

M/s. Satparkash-Ram Narain *v.* The Commissioner of Income-tax, Punjab,
Jammu and Kashmir and Himachal Pradesh at Patiala
(Shamsher Bahadur, J.)

Jesinghbai Ujamshi v. Commissioner of Income-tax, Bombay (6), is more in consonance with the provisions of the Act than the one adopted by the Division Bench of the Bombay High Court in *Vissonji Sons and Co. v. Commissioner of Income-tax, Central* (1). In the result, we would answer this question in the negative in favour of the assessee. The second question in consequence does not arise. The assessee would be entitled to get costs of this reference.

Mehar Singh, C.J.—I agree.

R.N.M.

INCOME-TAX REFERENCE

Before Mehar Singh, C.J., and Shamsher Bahadur, J.

M/s. SATPARKASH-RAM NARAIN,—*Appellants.*

versus

THE COMMISSIONER OF INCOME-TAX, PUNJAB, JAMMU AND KASHMIR
AND HIMACHAL PRADESH AT PATIALA,—*Respondent.*

Income-tax Reference No. 51 of 1967

April 3, 1968

Income-tax Act (XI of 1922)—S. 5 and 28—Initiation and conclusion of penalty proceedings under section 28(1)(c) by one Income-tax Officer against an assessee—Long time, thereafter a successor officer imposing penalty—Such successor officer not giving opportunity of being heard to the assessee—S. 5 (7C)—Whether applies—Imposition of the penalty—Whether with authority.

Held, where one Income-tax Officer initiates penalty proceedings under section 28(c) of Indian Income-tax Act, 1922 and the hearing of the proceedings are concluded. Long time thereafter a successor officer passes an order imposing penalty without giving an opportunity to the assessee to be heard, the provision of section 5(7C) of the Act apply and though the assessee fails to exercise right under the first part of the proviso to section 5(7C) to have the proceedings reopened, it does not lose its right of being heard under section 28(3) before the

Officer who had been invested with jurisdiction to continue the penalty proceedings. The successor Officer has no authority to pass an order of penalty without giving the assessee a further opportunity of advancing arguments before him. He is bound to give an opportunity to the assessee before passing an order of penalty.

[Para 4].

Reference under section 66(1) of Income-tax Act, 1922, for decision of the below noted question of law involved in the case, by the Income-tax Appellate Tribunal,

"Whether on the facts and in the circumstances of the case, the Income-tax Officer, C-Ward, Jullundur was not bound to give the assessee an opportunity of being heard in as much as the assessee was aware of the change of jurisdiction to the Income-tax Officer and did not demand such an opportunity?"

BHAGIRATH DASS WITH B. K. JHINGON, ADVOCATES, for the Appellant.

D. N. AWASTHY WITH B. S. GUPTA, ADVOCATES, for the Respondents.

JUDGMENT

SHAMSHER BAHADUR, J.—The language of the question which has been referred to us by the Income-tax Appellate Tribunal under sub-section (1) of section 66 of the Income-tax Act, 1922 (hereinafter called the Act) is somewhat inartistic but the meaning and tenor of it has not been in dispute. The question which is in a compendious form is to this effect:—

"Whether on the facts and in the circumstances of the case the Income-tax Officer C ward, Jullundur, was not bound to give the assessee an opportunity of being heard in as much as the assessee was aware of the charge of jurisdiction to this Income-tax Officer and did not demand such an opportunity?"

The confusing aspect of this question would be apparent after the facts giving rise to it have been briefly recapitulated.

(2) The assessee is the registered firm of Messrs. Sat Parkash, Ram Naranjan of Nawanshehr, and was assessee for the year 1954-55, the relevant accounting period being the year ending with 12th April,

M/s. Satparkash-Ram Narain *v.* The Commissioner of Income-tax, Punjab,
Jammu and Kashmir and Himachal Pradesh at Patiala
(Shamsher Bahadur, J.)

1954. Being of the view that a sum of Rs. 47,996 standing in the cash credit accounts of the wives of the partners of the firm. (Rs. 11,980-3-0 in each case) had not been accounted for, it was added in the total income of the assessee-firm. Regarding it as concealed income, the Income-tax Officer took action under section 28(1) (c) of the Act and levied a penalty of Rs. 10,000 with the prior approval of the Inspecting Assistant Commissioner, Jammu Range, Jammu, in his order of 13th of December, 1960. Sub-section (1) of section 28 of the Act says that:—

“If the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal in the course of any proceedings under this Act, is satisfied that any person:—

- (a)
- (b)
- (c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income, he or it may direct that such person shall pay by way of penalty.....”.

It is to be noted that sub-section (3) of section 28 says that:—

“No order shall be made under sub-section (1) or sub-section (2) unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.”

It is on the construction of sub-section (3) of section 28 that the decision of this reference must turn.

(3) The assessee appealed from the order of the Income-officer to the Appellate Assistant Commissioner. It may be mentioned at this stage that originally Income-tax Officer, B-ward, Jullundur had jurisdiction over this matter and it was he who actually issued notice under section 28 to the assessee on 17th of September, 1958. The assessee in reply sent a letter to the Income-tax Officer, B-ward, on 6th of November, 1958, *inter alia*, making a request that the levy of penalty should be held over till the disposal of the qu

appeal for the year 1954-55. The matter presumably was allowed to remain in abeyance for a long time. Sometime in July, 1959, the jurisdiction over the assessee-firm seems to have been transferred to Income-tax Officer, C-ward. The appeal, whose decision the Income-tax Officer, B-ward, had been requested to await, was disposed of on 2nd of December, 1959. Without any information to the assessee, the Income-tax Officer, C-ward more than one year later on 13th of December, 1960, imposed a penalty of Rs. 10,000 on the assessee. The Appellate Assistant Commissioner decided the appeal of the assessee in his favour on 8th of June, 1962, holding that Income-tax Officer, C-ward, to whom the jurisdiction over the assessee had been transferred, had imposed the penalty without complying with the provisions of section 5(7C) of the Act under which:—

“Whenever in respect of any proceeding under this Act an Income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the Income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be re-opened or that before any order for assessment is passed against him he be re-heard:

.....”.

A further appeal by the Revenue before the Income-tax Appellate Tribunal resulted in a reversal of positions and the order of the Income-tax Officer was restored. The appellate Tribunal was of the view that the assessee had come to know of the change of jurisdiction and had made no request to the Income-tax Officer, C-Ward to allow him opportunity of being heard. It is these last two findings of fact which have been incorporated in the question under reference and on which the answer to the main question has been made dependent.

(4) Mr. Bhagirath Dass, the learned counsel for the assessee, has contended that the question has been so formulated that he is now barred from questioning the two findings or to ask for a fresh finding. It is, however, submitted by him that even taking these findings which he is not now in a position to challenge as correct, the appeal having come under the jurisdiction of Income-tax Officer, C-ward, an independent obligation devolved on this authority to

M/s. Satparkash-Ram Narain v. The Commissioner of Income-tax, Punjab,
Jammu and Kashmir and Himachal Pradesh at Patiala
(Shamsher Bahadur, J.)

afford an opportunity to the assessee. It is submitted by the learned counsel that the Income-tax Officer, B-Ward, on the assessee's request embodied in the letter of 6th of November, 1958, must be taken to have acceded to it as no further proceedings had been taken in pursuance of the notice under section 28 of the Act for a period of more than two years. Although the quantum appeal had been disposed of on 2nd of December, 1969, no further action was taken by the Income-tax Officer, C-Ward, till he passed the order imposing penalty on 13th December, 1960. It is submitted by the counsel that sub-section (7C) of section 5 of the Act also imposed a duty on the Income-tax Officer, C-Ward, to ascertain from the assessee whether or not to continue the proceedings from the stage at which they had been left by the Income-tax Officer, B-Ward. The opportunity contemplated by sub-section (3) of section 28 having been given by the issue of notice by the Income-tax Officer, B-Ward, it followed as a matter of consequence, as contended for on behalf of the Department, that the assessee had to keep himself informed about the progress of penalty proceedings from day-today. It appears to be a somewhat unrealistic approach and it seems to us that the easiest course for the Income-tax Officer, C-Ward and one which was in conformity with requirements of natural justice would have been to inform the assessee that the quantum appeal having been disposed of, the question of penalty would be taken on an appointed date. How could the assessee be expected to have knowledge of what was happening in the Department of the Income-tax Officer, C-Ward, when all that was made known to him was that on his own request the further proceedings had been held in abeyance by the Income-tax Officer, B-Ward. A decision of the Division Bench of the Calcutta High Court in *Calcutta Tanneries (1944) Ltd. v. Commissioner of Income-tax, Calcutta*, (1) has been relied upon by Mr. Bhagirath Dass. In the judgment of Chief Justice Lahiri, with whom Bachawat J. (as Mr. Justice Bachwat than was) concurred it was held that where one Income-tax Officer had initiated penalty proceedings under section 28(1)(c) of the Act and the hearing of the proceedings was concluded on September 29, 1951, and a long time thereafter a successor Officer passed an order on January 14, 1954; imposing a penalty; without giving an opportunity to the assessee to be heard, the provisions of section 5(7C) of the Act applied and though the assessee had failed to

(1) (1960) 40 I.T.R. 178.

exercise his right under the first part of the proviso to section 5(7C) to have the proceedings re-opened. It did not lose its right of being heard under section 28(3) before the Officer who had been invested with jurisdiction to continue the penalty proceedings. The successor Officer, in the view of Chief Justice Lahiri, had no authority to pass an order of penalty without giving the assessee a further opportunity of advancing arguments before him. According to this ruling, it is clear that the Income-tax Officer, C-Ward was bound to give an opportunity to the assessee before passing an order of penalty.

(5) On behalf of the Department, Mr. Awasthy has cited a Division Bench Judgment of the Rajasthan High Court in *A.C. Metal Works v. Commissioner of Income-tax Delhi and Rajasthan* (2). In that case though one Income-tax officer had issued notice under section 28(3) of the Act and the assessee had submitted his explanation in writing, the assessee did not choose to appear before the Income-tax Officer or ask for an opportunity to adduce evidence or address arguments, nor did he defend rehearing under the proviso to sub-section (7C) of section 5 when the officer had been transferred. It was held that the succeeding officer had authority to continue the penalty proceedings and impose penalty on the assessee after considering the written representation already filed by him without giving a fresh opportunity of being heard. In the instant case, no explanation had been filed by the assessee and the proceedings before the Income-tax Officer, B-ward, had remained in a state of suspended animation for a period of two years, when the successor imposed the penalty without giving any opportunity to the assessee and having what the assessee may have to say.

(6) Mr. Awasthy places reliance also on the Division Bench authority of the Mysore High Court of Hegde and Ahmed Ali Khan, JJ., in *Shop Siddegowda and family v. Commissioner of Income-tax, Mysore* (3). In that case, one Income-tax Officer issued a notice under section 28(3) to the assessee calling upon him to appeal and show cause why penalty should not be levied and the assessee submitted his explanation in writing, but did not choose to appear or ask for an opportunity to adduce evidence or address arguments, it was held that the successor officer had authority to impose penalty after considering the written representations of the assessee without giving a fresh opportunity of being heard. This authority,

(2) (1967) 66 I.T.R. 14.

(3) (1964) 53 I.T.R. 57.

Ujagar Singh v. State of Punjab and others (Mehar Singh, C.J.)

like the Rajasthan case, contains the distinguishing feature that the assessee had given an explanation which alone came to be considered by the successor authority.

(7) Precisely the same considerations prevailed in another Division Bench authority of the Mysore High Court in *Hulekar and Sons v. Commissioner of Income-tax Mysore* (4). There again a written representation had been given to one Income-tax Officer and the successor proceeded with the penalty proceedings as the assessee did not seek a fresh opportunity of being heard.

(8) In our opinion, the answer to the reference, therefore, must be made in favour of the assessee. In the circumstances, there would be no order as to costs.

MEHAR SINGH, C.J.—I agree.

K.S.K.

FULL BENCH

Before Mehar Singh, C.J., D.K. Mahajan and Gurdev Singh, JJ.

UJAGAR SINGH,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2489 of 1967

September 24, 1968

Punjab Gram Panchayat Act, 1952 (IV of 1953)—Ss. 102(1) and 102(2)—Inquiry under—Nature and scope of—Bare minimum of the inquiry—Stated—Order of suspension of a Panch or a Sarpanch—No inquiry by the Government—Such order—Whether can be passed by the Deputy Commissioner.

Held, that an enquiry under sub-section (2) of section 102 of Punjab Gram Panchayat Act, being a statutory requirement must be there before a Panch or

(4) (1967) 63 I.T.R. 130.