

PETITIONER:
COMMISSIONER OF INCOME-TAX, PUNJAB

Vs.

RESPONDENT:
INDIAN WOOLLEN TEXTILE MILLS

DATE OF JUDGMENT:
18/11/1963

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
SARKAR, A.K.
HIDAYATULLAH, M.

CITATION:
1964 AIR 735 1964 SCR (5) 427
CITATOR INFO :
D 1973 SC2330 (15)
R 1975 SC 893 (9)

ACT:
Income Tax-Tribunal ignores essential evidence-Refusal to state case--Power of High Court-Income-tax Act, 1922(11 of 1922), ss. 15C & 66(1) (2).

HEADNOTE:

'Eldee', one of the branches of the respondent had advanced a loan to another concern, 'Castle'. The respondent claimed under s. 15C of the Income Tax Act, exemption from tax in respect of 6 % of the capital employed in 'Eldee' as a newly established undertaking and sought to include in the computation of the capital so employed the amount advanced to 'Castle'. The Income-tax Appellate Tribunal directed inclusion of the amount advanced to 'Castle' in the computation of capital invested for the purpose of s. 15C. The Commissioner's application under s. 66(1) of the Act to the Tribunal to refer a question which arose out of the order of the Tribunal was rejected and his petition under s-66(2) for an order directing the Tribunal to state the case and refer it to the High Court was also dismissed. The question in dispute before the Revenue Authorities was whether 'Castle' was a branch of the assessee. The Appellate Assistant Commissioner thought that the same eight persons were partners in these two undertakings and that the constitution of both the undertakings being the same, 'Castle' could not be regarded as a separate entity. The Tribunal disagreed with that view relying upon only one circumstance that in the assessment for the year 1951-52 the income from 'Castle' had not been computed and included in the assessment of the respondent.

Held : Under the Income-tax Act it is for the Tribunal to decide all questions of fact: the High Court has the power merely to advise the Tribunal on questions of law arising out of the order of the Tribunal. In so advising the High Court must accept the findings of the Tribunal on matters of appreciation of evidence. But the refusal of the Tribunal to state a case for the opinion of the High Court, on the view that a question of law does not arise out of the order

is not conclusive. The High Court has the power to call upon the Tribunal to state the case if in its view a question of law arises out of the order of the Tribunal, and also if the Tribunal has misdirected itself in law in arriving at its findings. It is not open to the court to discard the Tribunal's finding of fact, if there is some evidence to support the finding of the Tribunal on a question of fact, -even if on a review of the evidence the court might have arrived at a difficult conclusion. It must however appear that the Tribunal had considered evidence covering all the essential matters before arriving at its con-

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clusion. If the conclusion of the Tribunal is based upon some evidence ignoring other essential matters it cannot be regarded as a finding not giving rise to a question liable to be referred to the Court.

(ii) The conclusion of the Tribunal suffers from a double infirmity: it assumed the only fact on which its conclusion was founded and ignored other relevant matters on which the Appellate Assistant Commissioner relied. The Tribunal had therefore misdirected itself in law in arriving at its finding, and in refusing to require the Tribunal to state the case and to refer it, the High Court was in error.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 96 of 1963.

Appeal by special leave from the judgment dated October 13, 1960, of the Punjab High Court in Income-tax Case No. 21 of 1958.

K.N. Rajagopala Sastri and R.N. Sachthey, for the appellant.
A.V. Viswanatha Sastri and N.N. Keshwani, for the respondent.

November 18, 1963. The Judgment of the Court was delivered by

SHAH J.-M/S Indian Woollen Textiles Mills Amritsar-hereinafter called 'the assessee' -had at different places in India, branches one of which was an industrial undertaking conducted in the name of Eldee Velvet and Silk Mills--called for the sake of brevity 'Eldee'. "Eldee" had advanced Rs. 3,21,460 to another concern, the Bombay Fine Worsted Manufacturers' Castle Mills-hereinafter called 'Castle'. In the assessment year 1951-52, the assessee claimed under s. 15C of the Indian Income-tax Act, 1922, exemption from tax in respect of 6% of the capital employed in 'Eldee' as a newly established undertaking and sought to include in the computation of the capital so employed Rs. 3,21,460 advanced to 'Castle'. The Income-tax Officer, Special Circle Amritsar, and the Appellate Assistant Commissioner rejected the claim. But the Income-tax Appellate Tribunal modified the assessment and directed inclusion of the amount advanced to 'Castle' in the computation of capital invested for the purpose of

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s. 15C. An application submitted under s. 66(1) of the Indian Income-tax Act to the Tribunal to refer a question which it was contended by the Commissioner arose out of the order of the Tribunal was rejected and the petition of the Commissioner under s. 66(2) for an order directing the Tribunal to state the case and refer it to the High Court was also dismissed. With special leave the Commissioner has appealed to this Court.

The question in dispute before the revenue authorities

was whether the business called 'Castle' at Bombay was a branch of the assessee. The Appellate Assistant Commissioner rejected the claim of the assessee to include the amount of Rs. 3,21,460 in the capital employed in the undertaking 'Eldee', because in his view there were in these two undertakings the same eight partners with a share of -/2/(two annas) each, and that the constitution of both the undertakings being the same, 'Castle' could not be regarded as a separate entity. The Tribunal disagreed with the view of the Appellate Assistant Commissioner, relying upon only one circumstance viz., that in the assessment for the year 1951-52 the income from 'Castle' had not been computed and included in the assessment of the assessee. It did not consider the other questions whether the constitution and ownership of the two businesses "were the same". The High Court declined to require the Tribunal to state the case holding that the finding of the Tribunal was one of fact as it was based on the inference arising from the non-inclusion by the Income-tax Officer in the assessment in question of the income of 'Castle' and that "the factor taken into consideration by the Appellate Tribunal in coming to the conclusion, it did," was a relevant factor.

Section 66(2) invests the High Court with jurisdiction to require the Appellate Tribunal to state a case and to refer it, if the Appellate Tribunal has refused to state the case on the ground that no question of law arises, and the High Court being approached

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by the aggrieved party within the period of limitation prescribed, is not satisfied about the correctness of the decision of the Appellate Tribunal refusing to state the case. Under the Income-tax Act it is for the Tribunal to decide all questions of fact: the High Court has the power merely to advise the Tribunal on questions of law arising out of the order of the Tribunal. In so advising the High Court must accept the findings of the Tribunal on matters of appreciation of evidence. But the refusal of the Tribunal to state a case for the opinion of the High Court, on the view that a question of law does not arise out of the order is not conclusive. The High Court has the power to call upon the Tribunal to state the case if in its view a question of law arises out of the order of the Tribunal. Such a question may arise out of the findings of the Tribunal, and also if the Tribunal has misdirected itself in law in arriving at its finding. It is not open to the Court to discard the Tribunal's finding of fact, if there is some evidence to support the finding of the Tribunal on a question of fact, even if on a review of the evidence the Court might have arrived at a different conclusion. It must however appear that the Tribunal had considered evidence covering all the essential matters before arriving at its conclusion. If the conclusion of the Tribunal is based upon some evidence ignoring other essential matters, it cannot be regarded as a finding not giving rise to a question liable to be referred to the Court.

Non-inclusion of the income of 'Castle' in the assessment of the assessee may have been a relevant circumstance, but its effect had to be considered in the light of other circumstances on which the Appellate Assistant Commissioner had relied. Moreover, reliance placed by the Tribunal upon the single circumstance on which its decision was founded had proceeded on an assumption that in the previous year to the year of assessment 1951-52, 'Castle' had carried on business and had earned income. The observations made by the Appellate Assistant Commissioner about

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'Castle' being separately assessed at Bombay in the status of a registered firm apparently refer to assessment of that business in subsequent years and not in the year of assessment 1951-52. The conclusion of the Tribunal therefore suffers from a double infirmity: it assumes the only fact on which its conclusion is founded and ignores other relevant matters on which the Appellate Assistant Commissioner relied in support of his conclusion. The Tribunal has therefore misdirected itself in law in arriving at its finding, and in refusing to require the Tribunal to state the case and to refer it, the High Court was, in our view, in error.

The appeal is therefore allowed and the proceedings are remanded to the High Court with a direction to proceed according to law. Costs in this appeal will be costs in the High Court.

Appeal allowed and Case remanded.