that arises for decision is :—

“Whether the Appellate Assistant Commissioner had given any direction as contemplated under second proviso to Section 34(3) ?”

This Court in *Income-tax Officer, A-Ward Sitapur v. Murlidhar Bhagwan Das*⁽¹⁾, ruled as to what exactly is the meaning of the words ‘finding’ as well as ‘direction’ in the second proviso to Section 34(3). Dealing with the expression ‘finding’, this Court ruled that it meant a finding necessary for giving relief in respect of the assessment for the year in question. A finding therefore could only be that which was necessary for the disposal of the appeal in respect of an assessment of a particular year. In that case the Appellate Assistant Commissioner had come to a finding that the disputed income did not arise or accrue in the concerned assessment year but had arisen in the previous year. The question for decision by this Court was whether the finding that the income arose in the previous year is a ‘finding’ within the meaning of second proviso to Section 34(3). This Court held that it is not a finding falling within the meaning of that proviso, though it was a matter considered in the order of the Appellate Assistant Commissioner. In other words this Court ruled that the only ‘finding’ that can fall within the scope of second proviso to Section 34(3) is a ‘finding’ which is absolutely necessary for the disposal of an appeal and not other incidental findings.

Let us apply that rule to the facts of the present case. The finding of the Appellate Assistant Commissioner that the Association of persons, consisting of all the heirs of Zahur Bux is not liable in respect of the Mauranipur business, is an essential finding; a finding which was absolutely necessary for the disposal of the case. The further finding that that business had been gifted to Mohd. Shakoor and Mohd. Bashir in the year 1942 is only an incidental finding and not a finding necessary for the disposal of the appeal. Further from that conclusion of the Appellate Assistant Commissioner it does not follow that Mohd. Shakoor and Mohd. Bashir continued to be the owners of the Mauranipur business during the relevant assessment years. Hence we agree with the High Court that the Appellate Assistant Commissioner did not find nor was it necessary for him to find that Mohd. Shakoor and Mohd. Bashir were owners of the Mauranipur business during the relevant assessment years.

(1) 52 I.T.R. 335.

- A** Now, coming to the question of 'direction', in *Murlidhar Bhagwan Das* case (supra) this Court held that the Appellate Assistant Commissioner can give, are those falling either under section 31(3)(b), (c) or (e) or Section 31(4). Mr. Karkhanis concedes that the direction given by the Appellate Assistant Commissioner does not fall within any one of the provisions mentioned above. Hence we must conclude that the direction given by the Appellate Assistant Commissioner is not one that falls within the scope of the second proviso to Section 34(3).
- B**

- From the above conclusions it follows that these appeals must fail. But Mr. Karkhanis contended that the finding of the Tribunal in this case that the finding given by the Appellate Assistant Commissioner at the earlier stage is a finding necessary for the disposal of the case, is a finding of fact and, therefore, the High Court could not have interfered with that finding. In the first place, no such contention was taken up before the High Court or in the Memorandum of Appeal. That apart, the conclusion of the Tribunal as to the scope of the Appellate Assistant Commissioner finding is not a finding of fact but one relating to law.
- C**
- D**

In the result these appeals fail and they are dismissed with costs. One hearing fee.

S.B.W.

Appeals dismissed.