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since I should have thought that ordinarily wherever the onus was placed, both parties would lead whatever evidence was available to them, and that in fact the fate of very few issues would depend on the placing of the onus. Indeed, this situation could hardly arise except where no evidence is led.

On the other hand this point was considered by a Full Bench consisting of Wanchoo, C.J. and Dave and Modi, JJ., in *Nagori Ibrahim and others* v. *Shahji Babumal and others* (4), and it was held that the placing of the onus could not be challenged in revision and that the proper remedy of the party aggrieved was to raise the matter at the stage of appeal as he was entitled to do so under section 105 Civil Procedure Code. Among the cases discussed in the course of the judgment was the Patna decision on which reliance had been placed by the petitioner in the present case. I am in respectful agreement with this decision and I, therefore, consider that the placing of the onus of an issue on one party or the other by a subordinate Court is not a matter on which the High Court is entitled to interfere in revision under section 115 of the Code of Civil Procedure, from which it follows that the present revision petition must be dismissed. I would, however, leave the parties to bear their own costs.

Dulat, J.

S. S. DULAT, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

AMOLAK RAM KHOSLA,—*Appellant*

versus

THE MUNICIPAL CORPORATION OF DELHI,—*Respondent*

Civil Reference No. 2-D of 1961

1962

Nov., 27th

Delhi Municipal Corporation Act (LXVI of 1957)—S. 126—Amendment of assessment lists—When takes effect—Provisional assessment—Whether can be made.

(4) A.I.R. 1954 Raj. 83.

Held, that the proviso to sub-section (1) of section 126 of the Delhi Municipal Corporation Act. 1957 makes it quite clear that the amendment of the assessment list cannot take effect prior to the year in which it is made. There is no provision in the Act for making provisional assessment and, therefore, enhanced tax on the basis of the amended list can only be recovered for the year in which the amendment was made and not for the previous year on the ground that provisional assessment on the basis of the proposed amendment was made in that year.

Reference u/s 169 of the Delhi Municipal Corporation Act forwarded by Shri Des Raj Dhameja, Additional District Judge, Delhi, dated 21st August, 1961, wherein the following law point arises:—

> *"Whether an amendment purporting to be for a particular financial year but actually made after the expiry of that year renders the assessee liable for enhanced tax in accordance with the amendment of that year?"*

Petitioner in person.

D. D. CHAWALA, ADVOCATE, for the Respondent.

JUDGMENT

MAHAJAN, J.—This is a reference under section 169 of the Delhi Municipal Corporation Act, 1957, hereinafter referred to as the Act. The following question has been referred :— Mahajan, J.

> "Whether an amendment purporting to be for a particular financial year but actually made after the expiry of that year renders the assessee liable for enhanced tax in accordance with the amendment for that year ?"

The facts are that a notice under section 126(2) of the Act was given to the petitioner, Shri Amolak Ram Khosla, on the 25th February, 1960 which

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was served on him on the 27th February, 1960. Sub-section (2) of section 126 of the Act is in these terms:—

> "126(2) Before making any amendment under sub-section (1) the Commissioner shall give to any person affected by the amendment, notice of not less than one month that he proposes to make the amendment and consider any objections which may be made by such person."

Objections were filed to the amendment of the list on the 24th March, 1960, and the 31st March, 1960, was fixed for decision of the objection but no notice regarding the hearing fixed for 31st March, 1960, was served on the petitioner. The Commissioner, however, made a provisional assessment. There is no provision in the Act for making a provisional assessment. The actual amendment was made after hearing the petitioner on the 29th December, 1960.

The case of the Corporation is that as the provisional assessment was made in the year 1959-60, that is, on the 31st of March, 1960, it would be operative for the year 1959-60. On the other hand, the petitioner's case is that the actual amendment was made on the 29th December, 1960, that is, in the year 1960-61 and, therefore, it could not be made use of to recover enhanced tax on the basis of the amendment for the year 1959-60. It may be mentioned that the assessment year begins from the 1st of April and ends on the 31st of March of the following year. As the Corporation claimed a reference under section 169 of the Act on the question already set out in the earlier part of the judgment, this reference has been made to this Court.

The scheme of the Act so far as assessment lists are concerned is that in pursuance of section 124 of the Act, the lists are prepared. After the lists are prepared, notice is given to the public. Ratable value of the buildings is fixed and objections to the ratable value or assessment or any other matter entered in the assessment lists have to be made in writing to the Commissioner before the date fixed in the notice. Thereafter objections are investigated after an opportunity of hearing having been given either in person or through an authorised agent. After the objections have been settled, the lists are authenticated by the signatures of the Commissioner or his delegate. Section 125 deals with the evidentiary value of these lists and it provides that these lists shall be accepted as conclusive evidence for the purpose of assessing any tax levied under this Act, or the ratable value of all lands and buildings to which such entries respectively relate and for the purpose of any tax levied on lands or buildings of the amount of each such tax leviable thereon during the year to which such list relates. Section 126 provides for the amendment of the assessment list. The operative part for our purpose reads thus:—

"126. (1) The Commissioner may, at any time, amend the assessment list—

(a) * * * * * * *
(b) * * * * * * *
(c) * * * * * * *
(d) * * * * * * *
(e) * * * * * * *
(f) * * * * * * *
(g) * * * * * * *

Provided that no person shall by reason of any such amendment become

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liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which the amendment is made.

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(2) * * * * * * * *"

It will be clear from the plain reading of the proviso that the amendment of the assessment list cannot take effect prior to the year in which it is made. Therefore, the question that requires determination is : whether the so-called provisional amendment in the list is the amendment which has to be looked at for the purposes of the proviso to section 126 or it is the actual amendment ? It is common ground that the actual amendment was made on the 29th December, 1960, and if the actual amendment will fix the year in which it was made for the purposes of the proviso, then the provisional assessment on the basis of which enhanced tax is sought to be recovered from the petitioner would be of no use. I have already said that there is no basis in the Act for any provisional assessment. Only final assessment can be made, and this was done in the year 1960-61. That being so, the enhanced tax cannot be recovered on the basis of the amendment in question. This does not mean that the assessee is not liable to tax for the year 1959-60 on the basis of the assessment list minus the amendment. The original assessment list will stand and the amendment of the assessment list made under section 126 will only be effective for the year 1960-61.

This reference is answered in the terms stated above.

There will be no order as to costs.

B.R.T.