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INDIA MACHINERY STORES (P) LTD.

v.

COMMISSIONER OF INCOME-TAX, BIHAR

May 6, 1970

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[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Income-tax Act, 1922, s. 66A(2)—Certificate of fitness to appeal to Supreme Court—High Court must mention grounds—Certificate justified only when question of great public or private importance is at issue.

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The appellant was a private limited company incorporated with the object of taking over the business carried on by another company. By an agreement dated August 2, 1956, the appellant company agreed to purchase all the assets goodwill etc. of the vendors. By cl. 4 of the agreement it was provided that all assets of the vendors in respect of their business "shall be taken over at the book value standing in the books of accounts of the vendors" as on August 1, 1956. The Income-tax Officer in proceedings for the assessment year 1958-59 found that in the books of the vendors the 'value of stock' as on August 1, 1956 was Rs. 1,77,285 but in the books of the appellant company the opening stock taken one was valued on the same day at Rs. 2,10,225. The latter valuation also appeared in the Schedule annexed to the deed of transfer. The Income-tax Officer observed that the valuation by the appellant company of the opening stock was in "clear violation of the agreement between the vendors and the Company". He accordingly added a sum of Rs. 33,000/- representing the difference between the value of the closing stock in the books of account of the vendors and the opening stock in the books of account of the Company. The order was confirmed in appeal by the Appellate Assistant Commissioner and by the Income-tax Appellate Tribunal. In reference the High Court of Patna upheld the view taken by these authorities. A Division Bench of the High Court certified the case under s. 66A(2) of the Indian Income-tax Act, 1922, observing that the case fulfilled all the requirements of the said section and was a fit case for appeal to the Supreme Court. The Revenue contended in this Court that the certificate was incompetent as the question of law which had to be decided was not set out and no question of public or private importance had been disclosed.

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HELD : (i) In granting the certificate the High Court merely observed that it was 'a fit case for appeal to the Supreme Court': they did not indicate the grounds which persuaded them to hold that it was a fit case for appeal to this Court. It would be conducive to better administration of justice if in certifying a case under s. 66A(2) of the Indian Income-tax Act as a fit case for appeal, the High Court sets out the question of law which they regard as of public or private importance which falls to be decided by this Court. [543 G]

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(ii) It is true that under s. 66(1) and (2) of the Indian Income-tax Act, 1922 only a question of law may be referred to the High Court for opinion, but the right to obtain a certificate under s. 66A(2) arises only when in the proposed appeal a question of great public and private importance arises. It cannot be held that because a question of law alone may be referred to the High Court under s. 66 of the Indian Income-tax Act, in the proposed appeal a question of law of great public or private importance necessarily arises. Any other view, would make every opinion of the High Court in a reference under s. 66 appealable to this Court. [544 B-C]

The practice followed in some of the High Courts of issuing certificates under s. 66A(2) without recording reasons or grounds for certifying the case would not justify a departure in the present case from the practice laid down many years ago by decision of the Judicial Committee of the Privy Council according to which a certificate under s. 66A(2) which does not set out precisely the grounds or raise a question of great public or private importance does not comply with the requirements of the Act. [544 E]

Commissioner of Income-tax, Central Provinces of Berar v. Sir S. M. Chitnavis, L.R. 59 I.A. 290, followed.

Delhi Cloth and General Mills Company Ltd. v. Income-tax Commissioner, Delhi, L.R. 54 I.A. 421, *Banarsi Parshad v. Kashi Krishna Narain & Anr.*, L.R. 28 I.A. 11, *Radha Krishn Das v. Rai Krishn Chand*, L.R. 48 I.A. 31 and *Radhakrishna Ayyar v. Swaminatha Ayyar*, L.R. 48 I.A. 31, applied.

(iii) The appellant made no attempt to explain the discrepancy in the valuation of the stock transferred. The Income-tax Officer was of the view that the company had inflated the opening stock so as to reduce the ultimate profits. That view was confirmed by the Appellate Assistant Commissioner and by the Tribunal. No question of law arose out of the order of the Tribunal. The reference itself was incompetent. [545 A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 376 of 1967.

Appeal from the judgment and decree dated December 8, 1965 of the Patna High Court in Misc. Judicial Case No 38 of 1962.

M. C. Chagia and *R. C. Prasad*, for the appellant.

Jagadish Swarup, *Solicitor-General*, *G. C. Sharma*, *R. N. Sachthey* and *B. D. Sharma*, for the respondent.

The Judgment of the Court was delivered by

Shah, J. This appeal is filed with certificate granted by the High Court of Patna under s. 66A(2) of the Indian Income-tax Act, 1922.

The India Machinery Stores (P) Ltd. is a private company incorporated with the object of taking over the business carried on by the India Machinery and Mills Stores—hereinafter called 'the vendors'. By an agreement dated August 2, 1956, the Company agreed to purchase all the assets of the vendors, goodwill, and the "book-debts and other liabilities and claims against the Company" as on the date of transfer in consideration of allotment of 260 fully paid-up shares of the Company of the nominal value of Rs. 2,60,000/-. It was provided by cl. 4 of the agreement :

"That all assets of the vendors in respect of all its business shall be taken over at the book value standing in the books of accounts of the vendors as on the 1st August One Thousand Nine Hundred Fifty-six."

- A** In a proceeding for assessment to tax for 1958-59, the Income-tax Officer found that in the books of the vendors the "value of stock" as on August 1, 1956 was Rs. 1,77,285 while in the books of the Company the opening stock taken over by the Company was valued on the same day at Rs. 2,10,285. The Income-tax Officer held that the valuation by the Company of the opening stock was
- B** in "clear violation of the terms of agreement between the vendors and the Company" and added a sum of Rs. 33,000 representing the difference between the value of the closing stock in the books of account of the vendors and the opening stock in the books of account of the Company. The order was confirmed in appeal by the Appellate Assistant Commissioner and by the Income-tax
- C** Appellate Tribunal.

The High Court of Patna recorded their answer in the affirmative on the following question referred by the Tribunal :

- D** "Whether on the facts and circumstances of the case and upon a construction of the agreement of 2nd August, 1956, the Tribunal was justified in holding that the sum of Rs. 33,000 forms part of the assessable profits of the assessee Company?"

A Division Bench of the High Court certified the case under s. 66A(2) of the Act as fit for appeal to this Court, observing :

- E** "That the case fulfils all the requirements of s. 66A(2) of the Indian Income-tax Act, 1922, and is a fit case for appeal to the Supreme Court."

- F** At the hearing of the appeal on behalf of the Commissioner of Income-tax, it is contended that the appeal is incompetent, since the High Court in certifying the case as fit for appeal to this Court did not set out the question of law which this Court has to decide. It was urged that the certificate or the order certifying the case must disclose that some substantial question of public or private importance arises in the case, and on that account the case is certified to be fit for appeal. In our judgment, the contention must be accepted.

- G** Section 66A of the Indian Income-tax Act, 1922, which was added by the Indian Income-tax (Amendment) Act 24 of 1926 by sub-s. (2) provides :

- H** "An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a reference made under section 66 in any case which the High Court certifies to be a fit one for appeal to the Supreme Court."

The phraseology of sub-s. (2) of s. 66A of the Income-tax Act is substantially the same as used in s. 109(c) of the Code of Civil Procedure, 1908, Art. 133(1)(c) and Art. 134(1)(c) of the Constitution. The Judicial Committee in *Delhi Cloth and General Mills Company Ltd. v. Income-tax Commissioner, Delhi*⁽¹⁾, observed :

“ . . . it will be noticed that the appeal thereby given is by sub-s. 2 confined to a case which the High Court certifies “to be a fit one for appeal to His Majesty in Council”. These words are textually the same as the concluding words of s. 109(c) of the Code of Civil Procedure, and coupled with the carefully limited referential words to the Code of Civil Procedure in sub-s. 3, suffice, in their Lordships’ judgment, to exclude from any right of appeal cases which fall within the requirements of s. 110 of the Code, and are operative to confine that right to cases which are certified to be otherwise fit for appeal to His Majesty in Council.”

In *Banarsi Parshad v. Kashi Krishna Narain & Anr.*⁽²⁾ the Judicial Committee explained that the expression “certifies to be a fit one for appeal” in the Code of Civil Procedure is clearly intended to meet special cases—such, for example, as those in which the point in dispute is not measurable by money, though it may be of great public or private importance. To certify that a case is of that kind, though it is left entirely in the discretion of the Court, is a judicial process which could not be performed without special exercise of that discretion, evinced by a fitting certificate.

In *Radha Krishn Das v. Rai Krishn Chand*⁽³⁾ a Division Bench of the Allahabad High Court had issued a certificate stating that “though the valuation of the case was below Rs. 10,000 yet as regards the value and nature of the case it fulfilled the requirements of s. 596 of Act No. XIV of 1882 (Code of Civil Procedure)”. In that case the value of the subject-matter was less than Rs. 10,000 and the Judicial Committee observed that even though s. 596 was referred to there was nothing to show that the Judges who had issued the certificate “had exercised their judicial discretion upon the matter in deciding whether, in order to comply with s. 595(c) and s. 600 the case was a fit one for appeal to Her Majesty in Council.” On that ground the appeal was dismissed as incompetent.

(1) L.R. 54 I. A. 421.

(2) L.R. 28 I. A. 11.

(3) L. R. 28 I. A. 1821.

A In *Radhakrishna Ayyar v. Swaminatha Ayyar*⁽¹⁾ the High Court granted a certificate in a case in which the claim was Rs. 4,560 due as rent. The certificate recited :

B "It is hereby certified that, as regards the value of the subject matter and the nature of the question involved, the case fulfils the requirements of ss. 109 and 110 of the Code of Civil Procedure, and that the case is a fit one for appeal to His Majesty in Council."

The Judicial Committee observed that where any certificate is granted certifying a case, it is of the utmost importance that the certificate should show clearly upon which ground it is granted. In dealing with the argument that the case was covered by s. 109(c) of the Code of Civil Procedure, 1908, their Lordships observed :

D "There is no indication in the certificate of what the nature of the question is that it is thought was involved in the hearing of this appeal, nor is there anything to show that the discretion conferred by s. 109(c) was invoked or was exercised. Their Lordships think . . . that these certificates are of great consequences, that they seriously affect the rights of litigant parties, and that they ought to be given in such a form that it is impossible to mistake their meaning upon their face."

E Again, the Judicial Committee observed in *Commissioner of Income-tax, Central Provinces & Berar v. Sir S. M. Chinavis*⁽²⁾ that when a certificate is granted under s. 66A of the Income-tax Act it must be on a question affecting not only a particular assessee and depending upon the state of the evidence in a particular case, but a question of great public importance affecting assesses generally and depending upon general principles.

F In granting the certificate the High Court merely observed that it was "a fit case for appeal to the Supreme Court": they did not indicate the grounds which persuaded them to hold that it was a fit case for appeal to this Court. It would be conducive to better administration of justice if in certifying a case under s. 66A(2) of the Indian Income-tax Act as a fit case for appeal, the High Court sets out the question of law which they regard as of great public or private importance which falls to be decided by this Court.

H Mr. Chagla contended that the rules laid down by the Judicial Committee applicable to a certificate issued under s. 109(c) of the Code of Civil Procedure, 1908, and under s. 596 of the Code of 1882, in regard to appeals in civil matters have no bearing in determining the meaning of s. 66A(2), for the High Court

(1) L. R. 48 I. A. 31.

(2) L. R. 59 I. A. 290.

exercises advisory jurisdiction on a reference on questions of law and on that account even if the question of law which in the view of the High Court arises is not stated in the certificate, it may be presumed when the High Court has certified a case to be fit for appeal, that a substantial question of law is involved, and the technical defect in the certificate may be ignored. We are unable to accept that argument. It is true that under s. 66(1) & (2) of the Indian Income-tax Act, 1922, only a question of law may be referred to the High Court for opinion, but the right to obtain a certificate under s. 66A(2) arises only when in the proposed appeal a question of great public or private importance arises. It cannot be held that because a question of law alone may be referred to the High Court under s. 66 of the Indian Income-tax Act, in the proposed appeal a question of law of great public or private importance necessarily arises. Any other view, would make every opinion of the High Court in a reference under s. 66 appealable to this Court. In our view, the certificate granted by the High Court was defective.

It was also urged that a practice is fairly common in some of the High Courts to certify a case under s. 66A(2), without recording any reasons or the grounds for certifying the case, and we may not penalize the Company when we are enunciating the true rule for the first time. But the practice, in our judgment, was laid down many years ago by the decisions of the Judicial Committee that a certificate under s. 66A(2) which does not set out precisely the grounds or raise a question of great public or private importance does not comply with the requirements of the Act. The jurisdiction of this Court to entertain an appeal from the opinion recorded under the Indian Income-tax Act arises only when a certificate is properly issued by the High Court or when this Court grants special leave under Art. 136 of the Constitution.

In our judgment, there is again no merit in the appeal. By cl. 4 of the agreement dated August 2, 1956, it was expressly provided :

"That all assets of the vendors in respect of all its business shall be taken over at the book value standing in the books of accounts of the vendors as on the 1st August One Thousand Nine Hundred Fifty-six."

It is undisputed that the stock-in-trade was entered in the books of account of the vendors on the date of transfer of the undertaking at Rs. 1,77,285 and the Company valued the stock-in-trade at Rs. 2,10,285. It is true that to the deed of transfer is annexed a Schedule of the assets and liabilities taken over by the Company, and in the Schedule the value of stocks at Patna, Muzaffarpur and

- A** Purnea is shown at Rs. 2,10,285.87. No attempt was made to explain the discrepancy between the operative part of the agreement and the valuation shown in the Schedule. The Income-tax Officer was of the view that the Company had inflated the opening stock so as to reduce the ultimate profits. That view was confirmed by the Appellate Assistant Commissioner and by the Tribunal.
- B** No question of law arose out of the order of the Tribunal. The reference itself was incompetent.

The appeal fails and is dismissed with costs.

G.C.

Appeal dismissed.