

Shri Prem Nath  
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 Bishan Narain, J.

take the view that they were not going to go on with the hearing at all. They are entitled, in short, to make their own inquiries in order to determine their own course of action, and the result of that inquiry has no effect whatsoever upon the rights of the parties. (That is plain, I think, from the burden that is put upon a plaintiff who is suing upon an award. He is obliged to prove not only the making of the award, but also that the arbitrators had jurisdiction to make the award. The principle *omnia praesumuntur rite esse acta* does not apply to proceedings of arbitration tribunals or, indeed, to the proceedings of inferior tribunals of any sort. There is no presumption that merely because an award has been made it is a valid award. It has to be proved by the party who sues upon it that it was made by the arbitrators within the terms of their authority, that is, with jurisdiction. Jurisdiction has to be proved affirmatively.”

I am in respectful agreement with these observations.

The result is that this appeal fails and is dismissed with costs.

Falshaw, J.

Falshaw, J.—I agree.

CIVIL REFERENCE.

Before Bhandari, C. J., and Chopra, J.

BIPAN LAL KUTHIALA,—Petitioner.

versus

THE COMMISSIONER OF INCOME-TAX,—Respondent.

Civil Reference No. 11 of 1956.

Income-tax Act (XI of 1922)—Sections 31 and 33—  
 Powers of Assistant Commissioner and Appellate Tribunal

1957

Jan., 21st

*to dispose of appeals—Income-tax authorities—Whether quasi-judicial tribunals—Powers of such authorities—Discretion to be exercised by judicial and quasi-judicial tribunals—Manner and nature of—Interference with such discretion by appellate authority—Extent of—“abuse of discretion”—Meaning of—Modern appellate procedure—Principles of Appellate authority’s power to remand the case—Circumstances in which remand can be ordered—Code of Civil Procedure (V of 1908)—Order 41, Rules 23, 23A and 25—Whether fetter the powers of Assistant Commissioner of Income-tax.*

*Held*, that the Legislature has invested the Assistant Commissioner with wide powers to pass any of the orders mentioned in subsection (3) of section 31, for this section provides that in disposing of an appeal from an order of assessment the Assistant Commissioner may confirm, reduce, enhance or annul the assessment, or set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further enquiry as the Income-tax Officer thinks fit or the Assistant Commissioner may direct. It confers full power on him to remand a case to the Income-tax Officer when the record is in such a shape that the Assistant Commissioner cannot in justice determine the assessable income of the assessee.

*Held*, that the powers of the Income-tax Appellate Tribunal are wider still, for subsection (3) of section 33 enacts that the Tribunal may after giving both parties to the appeal an opportunity of being heard, “pass such orders thereon as it thinks fit”. It may affirm, reverse or modify any order appealed from as justice may require, or may remand the case for further proceedings without determining the issues on the appeal, or finally dispose of the case by entering judgment or directing the Assistant Commissioner to enter a particular judgment.

*Held*, that an Income-tax Officer, an Assistant Commissioner, Commissioner and Appellate Tribunal are quasi-judicial tribunals. They can compel the production of documents, enforce the attendance of witnesses and issue commissions for their examination. They follow a procedure which conforms in many respects to that followed by Courts; they perform the same functions as a Court and their proceedings partake of the nature of judicial

proceedings. They have power to take and weigh evidence, to determine facts based upon the consideration of evidence and to make an order supported by findings. They have power to hear, to determine and to enforce. The powers exercised by them affect the personal and private rights of private individuals and their determinations are final and conclusive. They must proceed in a judicial spirit, conform to rules of natural justice and come to judicial conclusions upon properly ascertained facts.

*Held*, that the discretion conferred on a judicial or quasi-judicial tribunal is an impartial legal discretion to be exercised in conformity with the spirit of the law and in a manner to subserve rather than to defeat substantial justice. It should be guided by law and inspired by a desire to promote justice. It should not be arbitrary, vague and fanciful and should not be ruled or governed by humour, unthinking folly or rash injustice. The very wide statutory discretion which has been conferred on the Appellate Tribunal for disposing of an appeal is a judicial discretion which must be exercised in accordance with legal principles and not in an arbitrary or capricious manner.

*Held*, that the action of a Court which is invested with the exercise of discretionary powers or authority is not ordinarily reviewable on appeal except to correct a clear and manifest abuse of justice. The expression "abuse of discretion" does not necessarily mean a reflection on the judge or carry with it the implication that his conduct is deserving of censure. It is not synonymous with perversity of will, passion, prejudice, partiality or moral delinquency. It is merely a legal term which implies that the reasons given by the Court for its action are clearly untenable and unreasonable, that its action clearly amounts to denial of justice or is against conscience, reason and evidence. Discretion is abused when the judicial action is arbitrary, fanciful or unreasonable.

*Held*, that some of the elementary principles of modern appellate procedure are: Firstly that in the absence of an error on the face of the record the appellate Court should proceed on the assumption that the lower Court has acted wholly within law, that the decree or

judgment was made on proper grounds, that that which ought to have been done was done and that the Court below applied the law correctly. It is not the duty of the appellate Court to search for reasons to reverse the decision of the trial Court; it is a duty of the appellant to show that the order under appeal was not justified and that the said order has intervened to his detriment. Secondly, it is well-known that an appellate Court should be slow to interfere with an order of the trial Court when the error complained of has not resulted in a miscarriage of justice. Minor and technical errors of procedure should be disregarded particularly when a judgment is right on the law and facts and the error does not affect the substantial rights of the parties. Thirdly, a decision, right in result, should not be set aside on the ground only that the reasons which form the basis of the decision are not correct. Fourthly, the action of a Court which is invested with the exercise of discretionary power or authority, while not altogether free from review in an appellate tribunal, is ordinarily not reviewable on appeal except to correct a clear and manifest abuse thereof.

*Held*, that an appellate Court is at liberty to remand a case to the trial Court when the interests of justice so require; when the records of the case cannot enable the appellate Court to determine the rights of the parties; when the trial Court has decided only a part of several issues raised by the pleadings, and findings on those issues are reversed by the appellate Court; when the pleadings filed in the trial Court are defective but can be made good by amendment and the appellate Court considers that they should be amended; when there is absence of necessary parties or misjoinder of parties; when an involved question of fact must be determined before judgment can be given; when a trial Court has omitted to record a specific finding upon a material issue of fact; when it has made findings which lack precision or which mix facts with inference, or when the findings are not sufficiently specific, or when the evidence which might have been material to the issues involved in the case was excluded. A case will not, however, be remanded for further amended findings where the findings are direct, free from ambiguity, consistent, and fully responsive to the issues and contain nothing indicating that they are ill-founded in point of law.

*Held*, that it is not correct to say that just as the powers of a civil court are circumscribed by the provisions of Order 41, Rules 23, 23-A and 25 of the Code of Civil Procedure, and just as a civil Court has no right to exercise those powers except in the circumstances mentioned in the said provisions, similarly an Assistant Commissioner or an Appellate Tribunal cannot exercise unlimited powers or unfettered discretion in the matter of remands. The Assistant Commissioner's powers to dispose of appeals under section 31 are wider than those of an appellate Court under the Code of Civil Procedure and the powers of remand conferred upon him and the Income-tax Appellate Tribunal are not limited by any restraining enactment. These two authorities are at liberty to remand a case for further investigation as ascertainment of facts is a necessary prerequisite to the application of the law.

*Case referred under section 66(1) of the Indian Income-tax Act, 1922 (Act XI of 1922) by the Appellate Tribunal, Bombay,—vide his letter No. 1007 of 55-56, dated the 25th June, 1956.*

A. V. VISVANATHAN SASTRI and D. K. MAHAJAN, for Petitioner.

S. M. SIKRI, Advocate-General and H. R. MAHAJAN, for Respondent.

#### ORDER

Bhandari, C. J.      Bhandari, C.J.—This is a reference under section 66(1) of the Indian Income-Tax Act.

In assessing the income of L. Bipan Lal Kuthiala, a timber merchant of Hoshiarpur, the Income-Tax Officer made several additions to the assessee's declared total income. On appeal the Assistant Commissioner examined the various items of income and expenditure and arrived at certain conclusions which were summarised in paragraph 9 of his order as follows:—

“From the foregoing paragraphs it would be seen that the assessment was made

without correct appreciation of facts on several points; and on some others, proceeded on wrong assumptions, so that heavy additions were made without bringing on record sufficient reasons and material to support these. It also appears to me that the account books were not thoroughly examined, for had this been done the Income-Tax Officer would have obtained substantial material to frame a proper assessment, and not relied upon surmises and presumptions unwarranted by the facts and circumstances of the case."

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As the record which was placed before the Assistant Commissioner could not enable the latter to make a proper assessment, he set aside the assessment, remanded the case to the Income-Tax Officer and directed him to make a fresh assessment after examining the assessee's accounts and after making necessary enquiries on the lines indicated in his order.

The Appellate Tribunal had no difficulty in endorsing the view taken by the Assistant Commissioner and dismissed the appeal by a short order, the concluding portion of which is in the following terms:—

"It seems to us that the Appellate Assistant Commissioner's order is not open to any criticism. Indeed, he could not properly pass any order other than the one which he did in the circumstances of this case. The assessee's contention before us that the Appellate Assistant Commissioner ought to have made a re-assessment himself is hardly practic-

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able. And we are unable to see anything in the Appellate Assistant Commissioner's order which is likely to prejudice the assessee in the fresh assessment. May be the assessee will have to undergo what is described as the ordeal of a fresh assessment, but that is inevitable and cannot be helped.

As already stated the appeal seems to us misconceived. It is consequently dismissed."

At the request of the assessee the Appellate Tribunal has referred the following question to this Court, namely—

"Whether on the facts and in the circumstances of this case the order of the Tribunal maintaining that passed by the Appellate Assistant Commissioner under section 31 of the Indian Income-Tax Act is erroneous in point of law."

The Legislature has invested the Assistant Commissioner with wide powers to pass any of the orders mentioned in subsection(3) of section 31, for this section provides that in disposing of an appeal from an order of assessment the Assistant Commissioner may confirm, reduce, enhance or annul the assessment, or set aside the assessment and direct the Income-Tax Officer to make a fresh assessment after making such further enquiry as the Income-Tax Officer thinks fit or the Assistant Commissioner may direct. It confers full power on him to remand a case to the Income-Tax Officer when the record is in such a shape that the Assistant Commissioner cannot in justice determine the assessable income of the assessee.

The powers of a Tribunal in dealing with appeals are wider still, for subsection (3) of section 33 enacts that the Tribunal may after giving both parties to the appeal an opportunity of being heard, "pass such orders thereon as it thinks fit." It may affirm, reverse or modify any order appealed from as justice may require, or may remand the case for further proceedings without determining the issues on the appeal, or finally dispose of the case by entering judgment or directing the Assistant Commissioner to enter a particular judgment.

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An Income-Tax Officer, an Assistant Commissioner, Commissioner and Appellate Tribunal are quasi-judicial tribunals. They can compel the production of documents, enforce the attendance of witnesses and issue commissions for their examination. They follow a procedure which conforms in many respects to that followed by Courts; they perform the same functions as a Court and their proceedings partake of the nature of judicial proceedings. They have power to take and weigh evidence, to determine facts based upon the consideration of evidence and to make an order supported by findings. They have power to hear, to determine and to enforce. The powers exercised by them affect the personal and private rights of private individuals and their determinations are final and conclusive. They must proceed in a judicial spirit, conform to rules of natural justice and come to judicial conclusions upon properly ascertained facts (*In re Harmukhrai Dulichand* (1), and *Commissioner of Income-Tax, Bombay v. Edulji Dinshaw*, (2).

Discretion conferred on a judicial or quasi-judicial tribunal is an impartial legal discretion

(1) I.L.R. 56 Cal. 39, 49

(2) I.L.R. 1943 Bom. 614, 622



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to be exercised in conformity with the spirit of the law and in a manner to subserve rather than to defeat substantial justice. It should be guided by law and inspired by a desire to promote justice. It should not be arbitrary, vague and fanciful and should not be ruled or governed by humour, unthinking folly or rash injustice. The very wide statutory discretion which has been conferred on the Appellate Tribunal for disposing of an appeal is a judicial discretion which must be exercised in accordance with legal principles and not in an arbitrary or capricious manner (*Maharani Kanak Kumari Sahiba v. Commissioner of Income-Tax, Bihar and Orissa*, (1), *Byramji and Co. v. Commissioner of Income-Tax, C.P. and U.P.* (2)).

The action of a Court which is invested with the exercise of discretionary powers or authority is not ordinarily reviewable on appeal except to correct a clear and manifest abuse of justice. The expression "abuse of discretion" does not necessarily mean a reflection on the judge or carry with it the implication that his conduct is deserving of censure. It is not synonymous with perversity of will, passion, prejudice, partiality or moral delinquency. It is merely a legal term which implies that the reasons given by the Court for its action are clearly untenable and unreasonable, that its action clearly amounts to denial of justice or is against conscience, reason and evidence. Discretion is abused when the judicial action is arbitrary, fanciful or unreasonable.

Before I proceed to answer the question whether the Appellate Tribunal was justified in upholding the order of the Assistant Commissioner, it would perhaps be desirable to set out as briefly as possible some of the elementary principles of

(1) 28 I.T.R. 462

(2) 11 I.T.R. 286

modern appellate procedure. The first and foremost principle is that in the absence of an error on the face of the record the appellate Court should proceed on the assumption that the lower Court has acted wholly within law, that the decree or judgment was made on proper grounds, that that which ought to have been done was done and that the Court below applied the law correctly. It is not the duty of the appellate Court to search for reasons to reverse the decision of the trial Court; it is a duty of the appellant to show that the order under appeal was not justified and that the said order has intervened to his detriment. Secondly, it is well-known that an appellate Court should be slow to interfere with an order of the trial Court when the error complained of has not resulted in a miscarriage of justice. Minor and technical errors of procedure should be disregarded particularly when a judgment is right on the law and facts and the error does not affect the substantial rights of the parties. Thirdly, a decision right in result should not be set aside on the ground only that the reasons which form the basis of the decision are not correct. Fourthly, the action of a Court which is invested with the exercise of discretionary power or authority while not altogether free from review in an appellate tribunal, is ordinarily not reviewable on appeal except to correct a clear and manifest abuse thereof.

Now what exactly were the circumstances which impelled the Assistant Commissioner to set aside the order of assessment, to direct the Income-Tax Officer to bring fresh facts on the record and to make a fresh assessment? Did he exceed the bounds of reason when he directed the Income-Tax Officer to make a further investigation? The answer is furnished by the Assistant Commissioner himself. He found that the books of account maintained by the assessee were not balanced from day

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to day; that the cash books showed credit balances on at least two dates according to which disbursements exceeded the cash available; that this was a physical impossibility under any system of book-keeping; that the assessee's explanation that some cash might have been temporarily borrowed from some sister concern of the Kuthiala group at Srinagar would have to be more specific and would require verification with reference to the accounts of the sister concern; that it was likely that a close examination of the cash book would disclose several more discrepancies of the type referred to above; that the cash book showed an irregular sequence of dates which might lead to the conclusion that the books produced were not kept in the regular course of business; that the assessee's claim of loss in respect of the Kuthai Forest required further investigation, that the assessee's claim regarding loss of this forest also required further investigation as the Income-Tax Officer had recorded no finding on this point; and that if the assessee's assertion that the books in question were actually lost was justified, the Income-Tax Officer should see how far the expenses claimed can be admitted either on the evidence of Srinagar account or on comparison with expenses claimed in respect of other forests with similar workings. It was in view of this state of the record that the Assistant Commissioner considered it necessary to set aside the assessment, to remand the case to the Income-Tax Officer concerned, and to direct him to come to such conclusions in regard to the fresh facts which may be brought on the record as he might consider necessary or proper. He held further that the assessee's grievance that no opportunity was afforded him for putting forward his case also appeared to be correct and that he was now entitled to be afforded such opportunity.

*Prima facie* the reasons given by the Assistant Commissioner fully justified an order of remand,

for it cannot be said that the Assistant Commissioner's discretion was exercised to an end and purpose unjustified by and clearly against reason and evidence or that it was contrary to the logic and facts as presented by the record of the case. Decided cases have evolved certain clear cut tests to determine whether a case for remand has been made out and indicated the grooves in which discretion ought to run. An appellate Court is at liberty to remand a case to the trial Court when the interests of justice so require; when the records of the case cannot enable the appellate Court to determine the rights of the parties; when the trial Court has decided only a part of several issues raised by the pleadings, and findings on those issues are reversed by the appellate Court; when the pleadings filed in the trial Court are defective but can be made good by amendment and the appellate Court considers that they should be amended; when there is absence of necessary parties or misjoinder of parties; when an involved question of fact must be determined before judgment can be given; when a trial Court has omitted to record a specific finding upon a material issue of fact; when it has made findings which lack precision or which mix facts with inference, or when the findings are not sufficiently specific, or when the evidence which might have been material to the issues involved in the case was excluded. A case will not, however, be remanded, for further amended findings where the findings are direct, free from ambiguity, consistent, and fully responsive to the issues and contain nothing indicating that they are ill-founded in point of law.

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Mr. Sastri, who appears for the assessee, has not been able to displace the presumption of the validity and regularity of the proceedings taken by the Assistant Commissioner. He has not been able to show that the order from which the appeal

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was preferred to the Appellate Tribunal had resulted in a miscarriage of justice. He has not been able to satisfy us that the order of remand was made in contravention of the principles on which such orders are usually made. He has failed to establish a clear and manifest abuse of discretion. He has placed only two submissions before us for consideration. The first is that the Income-Tax Officer had considered the entire evidence on which the parties had relied, that he did not overlook any material which was placed before him, that he set out his conclusions on all the matters in controversy between the parties and consequently that there was no occasion for the Assistant Commissioner to remand the case for further investigation. If he was in any doubt in regard to any matter he should have examined the books himself and should have arrived at an independent conclusion in respect of each of the points decided by the Income-tax Officer. The order of remand passed by him, it is contended, was wholly unjust and in contravention of recognised principles of judicial procedure. This contention appears to me to be wholly devoid of force. The Assistant Commissioner has given detailed reasons for asking the Income-Tax Officer to make a fresh investigation into the matter and there can be no manner of doubt that the interests of justice required a remand. If the argument that the Assistant Commissioner should have examined the books himself and should have arrived at independent conclusions of his own were to be pursued to its logical conclusion, no superior Court would ever be in a position to remand a case to an inferior Court, for it is always within the competence of an appellate Court to do what it has directed the lower Court to do and there would never be a justification for an order of remand. Secondly, it is argued that it was illegal on the part of the Assistant Commissioner to express an opinion on the various points

which had arisen for decision in the case, for the views expressed by him are calculated clearly to prejudice the assessee's case before the Income-Tax Officer. This contention appears to me to be equally futile. The Assistant Commissioner did not travel beyond the realm of propriety and did not express any opinion to which an exception can be taken.

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Our attention was invited to the provisions of Order 41, rule 23, and Order 41, rule 25 of the Code of Civil Procedure and to Order 41, rule 23-A as enacted by the High Court at Lahore and it was contended that just as the powers of a civil Court are circumscribed by the provisions of law and just as a Civil Court has no right to exercise those powers except in the circumstances mentioned in the provisions referred to above, similarly an Assistant Commissioner or an Appellate Tribunal cannot exercise unlimited powers or unfettered discretion in the matter of remands. This contention cannot merit serious consideration, first, because the Assistant Commissioner's powers to dispose of appeals under section 31 are wider than those of an appellate Court under the Code of Civil Procedure; secondly, because the discretion exercised by the Assistant Commissioner was exercised in accordance with recognised judicial principles; and thirdly, because the powers of remand conferred upon an Assistant Commissioner and an Appellate Tribunal are not limited by any restraining enactment. It seems to me therefore that these two authorities are at liberty to remand a case for further investigation. Ascertainment of facts is obviously a necessary prerequisite to the application of the law.

The Assistant Commissioner in the present case has given clear and detailed reasons for asking the Income-Tax Officer to make a further investigation into the case and there can be no

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manner of doubt that the interests of justice required a remand. The Appellate Tribunal did not exceed the authority conferred upon it by law by declining to interfere with the order of the Assistant Commissioner. Indeed, the order passed by the Tribunal was the only order which could be passed in the circumstances of the case.

For these reasons I entertain no doubt in my mind that on the facts and in the circumstances of this case the order of the Tribunal maintaining that passed by the Assistant Commissioner was not erroneous in point of law. The question which has been referred to us by the Tribunal must, in the circumstances, be answered in the negative. Let an appropriate answer be returned. The Department will be entitled to costs of this case.

Chopra, J.

Chopra, J.—I agree.

CIVIL MISCELLANEOUS.

Before Bhandari, C. J., and Chopra, J.

MESSRS. SIKRI BROTHERS,—*Petitioners.*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Application No. 332 of 1955.

1957  
Jan., 30th

*Constitution of India, Articles 19(5) and 226—Mandamus—Person asking for a writ of mandamus must come with clean hands—Laches—Delay in filing a petition under Article 226 must be explained in the petition—Delay—Reasonable excuse—Time spent in pursuing a legal remedy, whether reasonable excuse—Time spent in pursuing a mercy petition, whether can be excused—Right to carry on business—Whether subject to reasonable restrictions.*

*Held, as follows:—*

(1) A writ of mandamus is controlled by equitable principles and can be issued only to a person who comes