

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on 26.07.2011

+ CRL.CONT.REF. NO.01/2011

COURT ON ITS OWN MOTION

versus

RAHUL KHARE

... Respondent

Advocates who appeared in this case:

For the Appellant : Mr V.K. Rao, Sr. Adv. learned Amicus Curiae with
Mr Ayushya Kumar.

For the Respondent : Mr A.N. Haksar, Sr. Adv. with Mr Udayan Jain, Adv.
with Mr R. Pandey

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether Reporters of local papers may be allowed to see
the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED (ORAL)

1. This Criminal Contempt Reference which has reached this court through a petition made by an Assessing Officer under the Income Tax Act, 1961, raises the fundamental question as to whether an Assessing Officer is a court for the purposes of the Contempt of Courts Act, 1971? In case this question is

answered in the affirmative, the next issue would be whether an Assessing Officer is a court subordinate to the High Court?

2. These questions arise in the backdrop of the provisions of Section 10 of the Contempt of Courts Act, 1971 which empower the High Court to punish contempts of subordinate courts. Section 10 of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the said Act'), reads as under:-

“10. Power of High Court to punish contempts of subordinate courts.- Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.”

3. A plain reading of Section 10 of the Act would make it clear that every High Court has the power and can exercise the same jurisdiction and authority in respect of contempt of courts subordinate to it, as it has and exercises in respect of contempt of itself. There is also a proviso which may be of some significance which stipulates that no High Court shall take cognizance of an offence alleged to have been committed in respect of a court subordinate to it

where such contempt is an offence punishable under the Indian Penal Code. Before we consider the questions raised in this matter, it may be pertinent to point out that Section 228 of the Indian Penal Code, 1860, specifically provides for an offence when there is an intentional insult or interruption caused to a public servant sitting in a judicial proceeding. In the present case, one of the complaints of the Assessing Officer in question is that the respondent, a lawyer, was unduly harassing the said Assessing Officer by writing very strong letters on behalf of his clients (who were assesseees) and was not only insulting him but was also interfering with the 'judicial proceedings' of a public servant, namely, the said Assessing Officer. So, there is an argument which could be raised even on the basis of the proviso that this court ought not to have taken the cognizance of the case at all in view of the fact that there already exists an offence punishable under the Indian Penal Code to which the present complaint relates.

4. Anyhow, without going into the issue of the proviso, let us consider the first question itself. Mr Rao, the learned senior counsel who has assisted this court as an amicus curiae has placed before us the various provisions of the said Act as well as of the Income Tax Act, 1961 and has also placed before us a decision of the Supreme Court in the case of **K. Shamrao & Others v. Assistant Charity Commissioner**: 2003 (3) SCC 563. He referred to paragraph 4 and

particularly to paragraphs 12 and 13. Paragraph 17 was also referred to where the Supreme Court came to the conclusion that the Assistant Charity Commissioner under the Bombay Public Trusts Act, 1950 had all the attributes of a court and therefore had to be regarded as a court for the purposes of Section 2 and 3 of the said Act. He placed before us for our consideration the observations of the Supreme Court in that decision and submitted that an analogy could be drawn with the provisions of the Income Tax Act, 1961 which were somewhat similar to the provisions of the Bombay Public Trusts Act, 1950 and therefore, it was possible to hold that an Assessing Officer was a court within the meaning of the said Act.

5. Mr Rao further submitted that Section 136 of the Income Tax Act, 1961 is also of significance inasmuch as, a proceeding before an income-tax authority which includes an Assessing Officer is deemed to be a judicial proceeding in respect of the provisions of Section 193, 228 and 196 of the Indian Penal Code. He further submitted that by way of an amendment introduced retrospectively with effect from 01.04.1974, the proceedings before every income-tax authority is also deemed to be a civil court for the purposes of Section 195 of the Code of Criminal Procedure, 1973. Consequently, Mr Rao, submitted that the proceedings before the Assessing Officer were 'judicial proceedings' and

because of the deeming clause provided in Section 136 as also because of the observations of the Supreme Court, by analogy, in **K. Shamrao** (*supra*), the Assessing Officer had to be regarded as a ‘Court’.

6. A reference was also made to the Constitution Bench decision of the Supreme Court in the case of **Lalji Haridas v. The State of Maharashtra & Another**: **AIR 1964 Supreme Court 1154 (1)**, where the Supreme Court considered the provisions of Section 37 (4) of the Income Tax Act, 1922. We may point out that Section 37 (4) of the Income Tax Act, 1922 is similar to the first part of Section 136 of the Income Tax Act, 1961, as it now exists, sans the later part which was introduced with effect from 01.04.1974 by way of the said amendment. Section 37 (4) of the Income Tax Act, 1922 was as follows:-

“4. Any proceeding before any authority referred to in this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860).”

7. The question before the Supreme Court was whether the proceeding before an Income Tax Officer under section 37 of the Income-tax Act, 1922 could be said to be a proceeding in any court within the meaning of section 195 (1) (b) of the Code of Criminal Procedure. The majority view (P.B.

Gajendragadkar CJ and K.N. Wanchoo and N. Rajagopala Ayyangar, JJ) was that the said section 37(4) regarded the proceedings before the Income-tax Officer as judicial proceedings under section 193 IPC and that those judicial proceedings must be treated as proceedings in any court for the purpose of section 195 (1) (b) Cr.P.C. It is perhaps pursuant to that decision of the Supreme Court that the amendment of 1974 was introduced in Section 136.

8. Mr Haksar, the learned senior counsel appearing on behalf of the respondent, drew our attention straightaway to the provisions of Section 136 of the Income Tax Act which reads as under:-

“136. Proceedings before income-tax authorities to be judicial proceedings – Any proceeding under this Act before an income-tax authority shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code (45 of 1860), and every income-tax authority shall be deemed to be a Civil Court for the purposes of Section 195, but not for the purposes of Chapter XXVI, of the Code of Criminal Procedure, 1973”

(underlining added)

9. He submitted that the first part of Section 136 declared that a proceeding before an income-tax authority is deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of section 196 of the

Indian Penal Code but, not for any other purpose. He further submitted that similarly, insofar as the second part of Section 136 (the portion underlined) is concerned, an income-tax authority is deemed to be a civil court specifically for the purpose of section 195 Cr.P.C. but not for the purposes of chapter XXVI of Code of Criminal Procedure. He stated that the latter exclusion has been specifically provided for by the legislature itself in Section 136. Thus, according to him an income-tax authority is deemed to be a civil court only for the purpose of Section 195 Cr.P.C and not for any other purpose.

10. Mr Haksar, placed reliance on the Supreme Court decision in the case of **Joint family of Udayan Chinubhai v. Commissioner of Income Tax Gujarat:** **AIR 1967 Supreme Court 762**, which is a decision of three Hon'ble Judges of the Supreme Court wherein in paragraph 12, the Supreme Court clearly observed that an Assessing Officer is not a court and it is for this reason that the principle of res judicata did not apply to income-tax proceedings. A reference was also made to **The Commissioner of Sales Tax Uttar Pradesh Lucknow v. M/s Parson Tools & Plants Kanpur:** **AIR 1975 Supreme Court 1039**, and particularly to paragraphs 6,12 and 18 thereof. Similarly, a reference was also made to **Sakuru v. Tanaji:** **1985 (22) E.L.T 327 (SC)**. Both these cases pertained to the Limitation Act and in both these decisions the Supreme Court

observed that the respective taxing authorities dealt with in those cases were not courts although they had elements of judicial proceedings. Lastly, Mr Haksar placed reliance on the decision in the case of **Prakash H. Jain v. Ms Marie Fernades** : AIR 2003 Supreme Court 4591, and particularly on paragraph 12 thereof. The question that arose there was as to whether the competent authority under the Maharashtra Rent Control Act, 2000 could be regarded as a court for the purpose of limitation. The Supreme Court observed, after considering the various provisions of the Maharashtra Act, that the competent authority constituted thereunder was not a court and that the mere fact that such authority was deemed to be a court only for limited and specific purposes cannot make it a court for all or any other purpose and at any rate for the purpose of either making the provisions of the Limitation Act, 1963 attracted to proceedings before such competent authority or clothe such authority with any power to be exercised under the Limitation Act.

11. Importantly, the Supreme Court observed that it is well settled that when a statute enacts that anything shall be deemed to be some other thing, the only meaning possible is that whereas that the said thing is not in reality that something, the legislative enactment required it to be treated as if it is so. It was also observed by the Supreme Court that though full effect must be given to a

legal fiction, it should not be extended beyond the purpose for which the fiction has been created and all the more when the deeming clause, itself, confined as in that case, the creation of a fiction for only a limited purpose as indicated therein.

12. We think that these observations of the Supreme Court are clearly applicable in the present case. Section 136 of the Income Tax Act, 1961, as pointed out above, has two parts. In the first part it is declared that a proceeding before an income-tax authority shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. The second part, which is the part with which we are concerned in the present proceeding, indicates that every income-tax authority shall be deemed to be a civil court for the purpose of Section 195 Cr.P.C. but not for the purpose of chapter XXVI of the Code of Criminal Procedure. It is clear, in the backdrop of the observations of the Supreme Court in the case of ***Prakash H. Jain*** (*supra*) that whenever a deeming provision is introduced in an enactment a legal fiction is created. In other words, had it not been for the deeming provision, the fiction that is sought to be created would not have been there. Making it clear, it means that had the legislature not made it emphasized that every income-tax authority shall be deemed to be a civil court for the

purpose of Section 195 Cr.P.C., an income-tax authority could not have been probably considered to be a civil court at all. It is only a fiction which has been created by the legislature and that, too, for the purpose of Section 195 Cr.P.C. alone. And, the legislature in its wisdom, to make it more than abundantly clear, has also added by way of caution, the words “ but not for the purposes of chapter XXVI of the Code of Criminal Procedure, 1973”.

13. Now, this means that an income-tax authority is to be considered to be a civil court by reason of a fiction created by the legislature and that, too, only for the purposes of Section 195 of the Code of Criminal Procedure. It is worth mentioning that chapter XXVI of the Code of Criminal Procedure contains provisions as to ‘offences affecting the administration of justice’. It is in the context of alleged hindrances to the administration of justice that the present petition has been brought to this court by the Assessing Officer. But that has been specifically excluded by virtue of Section 136 of the Income Tax Act.

14. Before we conclude on this issue, it would be necessary for us to deal with the decision of the Supreme Court in the case of **K. Shamrao** (*supra*), which has been placed before us by Mr Rao. The said decision makes it clear in paragraph 16 itself that before a judicial proceeding can be considered to be a

judicial proceeding before a court, there must exist a “dispute between the parties” which is then heard by that particular authority. Paragraph 16 of the said decision is reproduced herein below:-

“16. The scheme of the Act, the powers conferred on the Assistant Charity Commissioner and the perusal of the aforesaid provisions of the Act clearly show that the Assistant Charity Commissioner has to be a judicial officer or an officer with a legal background; has to hear parties wherever dispute is raised with regard to existence of a public trust or with regard to a property being trust property or otherwise and then give a definitive judgment after taking evidence having regard to the facts of the case and by application of law. The judgment is final unless interfered with in appeal or thereafter tested in appeal before the High Court. The jurisdiction of the civil court has been barred in the matters inquired into and decided by the Assistant Charity Commissioner.”

(underlining added)

15. The circumstances relating to the powers of the Assistant Charity Commissioner are by and large absent in the case of an Assessing Officer under the Income-tax Act, 1961. The Assistant Charity Commissioner is either a judicial officer or an officer with a legal background. This is not so in the case of an Assessing Officer. Furthermore, the Supreme Court has indicated that before a particular authority can be regarded as a court, it must have the capacity and power to hear the parties on a particular dispute. The issues arising before the Assessing Officer are not of the nature which is decided by courts.

The Assessing Officer does not decide a dispute between the parties but he makes an assessment of income tax that is payable by an assessee. There are no rival parties present before the Assessing Officer who have brought their disputes to be adjudicated upon by the Assessing Officer. Although the Assessing Officer is required to act in a judicious manner and is required to follow the principles of natural justice by giving a hearing to the assessee, this cannot equate him with a court unless specifically provided by a statute. This has already been made clear by the Supreme Court decision in the case of ***Joint family of Udayan Chinubhai*** (*supra*) which, though delivered in the context of the Income Tax Act, 1922, would be equally applicable in respect of the Income Tax Act, 1961.

16. Moreover, the decision of the Supreme Court in **K Shamrao** (*supra*) was rendered in the context of the Bombay Public Trusts Act, 1950. Section 74 of that Act provided as under:-

“74. Inquiries to be judicial inquiries. – All inquiries and appeals under this Act shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (XLV of 1860)”

We can immediately see the difference between section 74 of the Bombay Public Trusts Act, 1950 and section 136 of the Income Tax Act, 1961, in that,

the second part of the said section 136 is absent from section 74 of the Bombay Public Trusts Act, 1950.

17. Consequently, we are of the clear view that the decision of the Supreme Court in the case of **K. Shamrao** (*supra*) is distinguishable and that the Assessing Officer cannot be regarded as a “court” for the purposes of Section 10 of the Contempt of Courts Act, 1971. Once we have answered the first question in the negative, the second question as to whether the Assessing Officer is a Court “subordinate” to the High Court, does not at all arise.

18. The result is that this Criminal Contempt Reference is not maintainable and the same is dismissed.

19. We express our gratitude to Mr V.K Rao for having assisted this Court as an *amicus curiae*.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

JULY 26,2011
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