

PETITIONER:  
COMMISSIONER OF INCOME TAX, WEST BENGAL, CALCUTTA & ANR.

Vs.

RESPONDENT:  
ANIL KUMAR ROY CHOWDHURY & ANR.

DATE OF JUDGMENT:  
30/03/1967

BENCH:  
SIKRI, S.M.  
BENCH:  
SIKRI, S.M.  
SHAH, J.C.  
RAMASWAMI, V.

CITATION:  
1968 AIR 150                      1967 SCR (3) 720

ACT:  
Indian Income Tax Act, 1922 (11 of 1962) Ss. 33 (2), and  
66-Proper person to file appeal, who is-New facts,  
jurisdiction of High Court.

HEADNOTE:

On the success of the assessee's appeal against in assessment made by the Income Tax Officer, District 1 (2), the Department appealed to the Tribunal. This was filed by the Income Tax Officer, District VI, in whose jurisdiction the assessee had shifted his residence. The assessee objected that the appeal was incompetent as it was not filed by the Income Tax Officer who had made the assessment. The Tribunal rejected the objection. On reference, the High Court sent for the records looked into them and on new facts, answered the question against the Revenue. In appeal by special leave

HELD.-The Income Tax Officer, District VI, bid jurisdiction over the assessee and he could be directed by the Commissioner to file the appeal.

Under S. 33(2), the person who has a right to appeal is the Commissioner of Income Tax and not the Income Tax Officer. The Income Tax Officer, when he files the appeal under the direction of the Commissioner performs merely a ministerial function. But the Income Tax Officer selected must have some concern with the assessee against whom the appeal is filed by the Commissioner of Income-Tax. It may be that the Income Tax Officer who completed the original assessment would also be concerned with the appeal to be filed by the Commissioner, but it does not mean that he is exclusively so concerned. If the case had been transferred by the Commissioner or the Board of Revenue from the Income Tax Officer who completed the assessment to another Income Tax Officer, then obviously the former officer will have no concern with the appeal. But if there has been no such transfer then it cannot be said that he alone is concerned with the appeal. The Income Tax Officers can have concurrent jurisdiction over some matters. One illustration of this is provided by s. 64(4). [325F-H; 327D]

Commissioner of Income Tax, Calcutta v. S. Sarkar & Co. A.I.R. 1954 Cal. 613. approved.

Sardar Baldev Singh v. Commissioner of Income Tax, Delhi 40 I.T.R. 605, followed.

R.B. L. Benarsi Dass v. C.I.T. East Punjab, 42 I.T.R. 363, disapproved.

The High Court exceeded its jurisdiction under s.66 of the Income Tax Act in finding new facts. If it felt any difficulty in answering the question. it should have called for a supplementary statement of the case. [325C]

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 205 of 1966.  
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Appeal from the judgment and order dated May 28, 1963 of the Calcutta High Court in Income Tax Reference No. 79 of 1959. Veda Vyasa, A. N. Kirpal, S. P. Nayyar and R. N. Sachthey, for the appellants.

A. K. Sen and B. P. Maheshwari, for the respondents.

The Judgment of the Court was delivered by Sikri, J. This appeal in pursuance of a certificate of fitness granted by the High Court of Judicature at Calcutta under s. 66 (A)(2) of the Indian Income Tax Act, 1922, is directed against the judgment of the High Court in Income Tax Reference No. 79 of 1959. By its judgment, the High Court answered the following question, referred to it by the Income Tax Appellate Tribunal, against the Revenue:

"Whether on the facts and in the circumstances of the case, the appeal before the Appellate Tribunal was filed by a proper person ?"

The relevant facts are stated in the statement of the case and are as follows : The respondents, hereinafter referred to as the assessee, is a Hindu Undivided family and for the assessment year 1947-48 the assessment was made by the Income Tax Officer, Dist. 1(2) on February 12, 1952. He held that the income of Rs. 1,41,851/- derived from forests in East Pakistan was not agricultural income exempt from tax under the Indian Income Tax Act, 1922. The assessee appealed to the Appellate Assistant Commissioner, who, by his order dated February 7, 1956, held that the said amount of Rs. 1,41,851/- represented income from agriculture and was thus exempt from tax. The Department appealed to the Income Tax Appellate Tribunal and the appeal was filed by the Income Tax Officer, District VI, Calcutta. It appears that the assessee who formerly resided at 24/25 Beadon Row, Calcutta, shifted in 1954 to 29B, Ballygunge Circular Road, Calcutta, consequently bringing him within the jurisdiction of Income Tax Officer, District VI, Calcutta. A preliminary objection was raised before the Appellate Tribunal, on behalf of the assessee, that the appeal was incompetent because it had been filed by the Income Tax Officer, District VI, Calcutta, and not by the Income Tax Officer, District 1(2), Calcutta. It was contended before the Appellate Tribunal that the Income Tax Officer, District 1(2), was the proper officer to file the appeal because he had made the assessment. The Appellate Tribunal rejected the contention. It held:

"The representative of the assessee conceded that the assessee was formerly residing at 24 and 25, Beadon Row, Calcutta but in 1954 he shifted to 29/B Ballygunge Circular Road, Calcutta, which is within the jurisdiction of 5Sup CL/67-8

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the Income-tax Officer, District VI, Calcutta.

Therefore, the jurisdiction for assessment vested in the Incometax Officer, District VI in view of the provision of section 64(2) of the Income-tax Act. That being the case, we are of the view that there was no lack of competence on the part of the Income-tax Officer, District VI to prefer the present appeal."

It will be noticed that in the facts given in the statement of the case and the reasoning of the Appellate Tribunal there is no mention of any order of transfer having been passed by the Commissioner of Income Tax or the Board of Revenue transferring the files from the Income Tax Officer, District 1(2) to the Income Tax Officer, District VI, Calcutta. Neither is there any mention which Commissioner of Income Tax directed the Income Tax Officer, District VI, Calcutta, to file the appeal.

The learned counsel for the appellants contends that the High Court erred in taking into consideration facts which were not to be found in the Statement of the Case. He says that in the penultimate para of the judgment, the High Court observed :

"The original assessment was made by the Incometax Officer, District 1(2). This officer is an officer subordinate to the Commissioner of Income-tax, Calcutta. The Income-tax Officer, District VI, Calcutta, is an officer subordinate to the Commissioner of Income-tax, West Bengal. Therefore, the Commissioner of Income Tax, Calcutta, could not transfer the case or the file to the Income-tax Officer, District VI, Calcutta. It is only the Board of Revenue which could transfer the case under section 5(7)(a). There was no such transfer by the Board of Revenue. Therefore, for all intents and purposes, it was the Income-tax Officer, District 1(2) who remained in seisin of the case and of the file."

The counsel contends that there was no material in the statement of the case to find out which officer was subordinate to which Commissioner of Income Tax and whether there was any transfer by the Board of Revenue or the Commissioner of Income Tax. The High Court further observed :

"While the appeal before the Appellate Assistant Commissioner was pending, the assessee changed his residence to 29B, Ballygunge Circular Road. There was no transfer of the case or of the file to the Income-tax Officer, District VI, who was the appropriate officer in the Ballygunge Circular Road area. Therefore, it cannot be said that the Income-tax Officer, District VI ever came to be in seisin of the case or the file. So far as the direc-

tion of the Commissioner is concerned, it is not disputed before us that a direction for filing the appeal was given to the Income-tax Officer, District VI but no order of transfer under section 5(5) read with section 5(7)(a) could be shown to us, although the original records were brought into Court."

The learned counsel urges that the High Court had no

jurisdiction to send for records or look into them, and the whole judgment of the High Court is based on new facts stated by it in the penultimate para of its judgment.

In our view, the High Court exceeded its jurisdiction under s. 66 of the Income Tax Act in finding new facts. It felt any difficulty in answering the question, it should have called for a supplementary statement of the case. We will, for the purpose of this appeal, ignore the following facts found by the High Court : (1) that there was no transfer of the case by the Board of Revenue; (2) that the Income Tax Officer, District 1 (2) was an officer subordinate to the Commissioner of Income Tax, Calcutta; (3) that the Income Tax Officer, District VI, was an officer subordinate to the Commissioner of West Bengal; and (4) that there was no transfer of the case or the file to the Income Tax Officer, District VI, who was the appropriate officer for the Ballygunge Circular Road area.

The answer to the question depends on the interpretation of s. 33(2) read with s. 64(2). Section 33(2) provides that "the Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under section 31, direct the Income-tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made within sixty days of the date on which the order is communicated to the Commissioner by the Appellate Assistant Commissioner." It is clear from a reading of this subsection that the person who has a right to appeal is the Commissioner of Income Tax and not the Income Tax Officer. It would be noticed that the period of limitation starts from the date on which the order of the Appellate Assistant Commissioner is communicated to the Commissioner by him. It seems to us that, in this context, the Income Tax Officer, when he files the appeal under the direction of the Commissioner performs merely a ministerial function. But the question still remains whether there is any limitation on the power of the Commissioner to nominate the Income Tax Officer who should file the appeal. One thing seems clear--from the expression "the Income Tax Officer" and that is that the Commissioner cannot direct any Income Tax Officer. The expression "the Income Tax Officer" occurs in various sections of the Act. In our view, the expression denotes an Income Tax Officer having jurisdiction over the assessee or the matter. In other words, the officer selected must have some concern with the

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assessee against whom the appeal is filed by the Commissioner of Income Tax. This was also held by the Calcutta High Court in Commissioner of Income Tax, West Bengal, Calcutta v. S. Sarkar & Co.(1) Chakravarti, C.J. observed in that case :

"To my mind, the definite article "the" points to the Income Tax Officer who is concerned with the case at the time when the appeal is to be filed. The section does not say that the Commissioner may direct "an" Income-tax Officer."

The question then arises whether the Income Tax Officer, District VI, Calcutta, was concerned with the appeal filed on the direction of the Commissioner of Income Tax. We have already mentioned that the assessee changed his residence to 29B, Ballygunge Circular Road, Calcutta, in 1954. By the time the appeal came to be filed, the Income Tax Officer, District VI, had jurisdiction over him. This follows from sections 64(1) and (2) which read as follows:

"64. Place of assessment.-(1) Where an

assessee carries on a business, profession or vocation at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business, profession or vocation is carried on in more places than one, by the Income-tax Officer of the area in which the principal place of his business, profession or vocation is

(2) In all other cases, an assessee shall be assessed by the Income-tax Officer of the area in which he resides."

It was held by this Court in *Sardar Baldev Singh v. Commissioner of Income Tax, Delhi*(2) that the Income Tax Officer, Delhi, within whose jurisdiction the resided, could initiate proceedings under s. 34 to revise an assessment made by the Income Tax Officer, Lahore, for the assessment year 1944-45. The reasoning of the High Court for rejecting the contention of the Department was this :

"Section 5(7)(a) gives power to the Commissioner to transfer a case from one officer subordinate to him to another and the Central Board of Revenue can transfer a case from one place to any other place in India. Suppose an assessee resides at a particular place and he has been assessed by the Income tax Officer who has jurisdiction over that area, or is in the process of being assessed. If he changes his residence to another place, then under Section 64 (2) the Income, Tax Officer having juris-

(1) A.I.R.1954 Cal. 613.

(2) 40 1. T. R. 605.

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diction over the new place of residence would acquire jurisdiction. But does that mean that the Income Tax Officer who was proceeding with the original assessment loses his jurisdiction ? If that were so, then an assessee could make his assessment impossible by constantly changing his residence during the assessment. That obviously cannot be the legal position. The legal position is that in such a case, although the officer having jurisdiction over his new place of residence acquires jurisdiction under Section 64(2), the Income-tax Officer who commenced the original assessment does not lose his jurisdiction to complete the case and the completion of the case will include the hearing of appeals or revisions against the original order of assessment."

It may be that the Income Tax Officer who completed the original assessment would also be concerned with the appeal to be filed by the Commissioner, but it does not mean that he is exclusively so concerned. If the case had been transferred by the Commissioner or the Board of Revenue from the Income Tax Officer who completed the assessment to another Income Tax Officer, then obviously the former officer will have no concern with the appeal. But if there has been no such transfer then we are unable to appreciate why he alone is concerned with the appeal. The Income Tax Officers can have concurrent jurisdiction over some matters. One illustration of this is provided by s. 64(4).

The High Court dissented from the decision of the Punjab High Court in *R. B. L. Benarsi Dass v. C.I.T., East Punjab*(1). The Punjab High Court in that case held that

there was nothing in s. 33(2) to prohibit the Commissioner from directing any Income Tax Officer, other than the one who in fact passed the assessment order, to appeal. We consider that it is not correct to say that any Income Tax Officer can be directed to file an appeal. It must be an Income Tax Officer who has concern with the appeal.

The High Court rightly relied on Commissioner of Income Tax, West Bengal, Calcutta v. S. Sarkar & Co.(2) in dissenting from the view expressed by the Punjab High Court in R. B. L. Benarsi Dass v. C.I.T. East Punjab,(1) but in our view the High Court erred in holding that the facts of the present case are governed by the earlier decision of the Calcutta High Court. In this case, on the facts found by of the Appellate Tribunal, one Income Tax Officer had passed the assessment order while another Income Tax Officer has jurisdiction over the assessee. In our view, the

(1) 42 I.T.R. 363. (2) A.I.R. 1954 Cal. 613.

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latter Income Tax Officer having jurisdiction over the assessee could be directed by the Commissioner to file the appeal.

In the result we set aside the judgment of the High Court and answer the question in the affirmative and in favour of the Department, but in the circumstances of the case there will be no order as to costs.

Y.P.

Appeal allowed.

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