

Abdul Fatteh Vs. State of U. P.

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Court : Allahabad

Decided On : Nov-01-1963

Reported in : [1964]53ITR592(All)

Appeal No. : Agricultural Income-tax Reference No. 249 of 1957

Appellant : Abdul Fatteh

Respondent : State of U. P.

Judgement :

M. C. DESAI C.J. - This is a statement of a case referred by the Revision Board under section 24(4) of the U.P. Agricultural Income-tax Act at the instance of the assessee, Abdul Fatteh, and this courts answers are required on the following four questions :

(1) Whether the Boards is empowered by section 22 of the Act to revise an earlier order made by it ?

(2) Whether the return filed by the assessee in respect of the notice under section 15(3) served on the assessee on the 7th July, 1950, could be treated as a return filed in response to the general notice published under section 15(1) ?

(3) Whether in the circumstances of the case the Revision Board could lawfully remand the case for fresh assessment ?

(4) Whether an assessment could be lawfully made as mutawalli without prior service of notice in respect of income from endowed properties and on him in his personal capacity in respect of other income ?'

The assessee is the mutawalli of a wakf which owns certain property. There is other property in villages Piprahia and Seharua which is owned by him along with 5 others as proprietors. A general notice under section 15(1) for the assessment year 1356 fasli was issued but it is not known within what period the assessee were required to file returns of their agricultural income of the previous year 1355 Fasli. Before any return could be filed by the assessee or the co-owners a notice under section 15(3) was issued by the assessing authority calling upon the assessee and the co-owners to file returns of their agricultural income within a certain period; it seems that the assessing authority treated the property in the two villages also as wakf property and returns of the income derived from all the properties (said to be wakf properties) by the 6 persons were called for. All the 6 persons were treated as individuals deriving income from the properties and not as mutawalli. In reply all of them filed returns showing their shares in the entire income from all the properties, but the assessing authority held that the assessee was the mutawalli and was alone liable to be assessed on entire income from all the properties and on July 7, 1949, assessed him as mutawalli on the entire income. The assessee filed an appeal before the Commissioner and contended that he had received no notice to submit a return as a mutawalli and could not be assessed as such on the entire income. The Commissioner repelled the contention saying that no prejudice was caused to him by his not receiving the notice under section 15(3) as a mutawalli. He, however, found that the property in the two villages was not wakf property but was owned by the assessee and the co-owners in their own rights and on January 23, 1950, set aside the assessment order and remanded the case to the assessing authority for fresh assessments, one against the assessee as a mutawalli in respect of the income from the wakf property and the other against him and the co-owners in respect of the share of each in the income from the property in villages Piprahia and Seharua. He did not have sufficient data to separate the income of the wakf property from the entire income on which the assessee was assessed and, therefore, he was obliged to remand the case. In the remand order he gave the direction that the income from

the wakf property should be assessed against the assessee alone and that fresh assessments be made 'in respect of the other two villages by separate proceedings after due notice to the appellant and other owners of those two villages.' This order meant that the assessee was to be assessed on the income from the wakf property without any fresh notice. There are 3 Kinds of notices which can be issued by an assessing authority, (1) a notice under section 15(1), which is the general notice be issued 'on or before the 1st day of November, 1948, or on any such day as may be fixed by the State Government, (2) a notice under section 15(3) which is to be served on every person liable to pay within such period, not being less than 30 days, as may be specified in the notice a return of his total agricultural income during the previous year and (3) a notice under section 16(2) which is to be issued by the assessing authority, having reason to believe that a return made under section 15 is incorrect or incomplete to the person making the return requiring him on a date to be specified in it to attend its office or to produce or cause to be produced any evidence in support of the return. None of these notices was to be served upon the assessee before a fresh assessment order was passed against him, but notices were required to be served against him and the co-owners in respect of the assessment on their shares in the income from the two villages. There was no question of serving notices under section 15(1) or notices under section 15(3) against them. A notice under section 15(1) was to be served on or before 1948, or on any such day as was fixed by the State Government. A notice under section 15(3) had been already issued against the 6 persons and there was no necessity of issuing fresh notices under section 15(3) to them and the Commissioners order did not at all suggest that he meant these notices to be issued again to them. The case was remanded by him to the assessing authority because he himself could not separate the income of the two villages from the income of the wakf property; so evidence was required to show what was the income from the wakf property and what was the income from the two villages and the notices meant by the Commissioner must have been notices under section 16(2).

Before the assessing authority could comply with the remand order passed by the Commissioner it was revised by the Revision Board on May 19, 1950, at the instance of the assessee. The Revision Board held that the notices were issued

against the assessee and the co - owners to file returns as individuals and not a mutawallis and that the assessee was prejudiced by the fact that the notice under section 15(3) served upon him did not call upon him to file a return of the income as mutawalli of the wakf. Since a fresh assessment order was ordered by the Commissioner to be passed against him it was thought proper that 'a fresh notice be issued' to him so that he might have an opportunity of taking any pleas that he wished to take and modified the remand order 'to this extent only that the proceedings for fresh assessment to be taken against Sri Abdul Fatteh also after issuing to him a fresh notice under section 15(3). 'The Revision Board clearly misunderstood the remand order and erroneously took it to contain the direction that fresh notices under section 15(3) were to be issued against the assessee and his co-owners in respect of their shares in the income from the two villages. As we explained the Commissioner meant notices under section 16(2) only by his direction that the 6 persons be assessed after due notice. Assuming that a notice under section 15(3) requiring an individual to submit a return of his income as a mutawalli is defective if the fact that he has to submit the return as mutawalli is not stated in it, it was only the notice under section 15(3) against the assessee that could be said to be defective and not the notices issued against him and the co-owners in respect of their income from the two villages as individuals. The Revision Board could have directed that a fresh notice under section 15(3) be issued against the assessee in respect of his income from the wakf property. There would have been no difficulty if it had directed that 'fresh assessment be taken against Sri Abdul Fatteh after issuing to him a fresh notice under section 15(3)' but difficulty is caused by its adding the word 'also' after 'sri Abdul Fatteh', which addition suggests that it understood the remand order to mean that notices under section 15(3) were to be issued against the assessee and the co-owners in respect of their income from the two villages.

The assessing authority then stated compliance with the remand order as modified by the Board and in June, 1950, issued notices under section 15(3) against the assessee as mutawalli and against him and the 5 co-owners as proprietors of the two villages. The notices were served upon them on July 7, 1950. The assessee in response to the notices filed a return of his income of wakf property, but under protest contending that the notices were barred by time. A notice under section

15(3) must be served upon an assessee in the assessment year and the assessment year 1356 Fasli ended on June 30, 1949, before the fresh notices under section 15(3) were served upon the assessee. The assessing authority on February 14, 1951, dropped the proceedings, being of the view that as the notice under section 15(3) served upon the assessee on July 7, 1950, after the expiry of the assessment year 1356 Fasli was 'time barred', he could not be required to submit a return of his income of 1355 Fasli.

The State Government filed a revision application against the order of the assessing authority which was allowed by the Revision Board on September 8, 1952. The Board upheld the view of the assessing authority and the assessee's contention that a notice under section 15(3) can be issued only in the assessment year and not after its expiry but held that after a return had been filed a notice under section 15(3) was not necessary, that the assessee had filed a return after the remand order in response to the fresh notice under section 15(3), that it could be treated as a return filed in reply to the general notice issued under section 15(1) because what is material is the filing of a return and not the notice in response to which it is filed what the remand order passed by the Commissioner required a notice under section 16(2) and not a fresh notice under section 15(3) to be issued to the assessee, that the original section 15(3) notices issued to the assessee and his co-owners required them to file returns of their income regardless of the capacity in which they had received the income and that its previous orders directing a fresh notice to be issued under section 15(3) 'was, therefore, not correct.' it accordingly reconsidered and revised it in exercise of its revisional jurisdiction conferred by section 22. It allowed the application of the State and passed the following order :

'..... setting aside all the previous orders passed in these cases, remand both the cases for a fresh assessment with the direction that the mutawallis be given a notice under section 16(2) to produce evidence in support of their return. The assessment order to be passed against all the persons to whom notices were originally issued as mutawallis of wakf properties.'

Against the above order the assessee made an application under section 24(2). The Revision Board dismissed it saying that no question of law of the order passed by it. The assessee then came to this court and this court directed the Board to state the case.

Section 22 lays down that the Revision Board may, on its own motion or on an application, call for the record of any proceedings under the Act pending before or decided by any authority subordinate to it and may pass such orders as it thinks fit and that 'any order passed by the Revision Board under sub-section (1) shall, subject to any reference that may be made to the High Court under section 24, be final.' Section 26 is to the effect that 'any authority which passed. . . . an order in revision may, on his own motion or on an application by the assessee at any time within one year from the date of such order, rectify any mistake apparent on the face of the record of the. . . . revision.'

The Revision Board by its second order dated September 8, 1952, expressly reconsidered and revised its earlier order dated May 19, 1950. It was suggested on behalf of the State that the second order could be justified as one passed under section 26, but the suggestion cannot be accepted. The Board itself never claimed to have exercised the jurisdiction under section 26 and instead professed to have exercised the jurisdiction conferred by section 22 which it thought was wide enough to permit its passing the second order. It never said that there was any apparent error on the face of its earlier order; on the other hand it was on reconsideration that it found that its earlier order was incorrect. Actually also there was no apparent error on the face of the earlier order; the error arose out of a wrong interpretation placed on the Commissioners remand order. Further, the jurisdiction conferred by section 26 can be exercised either on the Board's own motion or on the assessee's application made within one year and cannot be exercised on an application by the State. Here the Board exercised the jurisdiction not on its own motion but on the State's application for revision. The Board did not purport to act on its own motion and could not have purported to do so when it expressly said that it was exercising revisional jurisdiction.

The revisional jurisdiction under section 22 is certainly wide but not so wide as was claimed by the Board. It is expressly subject to two provisos (neither of which is applicable in the instant case) and also subject to the limitations placed by the mention of the circumstances in which it can be exercised. It is to be exercised in respect of a proceedings before an authority subordinate to itself and cannot be exercised in respect of a proceeding before its own self. In other words, it can pass 'such orders as it thinks fit' only in respect of a proceedings decided by an authority subordinate to it. It could revise any order passed by the assessing authority or by the Commissioner but could not revise any order passed by itself because it cannot be said to be subordinate to its own self. The assessing authority here passed an order in compliance with the remand order passed by the Commissioner as modified by itself on May 19, 1950. If the assessing authority's order was in contravention of the remand order as modified by it, it could revise it and substitute in its place any other order and this was all the jurisdiction that it possessed under section 22. If the assessing authority's order was correct according to the remand order as modified by it, it had no jurisdiction to revise its own order and thereby render the assessing authority's order incorrect and, therefore, revisable by it. The order passed by it earlier had become final and could not be altered in any manner other than that laid down in section 22(2); it was not altered here in that manner. We cannot agree with Sri Gopi Nath that section 22(2) only prevents disobedience of the order by any person and does not deprive the Board itself of the power of correcting it. When an order passed by the Board becomes final it cannot be altered or corrected by any authority including the Board itself; it binds everybody including itself.

Question No. 1 is, therefore, answered in the negative.

Assessment year 1356 Fasli with which we are concerned was the first assessment year under the Act. The general notice mentioned in section 15(1) was to be issued only in the first assessment year; the notice referred to in section 15(3) on the other hand to be issued in every assessment year (may be) including the first assessment year. Thus only in the first assessment year there could be two notices, one under section 15(1) and the other under section 15(3). There was no necessity for issuing two notices even in the first assessment year.

and it is because section 15(3) is so widely worded as to cover every assessment year that it can be said that a notice under section 15(3) could be issued also in the first assessment year. If a return was filed in response to the notice issued under section 15(1) there could be no occasion for a notice under section 15(3) being issued against the assessee; on the return the assessing authority could proceed to assess the assessee under section 16. It could anything more or better by issuing an

additional notice under section 15(3). It appears that no returns were filed in response to the general notice, and therefore, the assessing authority issued notices under section 15(3) against the assessee and the co-owners as individuals. A return was filed by the assessee in response to that notice. The assessing authority in July, 1950, however served upon him as mutawalli another notice under section 15(3) in compliance with the remand order as modified by the Revision Board and the return filed under protest in response to that notice by the assessee cannot possibly be treated as a return filed in response to the general notice. After a notice under section 15(3) was issued, which could have been issued as explained above, only if the general notice had remained unresponded to, the return filed in response to it could not possibly be deemed to be a return filed in response to the general notice. Moreover when one return is filed in response to a notice under section 15(3) another return filed in response to another notice under section 15(3) cannot be deemed to be return filed in response to the general notice. Whatever might have been the period fixed in the general notice it must have expired before the first notice under section 15(3) was issued and in any case before the end of the assessment year 1356 Fasli and the return filed after the expiry of this period cannot be deemed to have been filed in response to it. We have held that the Board had no jurisdiction to revise its earlier order on September 19,1950, and, therefore, it must be treated as still in force. According to it the return filed by the assessee second time was a return filed in response to a notice under section 15(3). At the time when it was filed the Boards order dated September 19,1950, stood and the Board had no jurisdiction either by setting aside its earlier order or otherwise to alter the nature of the return with retrospective effect and to the detriment of the assessee. It had no jurisdiction to compel him to file a return as in response to a notice under section 15(3) and after

he filed it and after realising that no notice under section 15(3) could be issued, to turn round and say that it would treat the return as one filed in response to the general notice; to do so would be nothing but a fraud on the legislature and the assessee. The analogy of the principle that governs the common law of appropriation applies in this case. The remand order called upon the assessing authority to assess the assessee on the return to be filed by him in response to a fresh notice to be issued under section 15(3) and not on a fresh return to be filed in response to the general notice; therefore, the question whether the second return filed by the assessee could be treated as a return filed in response to the general notice did not arise. Even if it could be treated so, the assessing authority had no jurisdiction according to the remand order to assess the assessee on it.

It is true that a return is a return whether filed in response to one notice or to another and that the law makes no distinction between a return filed in response to one notice and a return filed in response to another notice. An assessee is to be assessed on the return filed by him and the question whether he filed it in response to the general notice or in response to a notice under section 15(3) is irrelevant. But the question here is of the validity of the notice served under section 15(3) upon the assessee on July 7, 1950, and of the effect of its invalidity on the return filed in response to it. The question whether a return was filed in response to a particular notice or not does become relevant when the validity of that notice is in question. If the assessing authority had not issued a notice under section 15(3) against the assessee-mutawalli-in June-July, 1950, he would not have filed the return; in other words, if the assessing authority had not committed a mistake of law there would have been no return filed by the assessee and it cannot be permitted to take advantage of its mistake by treating the return as one filed in response to the general notice. It cannot treat as done something which would have been done if everything had gone on in accordance with the law.

We could not quite understand why we are referred to the proviso to section 15(1) to the effect that the assessing authority may extend the date for the delivery of the return; there is no question here of its extending, or having extended the date for the delivery of the return asked for under the general notice under section 15(1). The assessing authority did not extend the date, the assessee never asked

for any extension of the date and after the issue of a notice under section 15(3) and the assessee filing a return in response to it no occasion could arise for its extending the date for the delivery of the return.

Merely because it could extend the date, the return filed in response to an illegal notice under section 15(3) cannot be treated as having been filed in response to the general notice after a return had been filed in response to the earlier notice under section 15(3). The attack on the second return filed by the assessee after July 7, 1950, was not on a ground that it was filed after the expiry of the date fixed for its filing in the general notice but on the ground that it could not be asked for at all after the expiry of the assessment year. Our answer to question No. 2 is, therefore, in the negative.

Questions Nos. 3 and 4 were not pressed on behalf of the assessee and are left unanswered because their answers depend upon the answers given to questions Nos. 1 and 2 above.

We direct that a copy of this judgment shall be sent under the seal of the court and the signature of the Registrar to the Revision Board as required by section 24(7) of the U.P. Agricultural Income-tax Act.

We further direct that the assessee shall get his costs from the State, which we assess at Rs. 100. Counsel's fee is assessed at Rs. 100.

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